



# City of Chicago



O2021-3227

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	7/21/2021
<b>Sponsor(s):</b>	Lightfoot (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Concession agreements for various services at Chicago O'Hare International Airport
<b>Committee(s) Assignment:</b>	Committee on Aviation



OFFICE OF THE MAYOR  
CITY OF CHICAGO

LORI E. LIGHTFOOT  
MAYOR

July 21, 2021

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of the Department of Aviation, I transmit herewith an ordinance authorizing the execution of concession agreements for various services at Chicago O'Hare International Airport.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in black ink, reading "Lori E. Lightfoot".

Mayor



## **ORDINANCE**

**WHEREAS**, the City of Chicago ("City") is a home rule unit of government as defined in Article VII, §6(a) of the Illinois Constitution, and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the City owns and operates Chicago O'Hare International Airport ("Airport") and possesses the power and authority to lease its premises and facilities and to grant other rights and privileges with respect thereto; and

**WHEREAS**, the Airport provides its employees, airport-tenants' employees, air carrier passengers and members of the public with many amenities, such as shopping, dining and other service needs; and

**WHEREAS**, to modernize the retail experience at the Airport and to promote self-service retail spaces in light of the COVID-19 pandemic, the City issued a request for proposals that included two packages: one for respondents to operate cashier-less, self-service retail spaces and another for respondents to install and maintain automated retail vending machines at the Airport; and

**WHEREAS**, the City desires to enter into a license agreement (the "Micro Mart Agreement") with HG ORD Tech Retail JV ("Hudson JV") for Hudson JV to operate retail spaces that utilize automated, cashier-less technology substantially in the form of agreement attached hereto as Exhibit A; and

**WHEREAS**, the City desires to enter into an automated retail license agreement (each an "Automated Retail License Agreement") with each of MAG US Lounge Management LLC; Prepango LLC; PepsiCo, Inc.; Best Vending Midwest LLC; Oops Diapers 2Go Inc.; TFG Swyft Ventures; Nuts on Clark, Inc.; Good Vibrations, LLC d/b/a BodyCharger Systems, LLC in Illinois, and Compass Group USA Inc., by and through its Canteen Division (each a "Vending Operator"), for the respective Vending Operator to install and maintain automated retail vending machines at the Airport substantially in the form of agreements attached hereto as Exhibits B-1 through B-9, respectively; and

**WHEREAS**, pursuant to Section 3.10(a) of the License Agreement ("Host Agreement"), dated January 1, 1998, by and between Host International Inc. ("Host") and the City, Host has requested the City approve the sublicense agreement substantially in the form attached hereto as Exhibit C to permit Café DesCartes Company, ("Café DesCartes"), an ACDBE, to operate as a sublicensee under the Host Agreement, and the City desires to approve such sublicense agreement; now therefore

### **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** The above recitals are incorporated by reference as if fully set forth herein.

**SECTION 2.** The Mayor or the mayor's proxy is hereby authorized to execute, upon the recommendation of the Commissioner of the Chicago Department of Aviation ("Commissioner"), an agreement with Hudson JV in substantially the form attached hereto as Exhibit A;

**SECTION 3.** The Mayor or the mayor's proxy is hereby authorized to execute, upon the recommendation of the Commissioner, an agreement with each Vending Operator, in substantially the form attached hereto as Exhibit B-1 through B-9, respectively;

**SECTION 4.** The Commissioner or the Commissioner's proxy is hereby authorized to approve of Café DesCartes operating as a sublicensee under the Host Agreement pursuant to a sublicense agreement substantially in the form attached hereto as Exhibit C;

**SECTION 5.** The Commissioner and such other City officials and employees as may be required are authorized to take such actions and execute such other documents as may be necessary or desirable to implement the objectives of this ordinance;

**SECTION 6.** This ordinance shall take effect immediately upon its passage and approval.

## **EXHIBIT A**

**CONCESSION LEASE AND LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**HG ORD TECH RETAIL JV**

**AT  
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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**SIGNATURE PAGE**

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of Aviation

APPROVED AS TO FORM AND LEGALITY:

Senior Counsel \_\_\_\_\_

(TENANT)

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

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]



## **CONCESSION LEASE AND LICENSE AGREEMENT**

This Concession Lease and License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between HG ORD TECH RETAIL JV [legal name of entity] a(n)\_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Tenant**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

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

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Tenant responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Tenant, and Tenant desires to accept, a license to operate such a concession and a lease to operate the concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Tenant to provide self-checkout, micro markets in Terminals 1, 2 and 3. Micro Marts (as defined herein) are self-contained stores without direct customer serving employees and include check-out free, touch-free Automated Checkout technology, which automatically detects and tracks, in a virtual cart, when purchases are taken and returned to shelves and utilizes an e-commerce autopay feature when customers are leaving the market to collect payment.

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

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

## **ARTICLE 1 CITY APPROVAL**

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

## **ARTICLE 2 INCORPORATION OF BACKGROUND AND EXHIBITS**

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

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

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

## **ARTICLE 3 DEFINITIONS**

3.1 Interpretation and Conventions.

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

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

C. Any headings preceding the text of the articles and sections of this Agreement,

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

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

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

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

### 3.2 Definitions

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

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

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

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

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

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

**"Automated Checkout Technology"** means e-commerce technology that, once a customer enters a Retail Space using their credit or debit card, tracks the customer's selections of merchandise including food and beverage and retail products, and automatically executes payment of any purchases immediately upon the customer leaving the Retail Space via no-contact electronic system, without any further action required on the part of such customer.

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

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

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

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

**"Concession"** means Tenant's business of offering the Products identified in Exhibit 5 for sale at retail to the public at the Airport pursuant to this Agreement.

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

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

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

- A. the date that is 180 days after the Delivery Date of the Retail Space in question;
- B. the date that is 180 days after the building permit for the Improvements for the Retail Space in question is issued; provided that the Tenant has demonstrated to the satisfaction of the Commissioner that Tenant timely submitted design drawings in accordance with Section 5.5 hereof and promptly applied for, and diligently pursued the issuance of, such building permit; or
- C. the date set forth in the Development Plan for the commencement of retail sales in the Retail Space in question; provided, however, that the date set forth in the Development Plan for commencement of retail sales shall be extended one day for each day Tenant has demonstrated to the satisfaction of the Commissioner that Tenant was delayed due to *force majeure* pursuant to Section 11.20. Under no circumstance can this date exceed 60 days beyond the date established in A.

above.

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

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

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

**"Default Rate"** means 12% per annum.

**"Delivery Date"** means the date upon which the City gives Tenant possession of the Retail Space or Storage Space in question.

**"Department"** means the Chicago Department of Aviation, also known as CDA.

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

**"Development Plan"** means, as further described in Section 5.5, the Tenant's conceptual plans, budget and other design specifications for construction of its Improvements and its schedule for commencement of retail sales in each Retail Space. The Development Plan is attached hereto as Exhibit 3.

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

**"Environmental Laws"** means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

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

**"Food Court Common Area"** means the space immediately adjacent to specific Retail

Spaces where shared seating is provided to the public.

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

- A. any sums collected and paid out by Tenant for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made in or from the Leased Space and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Leased Space to any other stores or warehouses of Tenant;
- D. sales of Tenant's fixtures and store equipment not in the ordinary course of Tenant's business;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Improvements, Products, fixtures, trade fixtures and other Tenant personal property other than the proceeds of business interruption insurance.

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

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

**"Improvements"** means the improvements to be made to the Leased Space by Tenant that add or maintain value to the Leased Space, including fixtures and trade fixtures (but excluding trademarked or proprietary trade fixtures) and any other enhancements of a permanent or temporary nature made to the Leased Space, other than the Shell and Core, so that the Leased Space can be used for Concession operations. The Improvements must be described, along with

a budget of Improvement Costs, and depicted conceptually in the Development Plan and must conform to Tenant's response to the RFP.

**"Improvement Costs"** means the total amount paid by Tenant for categories of labor, services, materials and supplies used in the design, development, installation and construction of the Improvements. The minimum Improvement Costs must not be less than 95% of the budgeted Improvement Costs included in the approved Development Plan. Tenant's actual, reasonable Improvement Costs will be memorialized in the written Confirmation of DBO that will be attached to Exhibit I upon approval by the Commissioner. Whenever this Agreement refers to amortization of Improvement Costs for a Leased Space, such amortization will be calculated on a straight-line basis over 60 months from the DBO of the Leased Space in question, and the amount being amortized will be the actual Improvement Costs for that Leased Space as memorialized in the Confirmation of DBO for that Leased Space.

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

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

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

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

**"Lease Year"** means

- A. for the initial Lease Year of this Agreement, a period beginning on the first Date of Beneficial Occupancy of any Retail Space and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the Agreement is otherwise terminated.

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

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

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

**"Micro Mart"** means a Retail Space for the sale food and beverage and/or retail products

which utilizes Automated Checkout Technology, and which typically occupies a smaller footprint than a full retail store or restaurant but is larger than a Kiosk.

**“Minimum Annual Guarantee” or “MAG”** means the minimum amount payable each Lease Year for the License Fee. If this Agreement covers more than one Retail Space, Exhibit 2 must prorate the MAG for the Agreement among the various Retail Spaces in proportion to their anticipated Gross Revenue volumes. The MAG for each Retail Space will commence upon the DBO for that Retail Space.

**“Percentage Fee”** means the percentage fee(s) set forth in Exhibit 2.

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

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

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

**“Retail Space”** means a Leased Space used by Tenant for the sale at retail of Products, including any Additional Space or Relocation Space used for that purpose.

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

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

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

**“Subcontracts”** means all oral or written agreements with Subcontractors.

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

**“Term”** means the period of time beginning on the Effective Date and ending at 11:59



p.m. on the seventh anniversary of the DBO of the Retail Space to open for business, excluding any Retail Space that is Additional Space or Relocation Space. At his/her sole discretion, the Commissioner may extend the Term by two additional years, in one-year increments by written notice to Tenant.

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

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

**"Value Price"** has the meaning set forth in Section 4.3.

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

#### **ARTICLE 4 LICENSE, LEASE AND TENANT'S OPERATIONS**

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

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of other tenants or licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Tenant pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

42     No Subleases, Assignments or Other Uses. Tenant understands and agrees that the Lease and the License granted under this Agreement are interdependent and that the locations of the Retail Spaces were determined by the City so that the Concession operated by Tenant is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of the Retail Space(s). Accordingly, Tenant acknowledges that the principal purpose of this Agreement is to provide Tenant a License to operate its Concession, without right of sublease or assignment, from the Leased Space and that any attempted sublease, assignment or other use of the Leased Space without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default.

43     Products and Value Pricing.

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

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

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

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

Tenant must submit to the CMR, within 30 days after the end of each Lease Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Tenant with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Tenant and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Tenant, Tenant shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five days will constitute an Event of Default. Tenant's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Tenant, as liquidated damages and not as a penalty, in amounts as outlined in Exhibit 13.

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

44 General Requirements for Operation of Concessions. Tenant has the authority to manage and administer the Concession in the Leased Space, subject to the rights of the City under the law, in equity, and under this Agreement to direct Tenant in order to ensure that the Airport operates in the most effective and efficient way possible and to supervise the Tenant's performance. Tenant covenants to take all commercially reasonable measures to maintain, develop, facilitate and increase the business of the Concession so as to maximize Gross Revenues. Tenant shall operate the Concession as a Micro Mart and acknowledges that utilizing Automated Checkout Technology is necessary for a concession to qualify as a Micro Mart. Failure to use the Automated Checkout Technology as included in the Development Plan, attached as Exhibit 3, constitutes an Event of Default. Tenant further covenants that neither it nor any Affiliate of Tenant will divert or cause or allow to be diverted any business from the Leased Space to other locations not at the Airport that are operated by Tenant or any Affiliate of Tenant. A material condition of this Agreement is that Tenant must operate the Concession operations in accordance with the Airport Concession Program Handbook, the Sustainable Airport Manual,

and the following general requirements:

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

B. Due to the nature of the concession, Tenant is authorized to install and operate any coin, card, token or otherwise activated vending machines as part of the Tenant's Development Plan and approved by the Commissioner.

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

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

E. Tenant must utilize a suitable virtual payment system, as submitted to and approved by the City, for the sale of all Products. Tenant must offer a receipt, which may be virtual, with each purchase. Failure to comply with this Section will constitute an Event of Default. Tenant's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, if Tenant is found to prohibit the acceptance of the above payment option, the City may assess, as liquidated damages and not as a penalty for non-compliance as further defined in Exhibit 13.

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

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

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

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

- (i) use reasonable efforts to remedy problems and issues raised by Airport patrons with respect to the operation of the Leased Space;
- (ii) answer in writing all written customer complaints within 72 hours after receipt, furnishing a copy of the complaint and the answer to the Commissioner within that period; and,
- (iii) furnish the Commissioner within 72 hours after their receipt copies of all written notices received by Tenant from any governmental authority or any Subcontractor with respect to any part of the Leased Space or any Subcontract.

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

I. Tenant shall at all times utilize Automated Checkout Technology to operate the Concession. To the extent Tenant utilizes a third party owned Automated Checkout Technology to operate the Concession, Tenant shall, at all times during the Term: (i) be licensed or permitted by such third party to utilize its Automated Checkout Technology, (ii) provide the City with copies of any agreements or other evidence the City may reasonably request demonstrating such arrangement ("Third Party Technology Use Agreements"), (iii) comply in all material respects with the terms and conditions of Third Party Technology Use Agreements, unless Tenant's compliance with such terms and conditions would cause Tenant to breach its obligations hereunder, (iv) not be in default under any Third Party Technology Use Agreement, (v) notify the City in writing immediately upon notification by any party to a Third Party Technology Use Agreement of Tenant's breach under such or termination of any Third Party Technology Use Agreements. Failure to comply with this Section 4.4(I) shall be an Event of Default under this Agreement.

45 Hours of Operation.

A. Tenant must begin conducting its Concession operations in each Retail Space on

the Date of Beneficial Occupancy applicable to that Retail Space and continue them uninterrupted after that date during all required hours of operation. The Retail Space shall be open, at a minimum, from 5:30 a.m. until 10:00 p.m. daily, to serve the public seven (7) days per week and three hundred sixty-five (365) days per year. Concession may close periodically for restocking, cleaning and routine maintenance. Closure times must be during daily periods of lowest passenger traffic volumes at the Airport. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Lease shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and Airport's flight schedules. The Retail Space must be open, as stated above, unless otherwise approved by the Commissioner or CMR in writing. The Tenant is required to allow access to the Retail Space, 24 hours per day.

B. Except as otherwise permitted under this Agreement, if Tenant fails to operate its Concession from any portion of the Retail Space during all times that Tenant is required to do so under this Agreement or operates the Concession without utilizing Automated Checkout Technology and either such failure continues for more than three days after the City gives Tenant notice, it is an Event of Default. In addition, Tenant acknowledges that failure to provide Concession services to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Tenant must pay the City as liquidated damages (and not as a penalty) in connection with such loss of goodwill the amounts as outlined in Exhibit 13 per Retail Space, beginning as of the time that the City first notifies Tenant that it is not operating the Concession in accordance with the time requirements of this Agreement. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Retail Space re-opens for business; (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Retail Space; and (iii) the date that the Commissioner receives possession of the affected portion of the Retail Space.

46 Personnel.

A. Staff.

- (i) Tenant must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Tenant must maintain an adequate sales force so as to maximize Gross Revenues and use the utmost skill and diligence in the conduct of its Concession operations. A staff member for each concession location must be physically available during all hours of operation. A staff member must be able to, or must have access to, a representative of any third-party provider of Automated Checkout Technology who is able to troubleshoot and perform routine fixes of Automated Checkout Technology during all hours of operation.
- (ii) All employees of Tenant must at all times be clean, courteous, neat in appearance and helpful to the public, whether or not on duty. While on duty, Tenant's

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

- (iii) Tenant and its personnel must at all times participate and cooperate fully in all quality assurance programs that may be instituted by the Commissioner or CMR from time to time. Tenant must cause its personnel to attend all customer service training meetings and participate in such other programs as may be required by the Commissioner or CMR. An appropriate officer or management representative of Tenant must meet with the Commissioner or CMR as requested by the Commissioner or CMR to discuss matters relating to this Agreement, including merchandising and marketing plans. In addition, at the request of the Commissioner or CMR, an appropriate officer or management representative of Tenant must attend other meetings with the City, airlines, other users of the Terminals or any other parties designated by the Commissioner or CMR.
- (iv) The Commissioner reserves the right to object to any of the personnel responsible for the day-to-day operation of the Concession. Upon receipt of such objection, Tenant must use its best efforts to resolve the cause for Commissioner's objection or replace the objectionable personnel with personnel satisfactory to the Commissioner.
- (v) In the event that Tenant was not the existing tenant in the Leased Space prior to the Effective Date, Tenant and its subtenants, if any, will work cooperatively in attempting to retain existing concession employees working in the Leased Space. This will be accomplished by giving the existing concession employees working in the Lease Space prior to the Effective Date preferential interviews for jobs in the Leased Space during the term of this Agreement.
- (vi) Tenant acknowledges that failure to comply with the provisions of this Section 4.6(A) may cause the City to suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess, as liquidated damages against Tenant, and not as a penalty, the amounts outlined in Exhibit 13.

B. General Manager. Tenant must designate a General Manager experienced in management and supervision who has sufficient authority and responsibility to administer and manage the Concession. The General Manager (or authorized representative) must be

immediately available to the Department whenever any of the Retail Spaces are open. The base of operations of the General Manager must be at the Airport, and the General Manager must spend substantially all of his or her working hours at the Airport, unless the Commissioner approves in writing another arrangement. The General Manager is subject to removal at the direction of the Commissioner if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the General Manager is not performing up to standards consistent with the fulfillment of Tenant's obligations.

C. Salaries. Salaries of all employees of Tenant and its Subcontractors performing services or Work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Tenant must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering Work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements of this subsection and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, the requirements of them.

4.7 Operation and Maintenance.

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

- (i) Tenant must provide all cleaning and janitorial services to the Leased Space. Tenant must clean, maintain and repair (including replacements, where necessary) the Leased Space and Improvements in first-class condition and repair during the entire Term.
- (ii) Tenant is responsible for pest control within the Leased Space by contracting with a professional pest control service to provide service on a regular basis or as needed, or at the Commissioner's election, the City or CMR may provide or contract for the pest control and charge Tenant a reasonable charge for the



service. If the Commissioner so requires, Tenant must coordinate all pest control service with the City's or CMR's pest control contractor. Tenant must furnish the Commissioner and CMR a copy of its pest control contract and service records upon request.

- (iii) Tenant must, at its own expense, keep the exhaust system, including all risers, piping and fans used in connection with the exhaust systems, whether located in or outside of the Leased Space, and all other pipes or ducts used by Tenant, including black iron duct, in good repair and so as to meet the highest standards of cleanliness, health, and safety, in a manner consistent with the operation of a first- class Concession and in accordance with all applicable laws, codes and regulations of any governmental authority having jurisdiction. Tenant must not permit any grease to be discharged into the City's plumbing lines. If fixtures or equipment are installed in or attached to roof vents or other openings in the structure or to ducts that connect with the openings, Tenant must keep the ducts, vents and openings free from the accumulation of grease, dirt and other exhaust matter and must furnish and service any filters or other equipment necessary to prevent such accumulation. Tenant must keep the exhaust fan in good condition and repair so as to provide at least the air flow velocities required by applicable codes and regulations. Without limiting the foregoing, Tenant must clean black iron duct twice yearly, or more often as may be required by any local governmental codes, regulations or officials, insurance requirements or applicable industry standards, whichever is more restrictive.

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

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

- (iv) To the extent any City ordinance imposes a stricter standard than the requirements

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

- (v) Any damage to property of the Airport or property of other tenants arising out of Tenant's failure to perform its maintenance obligations is expressly deemed a "Loss" subject to Tenant's indemnification obligations under Section 8.2.
- (vi) Tenant acknowledges that failure to comply with the provisions of this Section 4.7(A) may cause the City to suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess, as liquidated damages against Tenant, and not as a penalty, the amounts outlined in Exhibit 13.

C. Food Court Common Areas.

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

- (i) Tenant has the non-exclusive right to use the Food Court Common Area, in common with other tenants and their customers, on the terms and conditions established by the City and as may be revised during the Term at the City's sole discretion. That use does not include the right to wait on customers in the Food Court Common Area. The City reserves the right to establish and enforce the policies for the Food Court Common Area and tenants whose customers use the Food Court Common Area that the City determines are in the best interest of the overall operation of the Food Court Common Area, so that the City may properly and efficiently operate and manage it as a whole. Tenant must comply with these policies.
- (ii) Tenant must at all times in operating its business in the Retail Space abide by all rules and regulations applicable to tenants whose customers use the Food Court Common Area including those relating to: (a) the health and sanitary conditions of the Retail Space, the Food Court Common Area and the employees of Tenant; (b) standards and quality of Products, services, and merchandising as determined by the City; (c) customer relations; and (d) other matters as the City determines applicable with respect to the operation of the Food Court Common Area and the business conducted by Tenant and all other tenants whose customers use the Food Court Common Area.
- (iii) The City will be responsible for the operation, repair and maintenance of the Food Court Common Area. Food Court CAM Costs include all costs incurred by the City in the repair and maintenance of the Food Court Common Area, including corridors and seating areas, and include, but are not limited to costs of: painting; cleaning; trash and grease removal; operation, maintenance and repair and replacement of all lighting, electrical, plumbing, HVAC and other mechanical and

utility systems; cleaning and retrieval of trays; water, power, gas and sewerage charges; wages and salaries (including employee benefits, unemployment, Social Security and Medicare, and any other payroll taxes) for employees performing operation, maintenance and repair of the Food Court Common Area; materials, equipment, supplies and services purchased for operation, maintenance and repair of Food Court Common Area; required permits and licenses; reasonable straight-line depreciation of movable equipment (including tables and chairs) used in the operation, maintenance or repair of the Food Court Common Area; rental of any equipment used in the operation, maintenance or repair of the Food Court Common Area; and all other direct costs and expenses properly chargeable to the operation, maintenance or repair of the Food Court Common Area. Neither the City nor any company, firm or individual operating, maintaining, managing or supervising the Food Court Common Area, nor any of their respective agents or employees, are or will be liable to Tenant or to any of Tenant's employees, agents, customers or invitees or anyone claiming through or under Tenant, for any damage, injuries, losses expenses, claims or causes of action because of any interruption or discontinuance at any time for any reason in furnishing services relating to operation, maintenance and repair of the Food Court Common Area, nor will any such interruption or discontinuance be deemed a disturbance of Tenant's use or possession of the Leased Space or any part of it; nor will any such interruption or discontinuance relieve Tenant from full performance of Tenant's obligations under this Agreement. Tenant is responsible for providing seating and chairs for Food Court Common Area directly adjacent to Tenant's Leased Space.

48     Utilities.

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

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

- (i)     where the utility lines, including gas, electrical, telephone, hot and cold water, fire sprinkler, gas, and sewer serve both the Leased Space and other areas of the Terminals, Tenant is only obligated to maintain those branch lines and facilities that exclusively serve the Leased Space; and
- (ii)    where such utility lines are entirely for the exclusive service of the Leased Space, Tenant is obligated to maintain the utility lines from the Leased Space up to the main entry point of the utility to the Terminal(s). Alternatively, the City may, at the Commissioner's sole discretion, maintain such utility lines and charge Tenant the reasonable cost of the maintenance.
- (iii)   Tenant must maintain all electrical cables, conduits, wiring, fire alarm systems,

electrical panels and associated equipment located within and serving the Leased Space.

49 Refuse Handling.

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

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

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

4.10 Promotion.

A. Signs and Advertising. Tenant may, at its own expense and subject to obtaining any necessary permits, install and operate necessary and appropriate identification signs in and on the Retail Space for its promotional use (identifying the Concession operations at the Retail Space in question or the Products sold there). All such signage (especially all signage visible from the Common Areas) must be in compliance with signage and other applicable criteria adopted by the Commissioner or other City agencies from time to time and subject to the prior written approval of the Commissioner as to the number, size, height, location and design (as applicable). Tenant must not install, affix, or display any signage outside the Retail Space except

as permitted by the Department. Without the prior written consent of the Commissioner, Tenant and its Subcontractors must not distribute any advertising, promotional or informational pamphlets, circulars, brochures or similar materials at the Airport except within the Retail Space and except as are related to Tenant's Concession. Tenant acknowledges that any failure to comply with this Section 4.10(A) may cause the City to suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess, as liquidated damages against Tenant, and not as a penalty, the amounts outlined in Exhibit 13.

B. Marketing and Advertising Fund. The Department operates a marketing fund ("**Fund**") for the purpose of financing a program for advertising and promoting Concessions at the Airport. The Program may include advertising, media placements, special events, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from the Tenant and other tenants at the Airport. Tenant will contribute an amount of 0.5 percent (0.5%) of Gross Revenues per Lease Year to the Fund. All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Tenant shall make its contributions to the Fund monthly in arrears concurrently with its Rent payment under this Agreement. The City may, but is not required to, contribute to the Fund. Tenant has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

4.11 Distribution and Storage; Deliveries.

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

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

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

4.12 Certain Rights Reserved By the City.

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

- (i) Install, affix and maintain any and all signs on the exterior and on the interior of the Terminals;
- (ii) Decorate or to make repairs, inspections, alterations, additions, or improvements, whether structural or otherwise, in and about the Terminals, or any part of them, and for such purposes to enter upon the Leased Space, and during the continuance of any of the work, to temporarily close doors, entryways, public space and corridors in the Terminals, and to interrupt or temporarily suspend services or use of facilities, all without affecting any of Tenant's obligations under this Agreement, so long as the Leased Space is reasonably accessible and usable;
- (iii) Upon request, require Tenant to furnish the Department with copies of door keys for the entry doors of the Leased Space, where applicable, and to retain them at all times, and to use in appropriate instances, keys, including master keys and passkeys, to all doors within and into the Leased Space, but the keys will at all times be kept under adequate and appropriate security by the Department. Tenant must not change any locks, nor affix locks on doors without the prior written consent of the Commissioner. Notwithstanding the provisions for the Department's access to the Leased Space, Tenant releases the City from all responsibility arising out of theft, robbery, pilferage and personal assault unless the same results from the City's gross negligence or willful misconduct. Upon the expiration of the Term of this Agreement or Tenant's right to possession of the Leased Space, Tenant must return all keys to the Concession Management Representative and must disclose the combination of any safes, cabinets or vaults left in the Leased Space;
- (iv) Approve the weight, size and location of safes, vaults and other heavy equipment and articles in and about the Leased Space and the Terminals so as not to exceed the legal load per square foot designated by the structural engineers for the Airport, and to require all such items and furniture and similar items to be moved into or out of the Terminals and the Leased Space only at the times and in the

manner as the Commissioner directs in writing. Tenant must not install or operate machinery, or any mechanical devices of a nature not directly related to Tenant's ordinary use of the Leased Space without the prior written consent of the Commissioner. Movements of Tenant property into or out of the Terminals or the Leased Space and within the Terminals are entirely at the risk and responsibility of Tenant, and the Commissioner reserves the right to require permits before allowing any property to be moved into or out of the Terminals or the Leased Space;

- (v) Establish controls for the purpose of regulating all property and packages, both personal and otherwise, to be moved into or out of the Terminals and the Leased Space;
- (vi) Regulate delivery and service of supplies and the usage of the apron area, loading docks, receiving areas and freight elevators and designate the times within which, and the locations at which, deliveries may be made to or by Tenant;
- (vii) Show the Leased Space to prospective Tenants and subtenants at reasonable times and, if vacated or abandoned, prepare the Leased Space for re-occupancy;
- (viii) Erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances to them, in and through the Leased Space at reasonable locations;
- (ix) Enter the Leased Space for the purpose of periodic inspection for fire protection, maintenance and compliance with the terms of this Agreement, including but not limited to the Airport Concession Handbook, and exercise any rights granted to City or retained by City in this Agreement; except in the case of emergency, however, the right must be exercised upon reasonable prior notice to Tenant and with an opportunity for Tenant to have an employee or agent present;
- (x) Grant to any person the right to conduct any business or render any service in or to the Terminals or the Airport.
- (xi) Promulgate from time-to-time rules and regulations regarding the operations at the Airport; and
- (xii) Maintain newspaper vending machines at any location in the Airport.

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

## **ARTICLE 5 LEASED SPACE AND IMPROVEMENTS**

5.1 Leased Space. As provided in Section 4.1, the City grants Tenant the right to use the Leased Space identified in Exhibit 1, or portions thereof, from the date of delivery of each

portion of the Leased Space through the remainder of the Term of this Agreement for the operation of the Concession, except as otherwise provided for herein. Exhibit 1 may be amended by agreement of the Tenant and the Commissioner from time to time to reflect changes in Leased Space, including but not limited to any Additional Space or Relocation Space. As of the Effective Date, all square footage identified in Exhibit 1 is approximate, and is subject to final correction in accordance with field measurements to be taken after completion of the Improvements. All such measurements relating to the Leased Space will be made to and from the "lease lines" as identified on Exhibit 1. Tenant must confine all of its Concession operations to its Leased Space. Any conduct of Concession operations outside of Tenant's Leased Space is an Event of Default.

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

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

C. Additional Space.

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

- a. size and location of the Additional Space being offered, if any;
- b. whether the Additional Space is being offered as Retail Space or Storage Space; and
- c. the City's Shell and Core obligations and Tenant's Improvement obligations for the Additional Space.

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



accordingly. Upon notification from Tenant to the Commissioner that it rejects the Additional Space or if Tenant fails to notify the Commissioner within 30 days that it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

- (ii) Nothing in (i) above requires the Commissioner to offer any Additional Space to Tenant or limits or restricts the Commissioner's or the City's right to enter into any Concession agreement with any third party for such space. **Additional Space, if any, offered to Tenant is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Tenant is at the Commissioner's sole and absolute discretion. TENANT HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE.**
- (iii) The maximum aggregate amount of Retail Space that may be offered to Tenant as Additional Space is 2,000 sq. ft.

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

- (i) The Commissioner will notify Tenant in writing within a reasonable period of time prior to the relocation of all or part of the Leased Space. Such notice will be not less than 90 days in advance of the relocation but, in any event, notice is not required more than 180 days in advance.
- (ii) If a Retail Space is being relocated and the Relocation Space has, in Tenant's reasonable business judgment, diminished size, visibility, and/or exposure to passenger traffic in comparison to the Retail Space being vacated, Tenant may so notify the Commissioner in writing no later than 15 days after Tenant receives the Commissioner's notice. Such notice must detail with reasonable specificity why Tenant believes that the Relocation Space is not comparable to the Retail Space being vacated and the projected adverse impact on Tenant's sales. Tenant and Commissioner may thereafter negotiate an adjustment in the Percentage Fee and/or the Minimum Annual Guarantee for the Relocation Space to reflect the differences in size, visibility, and/or passenger traffic. If the Tenant and Commissioner fail to agree on such an adjustment or if Tenant otherwise rejects the Relocation Space, then the Lease for the Retail Space being vacated will terminate on the date for the relocation set forth in the Commissioner's notice, and the Minimum Annual Guarantee as of such date will be adjusted in proportion to the percentage of Tenant's Gross Revenues from prior Lease Year that were generated at the Retail Space being vacated. Further, if the Lease of the Retail Space being vacated is terminated, Tenant is entitled to a credit, equal to the unamortized portion of Tenant's actual Improvement Costs for the Retail Space being vacated (but excluding any Improvement Costs for Tenant personal property or any portion of the Improvements that can be moved and used by

Tenant elsewhere), against Rent due and owing to the City from Tenant until the full amount of the credit has been applied against Rent.

- (iii) Except when Tenant rejects Relocation Space pursuant to (ii) above, the City is responsible for costs incurred in the relocation or replication of the Improvements in the Leased Space being vacated, including the cost of moving Tenant's equipment and inventory and the cost of constructing replacement Improvements comparable to the condition of the Improvements in the Leased Space being vacated as of the date of relocation, to the extent comparable Improvements do not already exist in the Relocation Space. In the case of a relocation, Tenant must promptly vacate the portion of the Leased Space required to be vacated and as to which this Agreement is being terminated and return the portion of the Leased Space in as good or better condition as existed as of the date that the City gave Tenant possession of the Leased Space being vacated, unless the Commissioner otherwise agrees in writing. The City will endeavor not to require Tenant to move from the Leased Space being vacated to the Relocation Space before Work on Improvements in the Relocation Space is completed, but the Leased Space being vacated may be needed for other Airport purposes prior to the completion of Improvements in the Relocation Space. Because the City is replacing Improvements in kind, Tenant is not entitled to any credit for unamortized Improvement Costs for the Leased Space being vacated, and the unamortized Improvement Costs for the Leased Space being vacated will be deemed to be the unamortized Improvement Costs for the Relocation Space and continue to be amortized on the same schedule as the original Leased Space.

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

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

5.4 Tenant's Improvement Obligations.

A. Retail Space and Storage Space. Unless otherwise agreed in writing by the Commissioner, Tenant must complete, or cause to be completed, the Improvements as described

in the Development Plan. Improvements shall be at Tenant's sole cost and expense and must be completed on or before the Date of Beneficial Occupancy set forth for each portion of the Leased Space in accordance with the schedule set forth in the Development Plan, subject to Section 11.20, "Force Majeure". Failure to achieve DBO for the Improvements in accordance with the schedule in the Development Plan will result in liquidated damages pursuant to Section 5.5(J).

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

C. Temporary Relocation Space and Additional Space. The Commissioner may require Tenant to operate the Concession, prior to the Date of Beneficial Occupancy applicable to any Relocation Space and Additional Space, from a temporary Relocation Space, at City's sole cost and expense. If approved by the Commissioner, Tenant may use temporary or used fixtures, trade fixtures and equipment and is not required to install Improvements except to the extent necessary to make the temporary Relocation Space useable.

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

#### 5.5 Work Requirements.

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

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

- (i) all regulations and directives now or later promulgated by the United States Federal Aviation Administration ("FAA") or Transportation Security Administration ("TSA") pertaining to airport security, as such regulations and

directives may be amended or modified from time to time during the Term of this Agreement;

- (ii) all federal, State of Illinois, and City laws, rules, regulations and ordinances, including all building, zoning and health codes and all Environmental Laws; and
- (iii) the Design and Construction Standard Operating Procedures- Concessions Projects ("C-SOP") C-SOP, the Airport Concession Program Handbook, and the Sustainable Airport Manual.

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

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

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

C. Development Plan. Tenant's Development Plan, as approved by the Commissioner, is attached hereto as Exhibit 3. It describes and depicts the Tenant's thematic concept for the Retail Space (including storefront design images, as appropriate), floor plan(s) of the Retail Space, its plan and schedule for implementing the Improvements and commencing Concession operations in the Leased Space, temporary facilities that may be necessary to meet the requirements of this Agreement, and its other submission requirements as set forth in the C- SOP. The Development Plan must include the anticipated Date of Beneficial Occupancy of each Retail Space, the budgeted Improvement Costs for each Retail Space, and the dates by which City must complete the Shell and Core and the Delivery Date necessary in order to achieve the anticipated DBO for each Retail Space.

D. 30, 60, 90 and 100 Percent Design Phase. Tenant must submit to the Commissioner its proposed 30, 60, 90, 100 Percent design drawings and specifications prepared as required under the C-SOP. The C-SOP outlines the timing and expectations for submissions at

each percentage of the design phase. . The C-SOP also provides the timing of the review by the Commissioner. Tenant must adhere to the time required to respond to the Commissioner's comments as outlined in the C-SOP. If Tenant fails to provide acceptable designs, after 5 attempts, an Event of Default can be declared by the Commissioner.

E. Start of Construction. For each portion of the Leased Space, within 10 days after the latest of occur of: 1) the date the City delivers to Tenant possession of said portion of the Leased Space, 2) the date Tenant has obtained applicable building permits for said portion of the Leased Space, and 3) the date of commencement of construction set forth in the Development Plan, Tenant must begin construction of the Improvements under and consistent with the approved Construction Documents, in a diligent, first-class and workmanlike manner. Commissioner may require Tenant and its Subcontractors to meet with the Department's construction manager and Concessions Management Representative prior to starting construction. Among other requirements, the Improvements:

- (i) Must conform with all architectural, fire, safety, zoning and electrical codes and all federal, State, City and other local laws, regulations and ordinances pertaining to them, including the ADA, and all Airport standards, procedures and regulations.
- (ii) Must be free and clear of any mechanics' or materialmen's liens or similar liens or encumbrances.
- (iii) Except as otherwise provided in this Agreement, must be completed entirely at Tenant's cost and expense and in accordance with the requirements of this Agreement including, but not limited to, the requirements and procedures set forth in the C-SOP.
- (iv) Upon the request of the Commissioner, Tenant must purchase and install a security camera and connect the camera feed into a junction box at a location to be determined by the Commissioner. Tenant will permit the Commissioner to connect the security camera to the Airport security system.

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

F. Change Order Review. Tenant must cause all Work to be performed in a first class, good and workmanlike manner and in accordance with the Construction Documents. Tenant may request in writing that change orders relating to the Work be responded to by the City, and the City will so respond within 10 days, unless a response within 10 days is unreasonable in the circumstances, in which case the response period will be as reasonably determined by the City but in no event longer than 20 days. At all times during the Work, Tenant must have on file with the Commissioner and on the construction site for inspection by the Commissioner, a copy of the approved Construction Documents. Tenant must immediately begin to reconstruct or replace and diligently pursue to completion, at its sole cost and expense,

before or after completion of the Work, any Work that is not performed in accordance with the Construction Documents as approved by the Commissioner.

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

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

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

- (i) Tenant must pay the City liquidated damages at the rate of \$250 per day for each day from and after the Date of Beneficial Occupancy, until the date on which the Retail Space actually opens to the public for business; and
- (ii) Tenant must cooperate with the Commissioner in providing the interim Concession operations from kiosks or other temporary locations, as the Commissioner may reasonably require, to serve the patrons of the Terminals until the applicable Improvements have been completed and the Retail Space is open to the public for business; and
- (iii) if, for any reason, Tenant fails to substantially complete the Improvements in accordance with the approved Construction Documents relating to them and open

the Retail Space to the public for business within 30 days after the Date of Beneficial Occupancy, the failure is an Event of Default, and the City has the right to exercise any and all remedies under this Agreement, at law or in equity; and further,

- (iv) if Tenant is permitted to open for business in accordance with the schedule in the Construction Documents but any punch list items are not completed within 30 days following the date on which Tenant opens to the public for business, the Commissioner will assess liquidated damages against Tenant at the rate of \$250 per day per punch list item not timely completed; and
- (v) if Tenant is permitted to open for business but any punch list items are not completed within 60 days following the date on which Tenant opens to the public for business, the City reserves the right, at the Commissioner's sole discretion, to either:
  - a. complete the punch list Work at the City's cost and bill the Tenant for this Work, in which case the charges are considered Additional Rent; or
  - b. close the affected Retail Space until all outstanding punch list items are completed.

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

K. Mechanics' Liens. Tenant must not permit any mechanics' lien for labor or materials furnished or alleged to have been furnished to it to attach to any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement in any way relating to any work performed by or at the direction of Tenant. Upon making payments to Subcontractors, Tenant must obtain from each Subcontractor a waiver of mechanics' liens against any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement arising out of any Work done by the Subcontractor and each and every of the Subcontractor's materialmen and workmen. If, nonetheless, any such mechanics' lien is filed upon any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement, Tenant must indemnify, protect, defend and save harmless the City against any loss, liability or expense whatsoever by reason of the mechanic's lien and must promptly and diligently proceed with or defend, at its own expense, the action or proceedings as may be necessary to remove the lien. Tenant must deliver notice to the Commissioner of any such lien or claim within 15 days after Tenant has knowledge of it. Tenant may permit the mechanics to remain undischarged and unsatisfied during the period of the contest and appeal; provided that, upon request by the Commissioner, Tenant must post a bond with the City equal to 150% of the amount of the lien. If the lien is stayed and the stay later expires or if by nonpayment of any lien any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement will be, or is claimed to be,

subject to loss or forfeiture, then Tenant must immediately pay and cause to be satisfied and discharged the lien. If Tenant fails to do so, the Commissioner may, in his or her sole discretion, draw on the bond and make such payment. If the Commissioner has not requested a bond, then the Commissioner may, in his or her sole discretion, make such payment out of legally available Airport funds and, in such event, the amount paid shall immediately be payable by Tenant as Additional Rent. Failure to post a bond when requested by the Commissioner or pay such Additional Rent shall be an Event of Default.

L. Mid-Term Refurbishment. Tenant must budget and expend such funds as necessary to undertake a mid-Term refurbishment of each Retail Space during or about the middle of the Term in order to ensure that each Retail Space presents a first-class appearance to the public. The minimum expenditure does not include financing costs, interest, and inventory or intracompany charges of the Tenant. The scope and extent of the renovation, remodeling, and upgrade and/or redecorating for such mid-Term refurbishment shall be jointly determined by the Commissioner and Tenant.

5.6 Damage or Destruction of Improvements.

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

B. Major Damage.

- (i) **"Major Damage"** means any damage or destruction that, based on reasonable estimates made by the Department within 60 days after the occurrence of the damage or destruction, in order to be repaired to the condition existing before the damage or destruction:
  - a. would cost, with respect to the Improvements, in excess of 50% of the replacement cost value of all Improvements; and
  - b. would cost, with respect to the Shell and Core, in excess of 50% of the replacement cost of the Shell and Core, or would require, in the sole judgment of the Commissioner, more than nine months to complete.
- (ii) If any part of the Terminals suffers Major Damage, whether or not including any portion of the Leased Space located in them, in whole or in part by fire or other casualty, the Commissioner has the right, for a period of six months starting on the date of the occurrence, to elect not to repair the Major Damage as otherwise required under this section, by giving written notice of the election to Tenant. If the Commissioner notifies Tenant of the Commissioner's election not to repair the Major Damage, this Agreement will terminate as to the affected Leased Space effective as of the date of the Major Damage, all Rent due under this Agreement



will be prorated to the date of termination, and Tenant must surrender the affected portion of the Leased Space to the City.

- (iii) If any portion of the Leased Space suffers Major Damage, and if after the occurrence of the damage the Agreement is not terminated, the Commissioner and the Airport architect will estimate the cost of restoration and the length of time that will be required to repair the damage and will notify Tenant of the estimate. If the damage can be repaired and the Improvements restored before the Term expires, then Tenant must repair the damage and restore the Improvements. If repair and restoration cannot be substantially completed before the Term expires, then this Agreement terminates as to the portion of the Leased Space as of the date of the Major Damage.
- (iv) If this Agreement is not terminated in accordance with paragraphs (B) (ii) or (iii) and a casualty has damaged or destroyed any portion of the Shell and Core involving the Leased Space, the City will restore the Shell and Core to the condition existing on the Delivery Date, according to the original as-built plans and specifications. Upon completion of the City's Shell and Core restoration work, if any, Tenant must proceed to rebuild the Improvements as nearly as possible to the character of Improvements existing immediately before the occurrence.
- (v) Before beginning to replace, repair, rebuild or restore Improvements, Tenant must deliver to the Commissioner a report of an independent consultant acceptable to the Commissioner setting forth:
  - a. an estimate of the total cost of the Work;
  - b. the estimated date upon which the Work will be substantially completed;  
and
  - c. a statement to the effect that insurance proceeds are projected to be sufficient to pay the costs of the Work.
- (vi) The Commissioner will use commercially reasonable efforts to provide suitable temporary Relocation Space during the period of restoration subject to the reasonable approval of Tenant. Tenant must relocate the Concession operations to the temporary Relocation Space, and the costs associated with any such relocation, including moving expenses and the cost of reconstructing the Improvements in the temporary Relocation Space, must be borne by Tenant.

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

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

5.7 City Resident Construction Worker Employment Requirement.

A. Use of Residents. In connection with and during the construction of any Work in excess of \$100,000 in Improvement Costs, Tenant and its Subcontractors must comply with the provisions of § 2-92-330 of the Municipal Code of the City of Chicago ("**Municipal Code**"), as amended from time to time concerning the minimum percentage of total construction worker hours performed by actual residents of the City. (At least 50% of the total construction worker hours worked by persons on the site of the Work must be performed by actual residents of the City. Tenant may request a reduction or waiver of this minimum percentage level of Chicagoans in accordance with standards and procedures developed by the Chief Procurement Officer of the City.) In addition to complying with this percentage, Tenant and its Subcontractors are required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. "**Actual residents of the City**" means persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment. Tenant and each Subcontractor (for purposes of this subsection, "**Employer**") must provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed. Each Employer will maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

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

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

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

E. Shortfalls; Liquidated Damages. When the Work is completed, in the event that the City has determined that Tenant has failed to ensure the fulfillment of the requirement of this

section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1% of the aggregate hard construction costs of the Improvement Costs (the product of .0005 x such aggregate hard construction costs) (as evidenced by approved contract value for the actual contracts) must be surrendered by Tenant to the City as liquidated damages, and not as a penalty, in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Tenant and/or the Subcontractors to prosecution. The City may draw against the security any amounts that appear to be due to the City under this provision pending the City's determination as to the full amount of liquidated damages due on completion of the Work.

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

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

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

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

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

"Subcontractor certifies and represents that Subcontractor and any entity or individual that owns or controls, or is controlled or owned by, or is under common control or ownership with Subcontractor is not currently indebted to the City and will not at any time during the Term be indebted to the City, for or on account of any delinquent taxes, liens, judgments, fees or other debts for which no

written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if the breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against the payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination.)”

5.11 MBE/WBE Compliance. Tenant shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises (“MBE/WBE”) in the design (including professional services) and construction of Tenant’s Improvements, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of the design and construction of the Concession, the City will accept a participation plan that meets a combined single *Design and Construction* goal of 26% MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 9 and should be used by Tenant’s Contractors. Tenant must submit to the CMR completed Schedules C’s and D’s from its design and construction Contractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Tenant must submit periodic reports to the CMR, in a form and frequency determined by the Commissioner, documenting its Contractors’ compliance with their commitments.

## **ARTICLE 6 TERM OF AGREEMENT**

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

### **6.2 Holding Over.**

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

B. Without consent. If Tenant continues to occupy all or a portion of the Leased Space without the written consent of the Commissioner after expiration or termination of this

Agreement in its entirety, or as to any such portion of the Leased Space where the Lease under this Agreement has expired or terminated, the holding over constitutes a month-to-month lease on the same terms and conditions as this Agreement, except that Tenant must pay Rent for the entire holdover period for the Leased Space where the Lease has expired or been terminated at double the annual rate of the Rent payable for that Leased Space during the immediately preceding Lease Year. No occupancy of Leased Space by Tenant after the expiration or other termination of the Lease under this Agreement with respect to such Leased Space extends the Term of this Agreement or the Lease, except as a holdover tenancy. Also, in the event of such holdover tenancy, Tenant shall indemnify the City against all damages arising out of the Tenant's retention of occupancy, including but not limited to any costs incurred by the City to evict Tenant, and all insurance policies and letters of credit required to be obtained and maintained by Tenant as set forth in this Agreement shall continue in effect.

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

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

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

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

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

E. If Tenant fails to perform any of its foregoing obligations, then the Commissioner may cause the obligations to be performed by Department personnel or City contractors, and

Tenant must pay the cost of the performance, together with interest thereon at the Default Rate from and after the date the costs were incurred until receipt of full payment therefor.

6.4 Termination Due to Change in Airport Operations. This Agreement, or the Lease of any affected Leased Space, is subject to termination by either party on 60 days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party in the Leased Space impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least 90 days, so long as the action or order is not the result of any Event of Default of Tenant.

6.5 Eminent Domain.

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

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

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

6.6 Early Termination. Notwithstanding anything to the contrary set forth in this Lease, the Commissioner may terminate this Agreement with respect to any or all of the Leased Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Tenant. Upon the effective date set forth in such notice, Tenant shall surrender and vacate that portion of Leased Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Leased Space. In the event of such early termination, the City shall pay to Tenant a "Leased Space Termination Payment", which shall be defined herein to include the following: (i) a sum equal to the unamortized balance of Tenant's Improvement Costs with respect to the Leased Space being terminated, depreciated using the straight-line method over 84 months commencing on the Date of Beneficial Occupancy of the Leased Space being terminated; and (ii) a sum equal to Gross Revenues earned by Tenant from the Leased Space being terminated during the four (4)-month period immediately preceding the termination date, less the Rent payable to the City for that period. Upon Tenant's receipt of the Leased Space Termination Payment and vacation of the Leased Space, the City and Tenant shall thereafter be released from any and all obligations under

this Agreement with respect to the Leased Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 7 RENT AND FEES**

### **7.1 Rent Payable.**

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

(i) License Fee. Beginning as of the first Date of Beneficial Occupancy of a Retail Space, an amount equal to the greater of a. or b.:

- a. Percentage Fee. The "**Percentage Fee**" is an amount equal to the percentage rental rates set forth in Exhibit 2 as applied to Gross Revenues.
- b. Minimum Annual Guarantee. There is no "**Minimum Annual Guarantee (MAG)**" or "**MAG**" for the first Lease Year of the Term. The Minimum Annual Guarantee for the second Lease Year is 85% of the Percentage Fee payable in the first Lease Year. Beginning with the third Lease Year, and for each Lease Year thereafter, the MAG will equal the greater of 85% of the Percentage Fee payable calculated for the prior Lease Year and the Minimum Annual Guarantee for the second Lease Year.

In the event the Leased Space is comprised of two or more distinct Retail Spaces that are opening for Concession operations on different dates, then Exhibit 2 must apportion the MAG payable for the entire Agreement among the various Retail Spaces. The MAG for each Retail Space shall become payable upon its DBO, prorated for any partial year. Upon the DBO of the final Retail Space, the entire MAG shall be payable, prorated for any partial year.

(ii) Pre-Construction License Fee. In the event Tenant conducts, with the Commissioner's approval, concession operations in any portion of the Retail Space prior to the construction of the Improvements, then the "**Pre-Construction License Fee**" is an amount equal to 20% of Gross Revenues during each calendar month (or portion thereof) from the Delivery Date through the DBO of the Retail Space.

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

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

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

C. Rent under this Agreement is not considered to be a tax and is independent of any Imposition levied by the City on the Tenant's business. Further, the payment of the Rent under this Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Tenant must pay all Rent without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement. If Tenant is directed to move its Concession operations to a Relocation Space, and the City determines that the affected Retail Space is to be closed before completion of the Improvements in the Relocation Space, then adjustments will be made to the Minimum Annual Guarantee until Tenant begins Concession operations in the Relocation Space. Such adjustments will be in the same proportion as the Gross Revenues attributable to the Retail Space to be closed bears to the Gross Revenues for the entire Retail Space to which the Minimum Annual Guarantee applies. If actual Gross Revenue amounts are not available, the adjustment will be made based on the MAG per location estimates in Exhibit 2.

## 7.2 Time of Payments.

A. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the DBO of the first Leased Space and continuing throughout the Term, Tenant must pay to the City:

- (i) that portion of the Minimum Annual Guarantee as may be due pursuant to Section 7.1(A)(i)(b);

B. On or before the 15th day of each month, beginning the month following the month in which the DBO of the first Leased Space occurs, Tenant must pay the City:



- (i) the amount, if any, by which the actual Percentage Fee for the preceding month pursuant to Section 7.1(A)(i)(a) exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee and additional rent, if any, based on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

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

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

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

#### 7.4 Reports.

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

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

C. Annually or more often.

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

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by [\_\_\_\_\_] for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$\_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

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

#### 7.5 Books, Records and Audits.

A. Except as provided below, Tenant must prepare and maintain at its office full, complete and proper books, records and accounts in accordance with generally accepted accounting procedures relating to and setting forth the Gross Revenues, including but not limited

to Gross Revenues generated by sales of Products for cash, debit, check, gift certificate, credit, through Automated Checkout Technology or any other form of compensation, and must require and cause its operations personnel to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Tenant. The books and source documents to be kept by Tenant must include true copies of all federal, state and local tax returns filed with respect to Tenant's Concession operation and reports, records of inventories and receipts of Products, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Leased Space by Tenant and any other persons conducting business in or from the Leased Space. Pertinent original sales records must include the following documents or their auditable electronic equivalents:

- (i) cash register tapes, including tapes from temporary registers,
- (ii) serially pre-numbered sales slips,
- (iii) the original records of all mail and telephone orders at and to the Leased Space,
- (iv) original records indicating that Products returned by customers was purchased at the Leased Space by the customers,
- (v) memorandum receipts or other records of Products taken out on approval,
- (vi) detailed original records of any exclusions or deductions from Gross Revenues,
- (vii) sales tax records, and
- (viii) such other sales records, if any, that would normally be examined by an independent accountant under accepted auditing standards in performing an audit of Tenant's Gross Revenues.

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

C. The acceptance by the Commissioner of payments of any Percentage Fee is without prejudice to the Commissioner's right to conduct an examination of the Tenant's books and records relating to Gross Revenues and of inventories of Products at the Retail Space, in order to verify the amount of Gross Revenues made in and from the Retail Space.

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

- (i) 3% or more, Tenant must promptly pay the City the cost of the audit in addition to the deficiency (and any interest on the deficiency at the Default Rate), which deficiency is payable in any event; and if
- (ii) 5% or more, an Event of Default is considered to have occurred, and in addition to all other remedies available under this Agreement, at law, or in equity, the Commissioner has the right to terminate this Agreement immediately upon giving notice to Tenant, without any opportunity for Tenant to cure.

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

7.6 Revenue Control. Upon the request of the Commissioner Tenant must make available monthly sales data for each Retail Space ("**Point of Sale Data**"), reflecting the amount of each sales transaction, items sold per transaction, time and date of the transaction, and specifying the sales category applicable to each item sold. At such time, if any, as computerized Point of Sale Data systems ("**POS Systems**") have been developed to a point where the Commissioner deems it necessary or desirable to install such a POS System, then Tenant must upon request and at its own expense, install such a POS System in the Retail Space or, if it already uses such a system, must use reasonable efforts to promptly cause the system to conform to the City's POS System. Tenant shall be given a reasonable amount of time, not to exceed one year, to accomplish the foregoing.

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

## **ARTICLE 8 INSURANCE, INDEMNITY AND SECURITY**

8.1 Insurance. Tenant must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Tenant is holding over or Tenant is required to return to the Leased Space for any reason whatsoever, the types of insurance specified in Exhibit 7 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

### **8.2 Indemnification.**

A. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS

35/0.01 et seq. (“**Anti-Indemnity Act**”), Tenant must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

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

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

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

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

## 83 Security

### A. Form of Security.

(i) Tenant must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Leased Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Tenant, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full Lease Year MAG, or other amount agreed to by the City (without consideration of any pro-rationing on account of either a Lease Year of less than 12 months or partial occupancy of the Leased Space) and b) the letter of credit will be required to be adjusted, as the MAG increases or decreases throughout the

term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

- (ii) In lieu of the Letter of Credit, Tenant may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "**Security**." The original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Tenant of all of Tenant's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least 30 days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Tenant's obligations under this Agreement. The Commissioner is not obligated to pay or credit Tenant with interest on any Security.
- (iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Tenant and held by the City for the payment of any obligation of Tenant arising before or after the Event of Default.
- (iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Tenant must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within 5 days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

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

C. Right to Require Replacement of Letter of Credit. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the

Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

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

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

## **ARTICLE 9 DEFAULT, REMEDIES AND TERMINATION**

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

A. Any material misrepresentation made by Tenant to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.

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

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

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

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

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

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

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

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

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

- (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time; or
- (ii) fails to pay its debts generally as they mature; or
- (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute; or
- (iv) makes a general assignment for the benefit of creditors, or
- (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
- (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.

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



L. Tenant is dissolved.

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

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

92 Remedies.

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

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

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

be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.

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

D. Enter upon the Leased Space, distraint upon and remove from it all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Tenant or by others, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Tenant's officers, to conduct a private sale, by auction or sealed bid without restriction. Tenant waives the benefit of all laws, whether now in force or later enacted, exempting any of Tenant's property on the Leased Space or elsewhere from distraint, levy or sale in any legal proceedings taken by the City to enforce any rights under this Agreement.

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

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

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

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

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

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

93 Commissioner's Right to Perform Tenant's Obligations.

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

- B. The Commissioner, in making any payment that Tenant has failed to pay:
- (i) relating to taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim;
  - (ii) for the discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien that may be asserted; and
  - (iii) in connection with the completion of construction, furnishing or equipping of the Leased Space or the licensing, operation or management of the Leased Space or the payment of any of its operating costs, may do so in such amounts and to such persons as the Commissioner may deem appropriate.

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

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

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

94 Effect of Default and Remedies

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

B. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Tenant will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Tenant has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

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

## **ARTICLE 10 SPECIAL CONDITIONS**

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

the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

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

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

C. The person signing this Agreement on behalf of Tenant has been duly authorized to do so by Tenant; all approvals or consents necessary in order for Tenant to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

- (i) conflict with or result in a breach, default or violations of: Tenant's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Tenant is now a party or by which it is bound; or
- (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Tenant under the terms of any instrument or agreement.

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

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

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

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

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

I. Neither Tenant nor any Affiliate of Tenant is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

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

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Tenant's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Tenant's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of § 2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;
- (v) are not delinquent in the payment of any taxes due to the City; and

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

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

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

L. Tenant has obtained any required third party permits or approvals to utilize the Automated Checkout Technology.

102 Business Documents, Disclosure of Ownership Interests and Maintenance of Existence.

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

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

circumstance that renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

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

104 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Tenant will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Tenant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Tenant must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Tenant, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Tenant must require each prospective Subcontractor to abide by such restrictions in connection with their respective Subcontracts.

105 Subcontracts and Assignments.

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

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

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



security interest in this Agreement or the Leased Space as collateral for Tenant financing are strictly prohibited and, if entered into by Tenant, are an Event of Default.

- (ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Tenant, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Tenant, or any merger or consolidation of Tenant (individually and collectively, "**Change in Ownership**"), is subject to the consent of:
  - a. City Council, in its sole discretion, if the Change in Ownership involves a 100% Change in Ownership of Tenant, or
  - b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Tenant.
- (iii) If Tenant (or, if Tenant is a joint venture or other entity comprised of other entities, any of the entities comprising Tenant) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Tenant's (or if Tenant is a joint venture or other entity comprised of other entities, of any of the entities comprising Tenant) stock is subject to the City's consent as set forth above. In that event, Tenant must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Tenant must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Tenant (or if Tenant is a joint venture or other entity comprised of other entities, of any of the entities comprising Tenant) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more.
- (iv) Consent by the City to any Change in Ownership does not relieve Tenant (or if Tenant is a joint venture, any of the entities comprising Tenant) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.
- (v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Tenant of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Tenant or to take any other action as provided in this Agreement be

deemed or construed to constitute consent to the Tenant's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Tenant's sole remedy is to terminate this Agreement without liability to either the City or Tenant.

- (vi) Notwithstanding any permitted Transfer by Tenant of any rights under this Agreement, Tenant remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or all or any portion of the Leased Space or Transfer of all or any portion of the Term, where the fees payable to Tenant exceed the Rent or pro rata portion of the Rent under this Agreement, as the case may be, for the License, Leased Space or Term, Tenant must pay the City monthly, as Additional Rent, at the same time as the monthly installments of other Rent under this Agreement that are payable in monthly installments, the excess of the fees payable to Tenant pursuant to the Transfer over the Rent payable to the City under this Agreement.
- (vii) Any or all of the requests by Tenant for consents under this Section must be made in writing and provided to the Commissioner (a) at least 60 days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least 120 days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed Economic Disclosure Statements and Affidavits for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Tenant in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Tenant that, notwithstanding the proposed Transfer or Change in Ownership, Tenant remains fully and completely liable for all obligations of Tenant under this Agreement; however, Tenant shall remain so liable regardless of whether or not the City requests a written acknowledgement.
- (viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Rent payable under this Agreement from any transferee of Tenant and in that event will apply the net amount collected to the amounts payable by Tenant under this Agreement without, by doing so, releasing Tenant from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Tenant and applies the net amount collected in the manner

described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

- (ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Tenant and are payable to the City as Additional Rent.
- C. The provisions of this Agreement, to the extent applicable, are deemed a part of any sublease or contract between Tenant and a subtenant or Subcontractor.
- D. Assignment of Subleases, Sublicenses and Subcontracts.
  - (i) Tenant shall assign to the City all of Tenant's right, title and interest in and to each and every permitted sublease and sublicense and each and every Subcontract with a design and construction Subcontractor, now or later executed by Tenant in connection with the License or the Leased Space or any part of it. In connection with the assignment, Tenant must deliver all originally executed subleases, sublicenses and Subcontracts to the Commissioner. Any such assignment will become operative and effective only when and if the City accepts the assignment by giving written notice to Tenant and:
    - a. either this Agreement and the Term of this Agreement or Tenant's right to possession under this Agreement are terminated pursuant to Article 9; or
    - b. in the event of the issuance and execution of a dispossess warrant or of any other re-entry or repossession by the City under the provisions of this Agreement; or
    - c. if an Event of Default exists.
  - (ii) At the time, if any, that the assignment becomes effective as provided above, the subtenants or Subcontractors will be deemed to have waived all claims, suits, and causes of action against the City arising out of or relating to the period before the effective date of the assignment. Further, in no instance will the City be responsible for any claims by a subtenant or Subcontractor arising from or related to any fraud, misrepresentation, negligence or willful or intentionally tortious conduct by Tenant, its officials, employees, or agents.

106 Compliance with Laws. Tenant must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "**Laws**"), and must not use the Leased Space, or allow the Leased Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Tenant under any Laws. Tenant must notify the City within seven days of receiving notice from a competent governmental authority that Tenant or any of its Subcontractors may have violated any Laws. Provisions required by any Law to be inserted in

this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Tenant covenants that it will comply with all Laws, including but not limited to the following:

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

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

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

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

7-28-390 Dumping on public way—Violation—Penalty;

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

During the period while this Agreement is executory, Tenant's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit the Tenant's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect the Tenant's eligibility for future City agreements.

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

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

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

- (ii) Tenant represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Tenant or the date the Tenant approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.
- (iii) Tenant agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.
- (iv) Tenant agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.
- (v) Tenant agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (vi) If Tenant violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Tenant's bid.
- (vii) For purposes of this provision:

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

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

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

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

- (a) they are each other's sole domestic partner, responsible for each other's common welfare;
- (b) neither party is married;
- (c) the partners are not related by blood closer than would bar marriage in the State of Illinois;
- (d) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (e) two of the following four conditions exist for the partners:
  - (i) The partners have been residing together for at least 12 months.
  - (ii) The partners have common or joint ownership of a residence.
  - (iii) The partners have at least two of the following arrangements:
    - a. joint ownership of a motor vehicle;
    - b. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.
  - (iv) Each partner identifies the other partner as a primary beneficiary in a will.

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

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

H. Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar

year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

I. Visual Rights Act.

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

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

107 Airport Security.

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



developed by the City, the TSA and the FAA with the objective of maximum security enhancement. The drawings, plans, and specifications provided by Tenant under this Agreement must comply with those guidelines for airport security developed by the City, the TSA and the FAA and in effect at the time of their submission.

B. Further, Tenant must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Tenant must adopt procedures to control and limit access to the Airport and the Leased Space by Tenant and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Tenant must have in place and in operation a security program for the Leased Space that complies with all applicable laws and regulations.

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

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

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

108 Non-Discrimination.

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

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

C. Tenant must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

D. Tenant must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the

Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Tenant must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.

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

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

G. Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Tenant authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Tenant's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

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

10.9 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Tenant must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 8 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

10.10 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Tenant

that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

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

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

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

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

10.15 2014 Hiring Prohibitions.

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

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

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

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

## **ARTICLE 11 GENERAL CONDITIONS**

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

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

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

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

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

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

117 Notices. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, 3 days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Tenant in writing, all notices or communications from City to Tenant will

be addressed to the person identified as the Tenant's contact person in the Tenant's Economic Disclosure Statement and Affidavit, as attached as Exhibit 11. All notices or communications from Tenant to the City must be addressed to:

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

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

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

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

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

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section  
30 North LaSalle Street, Suite 1400  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

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

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Tenant not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Tenant for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee

of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Tenant or any third party claiming by or through Tenant or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

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

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

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

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

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

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

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and



given by the Commissioner or by such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

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

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

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

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

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

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

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

11.16 Limitation of City's Liability. Tenant, its subtenants and Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Tenant, subtenant, and Subcontractor personal property upon the Leased Space or upon any other part of the Airport, is at the risk of Tenant, subtenant, or Subcontractor respectively only, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Tenant, its subtenants or Subcontractors, and Tenant waives, and will cause its subtenants and Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the

Terminals or the Leased Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform and, notwithstanding the foregoing, Tenant recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Rent and other monies payable by Tenant to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

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

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

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

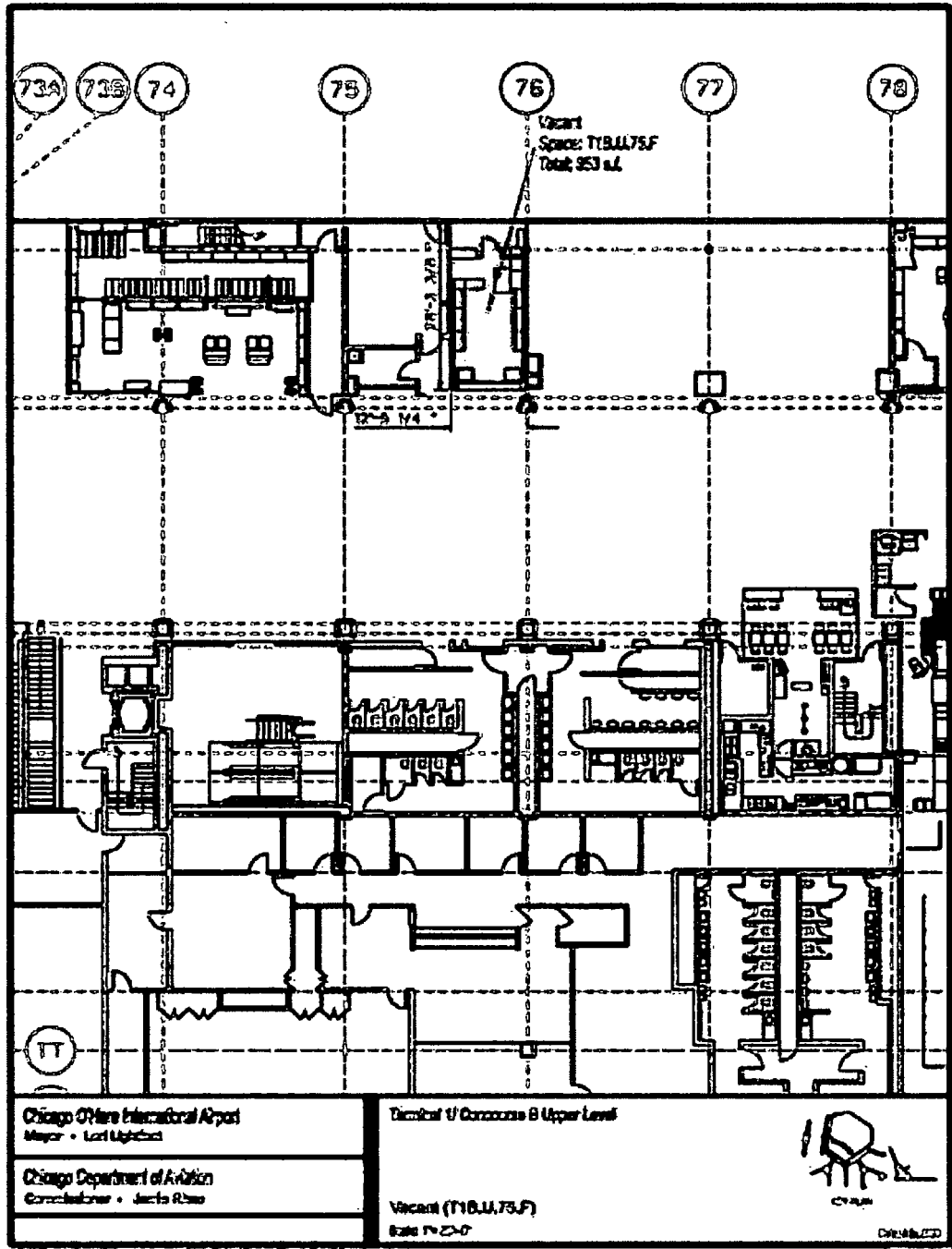
11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure*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

**EXHIBIT 1**  
**LEASED SPACE**  
**(INCLUDING CONFIRMATION OF DBO AND ACTUAL IMPROVEMENT COSTS)**

The Leased Space is located at ORD and consists of two (2) location(s) with a total of approximately 1308 square feet of Retail Space and approximately TBD square feet of Storage Space as further depicted in the lease outline drawings attached hereto.

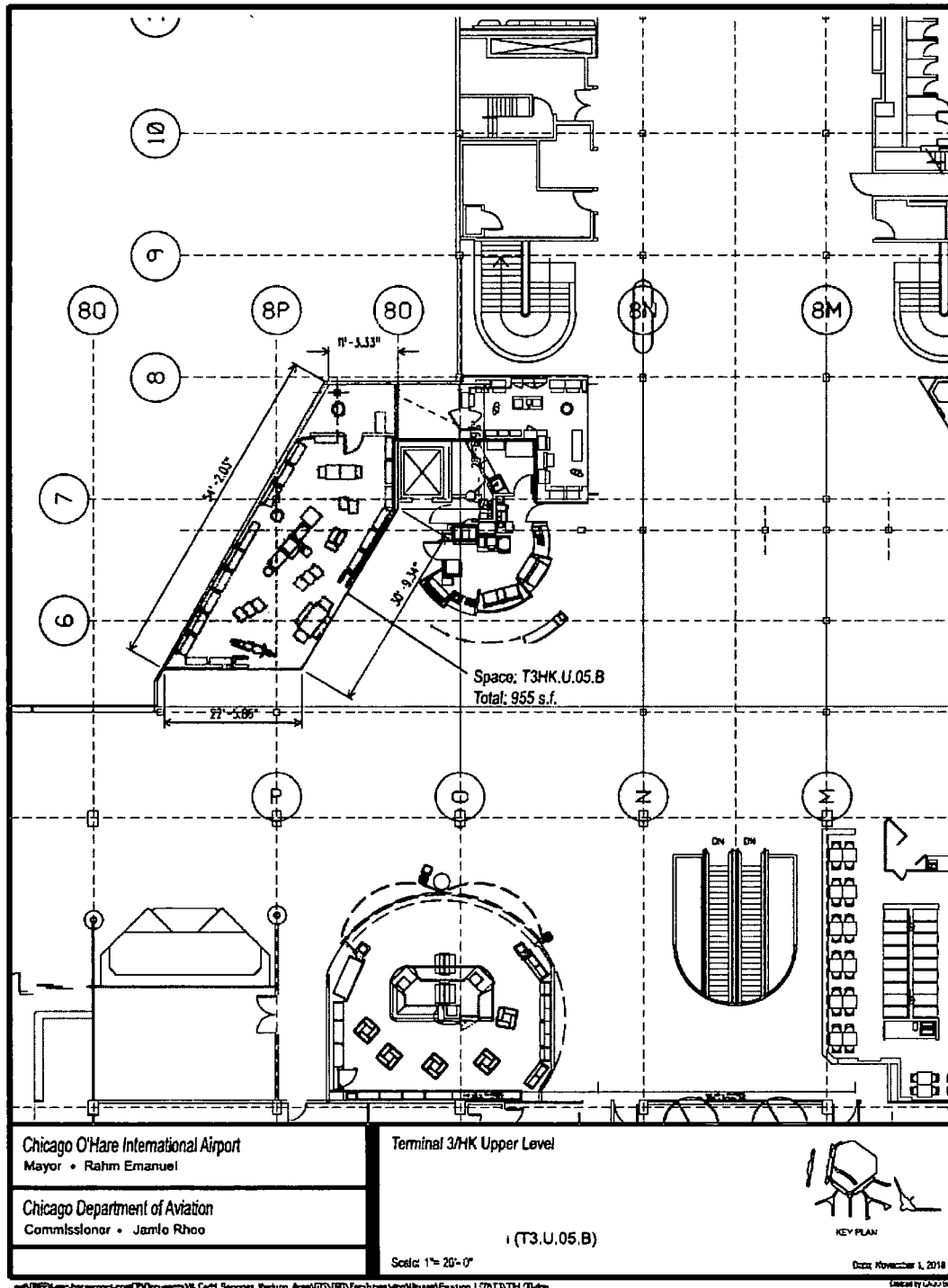
The Date of Beneficial Occupancy is: TBD

EXHIBIT 1  
LEASED SPACE  
(INCLUDING CONFIRMATION OF DBO )



The Date of Beneficial Occupancy is: TBD

EXHIBIT 1  
LEASED SPACE  
(INCLUDING CONFIRMATION OF DBO)



The Date of Beneficial Occupancy is: TBD

**EXHIBIT 2**  
**FEES**

## EXHIBIT 2

### FEEES

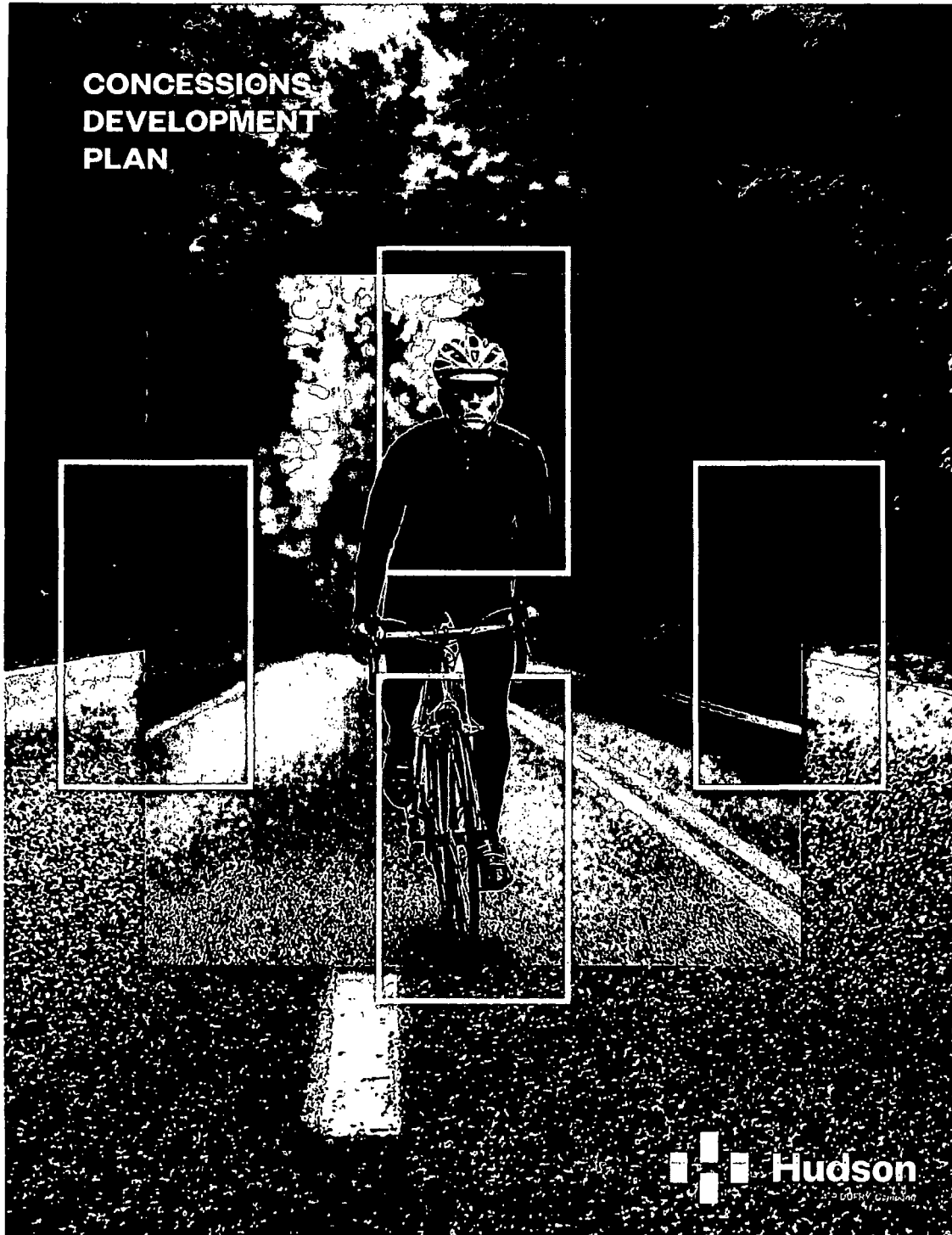
1. Percentage Fee: The Percentage Fee shall be due and paid monthly as per the terms of the Agreement and shall be equal to 22.0% of Gross Revenue.
2. Minimum Annual Guarantee. There is no “**Minimum Annual Guarantee (MAG)**” or “**MAG**” for the first Lease Year of the Term. The Minimum Annual Guarantee for the second Lease Year is 85% of the Percentage Fee payable in the first Lease Year. Beginning with the third Lease Year, and for each Lease Year thereafter, the MAG will equal the greater of 85% of the Percentage Fee payable calculated for the prior Lease Year and the Minimum Annual Guarantee for the second Lease Year.

In the event the Leased Space is comprised of two or more distinct Retail Spaces that are opening for Concession operations on different dates, then the MAG payable for the entire Agreement will be apportioned among the various Retail Spaces based on actual annualized Gross Revenue, projected Gross Revenues or another reasonable method mutually agreed upon by both parties. The MAG for each Retail Space shall become payable upon its DBO, prorated for any partial year. Upon the DBO of the final Retail Space, the entire MAG shall be payable, prorated for any partial year.

**EXHIBIT 3**  
**DEVELOPMENT PLAN**  
**(INCLUDING BUDGET IMPROVEMENT COSTS, AND SCHEDULED DBO DATES)**



**CONCESSIONS  
DEVELOPMENT  
PLAN**



 **Hudson**  
a CORNYL COMPANY

**Proposal Form B**  
**Concept Plan**  
**Package 2**  
**(Automated Self-Checkout Micro Marts)**

*Instructions: Provide respondent's proposed concept plan showing the following information for each proposed Concession Location. Use additional copies of this table as necessary. Submit additional information as set forth in the Proposal Requirements following this proposal form.*

Respondent: HG ORD Tech Retail JV

Concession Type	Location	Concession Description	Proposed Concept/Brand	Brand Type (Food & Beverage, News & Gift, Specialty Retail, Retail Service, Other)	Proposed Operator	Anticipated Opening Date
Automated Self-Checkout Micro Mart	Vacant Space T18.U.75.F	Hudson Just Go - Utilize just walk out technology to enable shoppers to simply enter a store, grab what they want, and just go.	Hudson Just Go - Powered by the technology from the industry leading technology company as we just presented for Chicago Midway and are implementing in Dallas Love Field	News and Gift	HG ORD Tech Retail JV	June 24, 2021
Automated Self-Checkout Micro Mart	Vacant Space T3HK.U.05.B	Hudson Just Go - Utilize just walk out technology to enable shoppers to simply enter a store, grab what they want, and just go.	Hudson Just Go - Powered by the technology from the industry leading technology company as we just presented for Chicago Midway and are implementing in Dallas Love Field	News and Gift	HG ORD Tech Retail JV	June 24, 2021
Additional Proposed Locations add Below (insert additional rows if needed)						

Chicago Department of Aviation  
Proposal Form B

### HUDSON JUST GO

Over the past year we've developed a partnership with a well-known, billion-dollar online retailer. That collaborative relationship has led us to develop a series of exciting initiatives – including implementing Just-Walk Out (JWO) technology into our concessions programs across North America. We're proud of the work we've done with you at O'Hare and that's why we're excited to introduce Hudson Just GO to the program, with JWO technology.



#### TOUCHLESS

As COVID-19 has forever altered our world, we're all more mindful of the importance of social distancing. That is why the JWO technology is so powerful. ORD guests will be able to enter the store without needing to interact with a sales associate, increasing safety and health for all.



#### QUICK SHOPPING OPTION

In addition to the health benefits of JWO, it's also SUPER fast. No need to waste time standing in line to checkout, just pick up what you need and walk out. A credit card is used to enter the store, so it's as simple as swipe, grab and go.



#### TESTED STREET SIDE

Our partner's team has perfected it's Just Walk Out solution and we'll work hand-in-hand with their team to power the micro marts at ORD. We'll deliver a "touchless" shopping experience that has been tested street-side in stores, notably in Seattle and New York City.

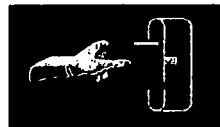


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#### Just Walk Out Technology

Travelers are increasingly attracted to convenience and tech-enabled shopping, and today the ability to shop without interacting with others is even more important. We're proud to share that O'Hare will be one of the first locations in the country to offer the "Just Walk Out" shopping experience! It's so simple and easy ... here's how it works:

### *Hudson* Just Go



1 Walk up to the store  
To the side of the entry  
gates, dip your credit  
card in the reader.

2

The gates open and you  
(and whoever is with you)  
enters the store



3 Pickup whatever  
you want in  
the store

4 Just  
walk  
out



**You Have Questions? So Did We.**

*This sounds too good to be true, right? Think again!*

*Here are some concerns we had and we're sure you do too:*

1. Do I need an App on my phone?

Nope! Just a debit or credit card.

2. What happens if I change my mind?

Just put items down in the store, you'll only be charged for what you leave with. We promise.

3. Do I have to touch anything?

Nope. Just insert your card into the chip reader – so you'll only touch your own credit card.

4. What if I want a receipt?

There is a receipt printer in the store, just swipe your card and punch in your email. By the way, the system will save your credit card and email, so you only need to do it once.

 OUR PARTNER, A BILLION-DOLLAR ONLINE RETAILER, HAS ALREADY PERFECTED THIS TECHNOLOGY IN STREET-SIDE LOCATIONS IN SEATTLE AND NEW YORK CITY.



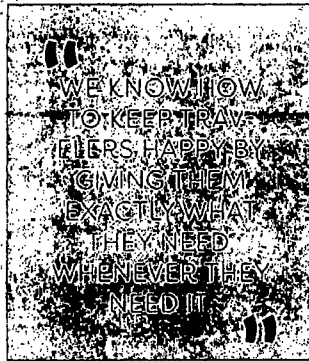
**Request For Proposal**  
Chicago O'Hare International Airport  
Automated Retail, Services, and Food

**Concessions Development Plan**  
Product & Pricing  
Micro Marts (Just Walk Out)



“  
NEED A HEALTHY  
SNACK, WATER ...  
OR CANDY? YOUR  
SECRET'S SAFE  
WITH US.  
”

Hudson – the brand known and trusted by travelers! For more than 30 years, Hudson has seen – and solved – every situation that travelers face. We opened our first Hudson store more than 30 years ago. Since then, we keep evolving with the times and now – we're doing it again with Just Walk Out technology!



“  
FORGOT  
YOUR PHONE  
CHARGER?  
CHECK.  
”

Inside the Hudson Just GO store, ORD travelers will find what they always expect from Hudson – everything they need (and want) to make the journey more enjoyable.



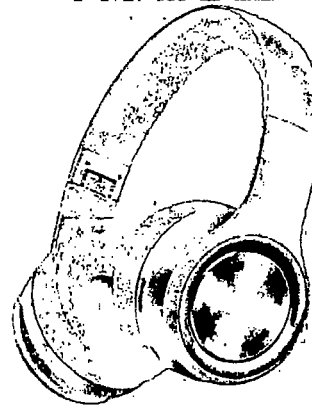
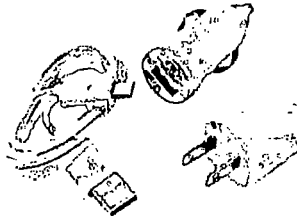
#### MARKETPLACE

Pre-packaged Snacks	\$1.99 to \$19.99
Candy, Gum & Mints	\$1.99 to \$19.99
Beverages	\$1.99 to \$19.99



#### ESSENTIALS

Sundries	\$0.99 to \$249.00
Health & Beauty Aids	\$0.99 to \$249.00
Travel Electronics	\$0.99 to \$249.00
Electronic Accessories	\$0.99 to \$249.00



#### MEDIA

Magazines	Publisher's Retail Price
Newspapers	Publisher's Retail Price





**\$1.8 Million**  
to ORD of product  
delivered each week



**21 Deliveries**  
each week to ORD



**2,000+ SKUs**  
managed for ORD

**WE'RE EXPERTS  
AT PRODUCT  
SOURCING -  
BOTH AT O'HARE  
AND ACROSS  
NORTH AMERICA.**



Hudson supplies more than 1,000 stores across North America and we have more than 400,000 SKUs in our inventory system. In other words, we're experts at product sourcing. From buying to shipping to receiving to clearing security, we've been supplying our concessions programs for 30+ years.

#### CHICAGO WAREHOUSE

We have a warehouse located right in Chicago that supplies our operations at O'Hare and Midway. You can be confident that our existing infrastructure means that we'll be able to seamlessly setup, stock and manage the Automated Retail and Just-Walk-Out Micro Marts with ease. The stats below are pre-pandemic and they show just how easily we'll be able to manage an expanded program.

#### SUPER-SIZED BUYING POWER

Product sourcing is streamlined at Hudson thanks to both our scale and the number of years we've been operating. At a high level, here are the steps involved:

1. **Establish Relationship** – One of our buyers at the National Support Center (NASC) establishes a relationship with a brand ... in the rare event we don't already have one.
2. **Order Direct** – In almost all cases, we buy directly from manufacturers or one of the main national supply houses, which cuts out delays and logistical complications.
3. **Ship Direct** – Thanks to our direct relationships, most products ship directly to our regional warehouses which accelerates sourcing timelines.
4. **Stock Programs** – Product is organized and packed for delivery to our stores and facilities at regionally dispersed warehouses.

#### WEEKS ON HAND

From years of experience, we know how critically important it is to have the appropriate amount of reserve inventory – which is often referred to as "weeks on hand." We generally maintain enough stock to meet demand for two weeks and six weeks for import items like sunglasses.



#### JUST WALK OUT (JWO) MICRO MARTS

Our Joint Venture is proposing to construct a Just Walk Out retail experience utilizing the industry leading technology the same as we recently presented to CDA for Midway. We're partnering with a billion-dollar, online retailer that has pioneered and perfected this technology in street side locations in Seattle and New York. The store will be outfitted with unique attributes to deliver a completely "touchless" experience, which include:

1. **Entry Gate** – After guests swipe a credit card to enter, the system automatically recognizes how many people are associated with a credit card.
2. **Exit Gate** – As guests exit, the system ends the transaction as items leave the store through the exit gate.
3. **Cameras** – Ceiling mounted cameras monitor items movement throughout the space and through the exit gate.
4. **Shelving Scales** – In conjunction with cameras, certain products are located on scales on special shelves to detect purchase.
5. **Receipt Dispenser** – Guests have the option to punch in an email on a receipt dispenser, from which an email receipt is sent after exiting the store.
6. **Monitoring Software** – Software monitors the entire space and items in it, to charge guests only for items they (or those with them) pick up while shopping.

As indicated on Form D, for Package 2, Self-Checkout Micro Marts our Joint Venture will invest a total of \$1,784,657. These cost estimates are based on our current Just Walk Out designs that are going to be implemented in Dallas Love Field and Chicago Midway.



*Please note: the amounts in Form E and above are for the total funding of the Joint Venture which include capital investment for construction and inventory. The amounts in Form D do NOT include inventory and therefore, are different.*

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#### **AUTOMATED RETAIL PROGRAM**

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For the Automated Retail and Food program, we'll install custom enclosures – styled to celebrate Chicago – and install smart machines in partnership with Signifi Solutions. The automated retail machines differ from other vending options in a few important ways:

1. **E-Monitoring:** All machines are remotely monitored, which allow for almost instant restocking and repair.
2. **Tailored Design:** Each machine is tailored to the product inside, which minimizes maintenance issues and optimizes display of products.
3. **Lift, Not Drop:** Machines lift products, as opposed to dropping them (as is common in traditional vending machines). This reduces product damage.
4. **Easy Evolution:** As we evolve product mix, our machines can easily be altered to accommodate new assortments.

For Package 3, Automated Retail, Services and Food, our Joint Venture will invest a total of \$1,910,577. These cost estimates are based on our installation of over 50 Signifi automated retail machines.



*Please note: the amounts in Form E and above are for the total funding of the Joint Venture which include capital investment for construction and inventory. The amounts in Form D do NOT include inventory and therefore, are different.*



#### **SUSTAINABLE CONSTRUCTION**

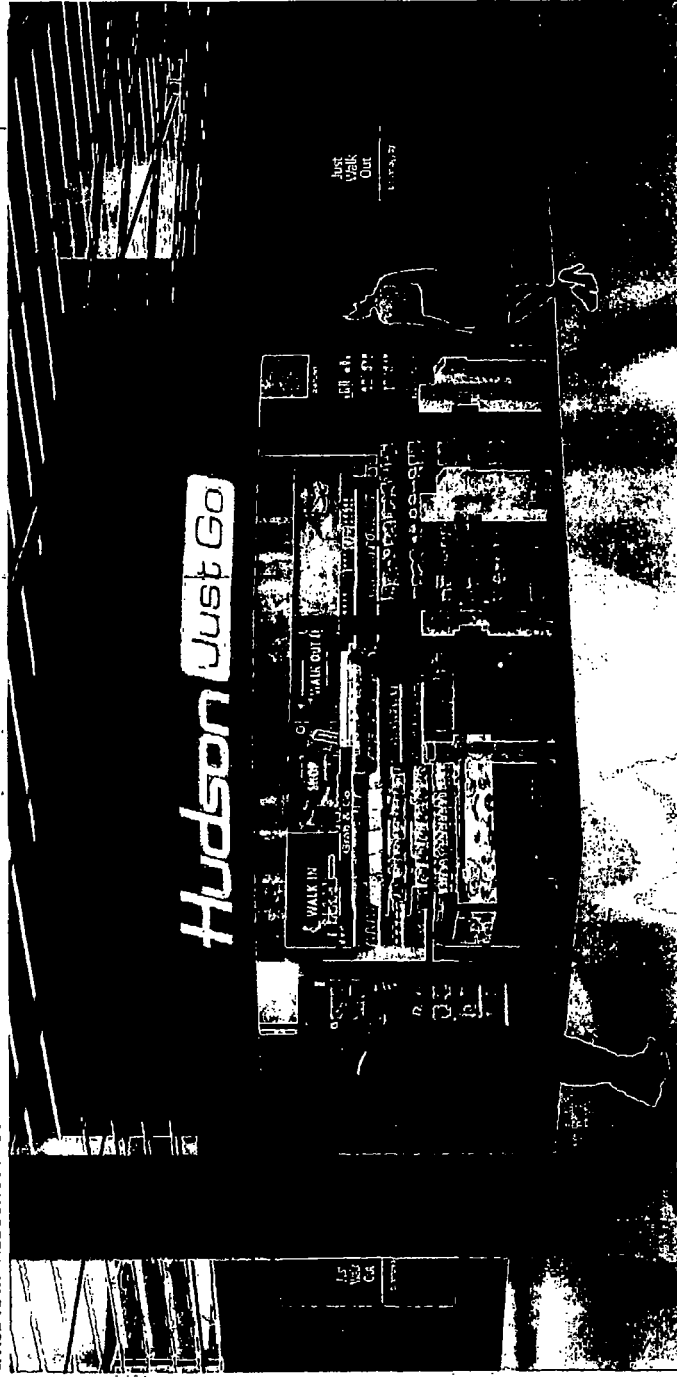
##### **Reduce Energy Consumption**

Hudson is dedicated to building high-performance, sustainable elements into every store we build, from the design through construction. To reduce energy consumption, we use LED lights for low energy consumption and low heat generation. We install Energy Star appliances, wherever applicable. And the open coolers in our travel essentials stores are designed to consume lower energy levels thanks to stringent design criteria and incorporated LED lighting to reduce heat transmission.

##### **Sustainable Sourcing**

Metals are steel which is endlessly recyclable. The steel is finished with powder coat, rather than metal plating that produces toxic waste and consumes electricity. Woods are MDF or FSC certified lumber. We never use old growth or rainforest woods.

SPACE T3-K1 HUDSON JUST GO 955 SF



Required For Proposal  
Chicago O'Hare International Airport  
Automated Retail, Services, and Food

Concessions Development Plan  
Micro Mart  
Rendering

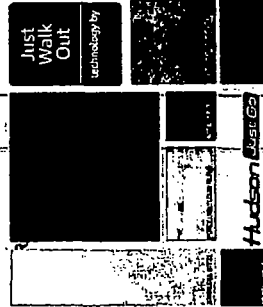
SPACE T3-K1 HUDSON JUST GO 955 SF



### CONCEPT DESCRIPTION:

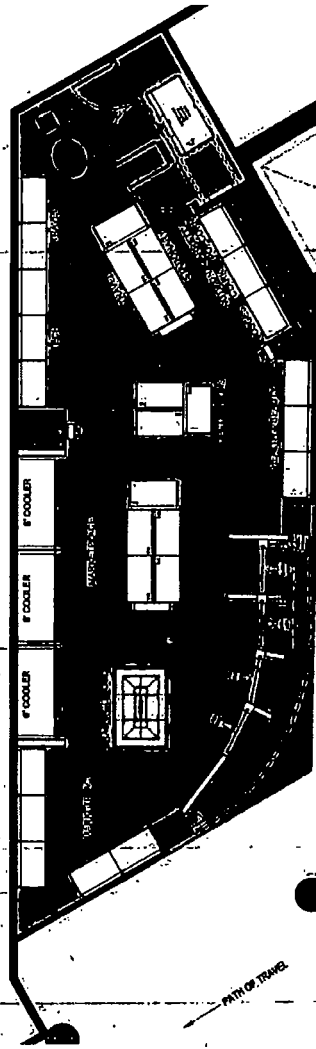
Hudson has been building cutting-edge travel convenience stores for over 30 years. Now, they are taking travel convenience and exceptional experience to the next level with a new retail concept for travelers. This new concept is called "Hudson - Just Go".

Hudson Just Go utilizes Just Walk Out technology to enable shoppers to simply enter a store, grab what they want, and just go. Born from the experiences of street stores, Just Walk Out uses complex technologies to aid passengers. Increase sales, and eliminate checkout lines. We are leveraging this technology in this store to bring fast and touch-less checkout experiences to travelers on the go.

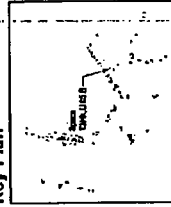


Request For Proposal  
Chicago O'Hare International Airport  
Automated Retail, Services, and Food

SPACE T3-K1 HUDSON JUST GO 955 SF

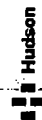


Key Plan



**Request For Proposal**  
**Chicago O'Hare International Airport**  
**Automated Retail, Services, and Food**

SPACE T1-B6 HUDSON JUST GO 353 SF



# SPACE T3-K1 HUDSON JUST GO 955 SF

## CONCEPT DESCRIPTION:

Hudson has been building cutting-edge travel convenience stores for over 30 years. Now, they are taking travel convenience and exceptional experience to the next level with a new retail concept for travellers. This new concept is titled "Hudson - Just Go"

Hudson Just Go utilizes Just Walk Out technology to enable shoppers to simply enter a store, grab what they want, and just go. Born from the experiences of street stores, Just Walk Out uses complex technologies to aid passengers, increase sales, and eliminate checkout lines. We are leveraging this technology in this store to bring fast and touchless checkout experiences to travellers on the go.

## MATERIALS:

**Hudson Just Go**

HUDSON SIGNAGE  
LED SIGN

POWDER COAT  
BLACK 2% GLOSS FINISH

CUSTOM CARVED LED  
TO MATCH PCT 300C BLUE

STAINLESS STEEL  
LIGHT STAINLESS ALUMINUM

CEILING TILE  
CALLA BLACK

POWDER COAT  
300C BLUE

SOLID OAK  
CLASSIC RFT WHITE

FLOOR TILE  
CROSSVILLEMAN STREET  
GALLERY GREY

Just Walk Out  
technology by

JUST WALK OUT SIGNAGE  
LED DIGITAL OPTIC POSTER  
SCREEN





## INTEGRATED MARKETING & COMMUNICATIONS:

### A WINNING STRATEGY

Hudson activates a multi-channel approach to gather customer insights and comments, to share content, and to connect in ways that continually enhance the overall experience for our customers. For us, it's not about how many followers we have on social media or how many media impressions we gain from a story; it's about customer engagement and conversation. Our approach targets consumers both in-and-out of the store, within the media, and online.

#### Strategy: Focus on traveler's needs and wants

Our public relations activities focus on connecting with our customers on a deeper level. It's about understanding the wants and needs of our customers and delivering meaningful moments that transform the travel retail experience. Our holistic approach means a wide set of marketing and guest experience activities that drive both sales and enjoyment for travelers. As the largest travel retailer in the industry, it is also about building strong relationships with our brand and landlord partners. We are "the Traveler's Best Friend" because we don't just listen, we respond.

#### Execution: Organize and plan activities

It's one thing to have marketing ideas and it's another to bring them to life. Our approach to Marketing & Guest services reflects our operational excellence in that it's organized and intentional. We have a variety of tools we use to develop customized plans across our markets, including an annual planning template and a month-by-month planning sheet (samples are on the next few pages). To develop a clear plan we take our tools and best practices and collaborate with our landlords and other critical stakeholders to make sure our activities are integrated and complementary across all channels.

Our marketing plan will also leverage our existing store locations throughout ORD. In every store we will cross-promote the new Just Walk Out Migo-Mart and Automated Retail and Food locations.

For The Automated Retail Program, SignIt's large tower screen controller unit is the hub of customers purchasing. We will use this digital screen to promote sales, specials and local favorites in a eye-catching manner to drive customer engagement. Comfort, convenience and ease are three messages that our marketing plan will highlight for both the JWO and Automated Retail.

#### Results: Hudson is the only travel retail brand in the industry

Our approach yields results. As you'll see later in this section, Hudson promotions are unparalleled and our brand's prominence in pop culture and social media is unmatched. According to one media benchmarking source, Hudson has the largest share of voice in the industry, topping off at 90% against competitors. The reason behind this is simple. The media and Hollywood know the value of true brand ethos. Most of our mentions are owned and earned, versus typical paid efforts that gain likes with no traction. Due to consistent presence within the media and online our brands stand out even with non-frequent travelers.

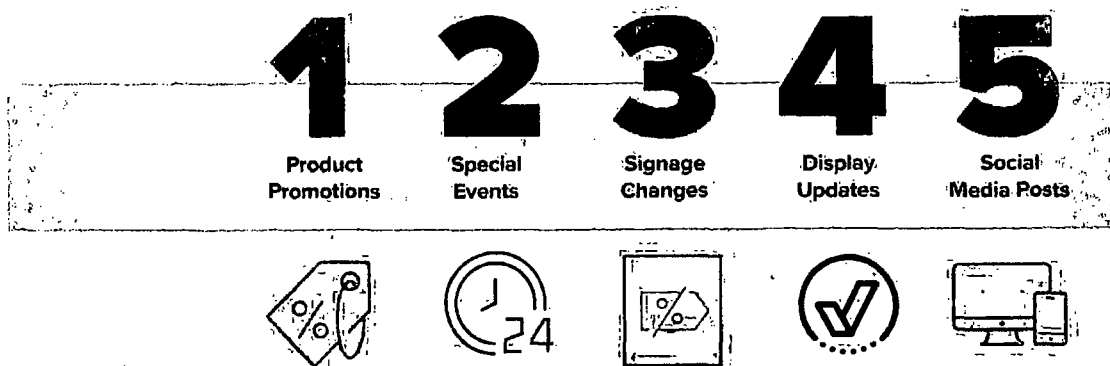
#### AIR TRAVEL MARKETING: A DEEPER DIVE

Each industry comes with its own unique set of variables, around which a successful marketing strategy must be built. Consumer marketing in aviation is unique and challenging because travelers are focused on reaching their destination. The focus on departure time means shopping is a secondary focus.

Buying decisions are typically driven by one of two factors. First is need. In the bustle to get out the door, it's easy to forget headphones or a tie for the meeting or snacks for the plane. Our team are expert at creating promotions, displays and signage to convert the needs of travelers into purchases. The second buying decision is driven by satisfying wants. But it's important to realize that shopping for pleasure, in the aviation context, is possible only if a traveler has time and wants to pass time while waiting to depart. This critical dimension in buying decisions is what drives us to focus on in-store strategies. Some travelers will plan ahead and may consider doing shopping online, but the vast majority only want to shop in the 30 to 60 minutes leading up to their boarding time.

#### ACTIVITIES THAT DRIVE SALES

Our Marketing and Guest Services activities typically fall into 5 categories, shown below. Throughout the rest of this section, we'll take a closer look at each of these 5 categories.



**Request For Proposal**  
Chicago OHare International Airport  
Automated Retail, Services, and Food

**Management & Operations**  
Marketing Plan & Activities

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See other doc for sample checklists. This page is a placeholder.

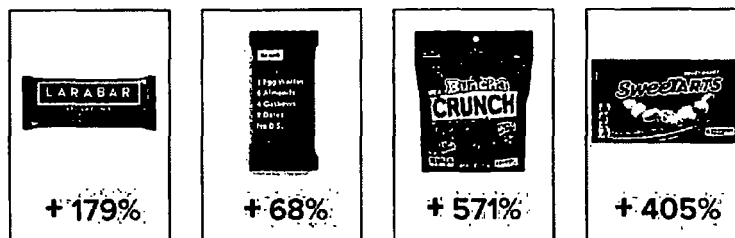
### POWERFUL, PROVEN PROMOTIONS

There are promotions and then there are Hudson promotions! We're happy to shine a light on some of the innovative initiatives that set us apart from the competition ...



**COMBO PROGRAMS – WHO DOESN'T LOVE A COMBO?** Our targeted combo promos maximize sales. We facilitate relationships between our vendors so we can continue to drive value and deliver the objective results that prove our effectiveness.

**PRODUCT PLACEMENT. PERIOD.** Product placement is critical. For the JWO stores our teams have developed a merchandise layout based on the combined airport knowledge of Hudson and our technology partner's feedback from their street-side locations. The images below show how sales increased when those products were adjusted for better placement.



#### FREE SAMPLE? YES PLEASE!

We have 400,000 products in our arsenal, giving us plenty of freebies and giveaways to share. Our marketing and buying teams create a wide variety of targeted local sample-and-demo opportunities to drive sales.

#### NATIONAL PROMOTIONS

Our national promotions align with specials we can offer thanks to our national buying power and relationships with well-known household names (e.g. Coca-Cola, KIND Bars, Dunkin' Donuts). In addition, we also align our promotions with seasonal offers that usually are organized around major holidays, including Halloween, Thanksgiving, Christmas, Mother's Day, Father's Day and the 4th of July. Examples of our national promotions include:

#### PAY IT FORWARD

Pay It Forward Day was developed in partnership with KIND Bar, a portion of sales for every bar sold that day are donated to "Feed the Children." Custom banner signage at the lease line and in store alerts customers to Pay It Forward. In just three years, sales on KIND Bar products for that single day have more than tripled. These simple, impactful and unexpected moments get customers engaged and enhance their overall travel-retail experience in positive, meaningful ways.

#### MILITARY PERSONNEL PROMOTIONS

We demonstrate our appreciation and gratitude to U.S. military personnel with free beverages (free Coca-Cola and coffee) on key holidays, including Memorial Day, July 4th, and Veterans Day. In addition, service members receive a 10% discount year-round in appreciation.



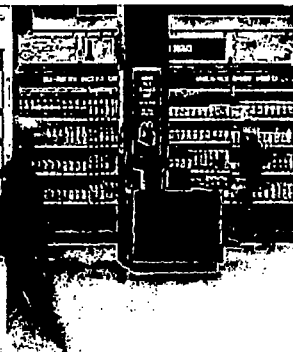
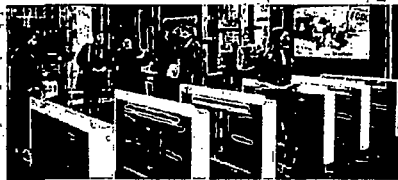
Strategy #

2

**SPECIAL EVENTS: SHOWCASING ACTIVITIES**

The Automated Retail program is an entirely human-less system and as a result, special events are not appropriate for the format.

However, the Hudson Just GO store can offer special events - particularly around grand opening. We'll work with ORD to develop grand opening events that introduce travelers to the concept and encourage them to experience this revolutionary shopping experience.





### Strategy #3

#### SIGNAGE CHANGES

Hudson's Creative team (located at the North American Support Center – NASC) creates merchandising promotion items and signage that is both localized and compelling. Here are some of the ways the Creative, on-site operations, and regional resource teams collaborate to deliver exciting promotional materials:

- Local vendors are showcased using in-store digital signage
- Our National Sign Program provides tools, templates, and materials to promote national and local merchandise
- Merchandisers ensure that seasonal programs and special events are identified and promoted with signage in accordance with our company standards
- On-site teams have access to our sign portal and can order tags and custom designed signs and displays, as needed

#### NATIONAL SIGN PROGRAM

Our National Sign Program provides a collection of carefully designed marketing and promotion tools and items to help accelerate the sale of both local and national products across all of our concepts. At a high-level, that program provides our on-site teams with:

- 2' x 5' banner signs that celebrate holidays, advertising merchandise specials and local events
- merchandise signs to place strategically informing the consumer about value pricing, hot market specials
- Sign toppers to subtly remind passengers of national holidays

Strategy

4

DISPLAY CHANGES

With all of the many options we have to serve our guests, we spend a lot of time thinking about how best to merchandise our stores. From M&Ms to MAC cosmetics – from Dasani to Dior – we sell just about everything you could possibly want or need in an airport. With all of that experience, we've learned that merchandising techniques must reflect not only the product category but also must align with adjacencies, store design, passenger demographics and the time of year. The graphic below showcases the top 6 aspects of merchandising that are most commonly incorporated into our merchandising techniques.



**IN-STORE PLACEMENT**  
Strategically locate products in stores



**PRODUCT PRESENTATION**  
Present products to maximize appeal



**DISPLAY SELECTION**  
Pick displays that showcase products



**SEASONAL DISPLAYS**  
Highlight holiday & seasonal products



**DISPLAY PLACEMENT**  
Arrange displays properly within stores



**SPECIAL EVENTS**  
Showcase sports & special events

**FLEXIBILITY IS CRITICAL**

Technology is rapidly changing our world and we've certainly seen a shift in categories over the past 30 years. Among the many lessons learned, flexibility in both mindset and store design is absolutely critical. Products become obsolete, brands lose their star-power and new categories continue to burst into the market. We anticipate these changes and our merchandising techniques are designed to allow for continual evolution and flexibility. Times change, and so do we.

**PRODUCT PLACEMENT TOOLS & PLANOGRAMS**

Our merchandising and product specialists develop customized planograms for each of our stores. In those, our onsite teams find guidelines, planograms and examples that they are encouraged to customize for their individual stores and markets. Planograms help local teams make use of best-practices from across our portfolio while enjoying the freedom to tweak based on demographics, proximity to TSA or gates and carrier traffic. Regional merchandise managers provide training to ensure that stores are crisp, well presented and visually appealing.

## Strategy

# 5

### SOCIAL MEDIA POSTS

How does Hudson make a strong impact? By connecting with customers on a deeper level. Engagement is more than just likes on a colorful photo, and real data is not only conceived by click-throughs. It's conceived by interactions with our guests.

Hudson and its portfolio of brands, particularly our flagship concepts, Hudson News and Hudson, have an active presence across major social media and online platforms, including Twitter, Instagram, and LinkedIn. While the average conversation is branded by the #TravelersBFF hashtag, our customers tend to make up their own, and again - we listen and respond.

We leverage relationships with strategic brand, vendor, airport, and celebrity partners to create co-promotions that further enhance the experience for traveling consumers.

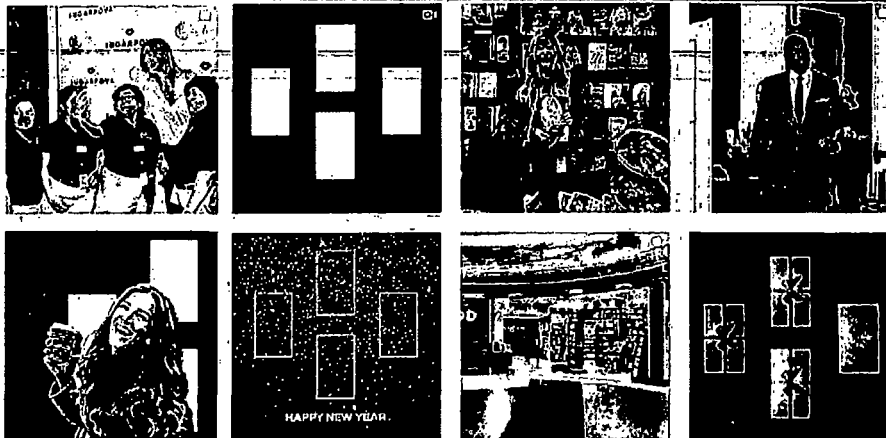
### OUR SOCIAL MEDIA PLAN STRATEGY:

- Establish a constant presence across the social media channels that are most relevant to passenger profiles for Newark Terminal One
- Leverage our already strong brand partnerships to expand our social media reach
- Partner with local key opinion leaders, influencers and bloggers to drive additional reach and create a buzz around airport shopping

We plan to carefully craft key activities and messaging in these imaginative streams.







#### ENGAGING CUSTOMERS ON SOCIAL MEDIA IN INNOVATIVE WAYS

Social media is the preferred method of communication for today's tech-savvy, on-the-go guests. Hudson leverages various social channels, developing even stronger relationships, engagement and awareness of the brand through existing communities of interest and industry influencers.

Based upon our relationships with large publishers, we have an unequalled ability to partner strategically with some of the best in the industry, working in tandem to enhance our brands and their own. By leveraging vendor relationships and their followings, we intensify our own public relations efforts, and in turn, that of our airport partners. This drives brand awareness and guest loyalty, while also increasing incremental sales, and further enhancing the travel retail experience for the millions we serve annually.

But, the most important conversations are those directly with our guests, something we've mastered over the years. We strive to keep lines of communications open and honest with our followers, which nets high-levels of engagement in return. This engagement translates into refined assortments and greater guest satisfaction, a win-win situation for everyone.

Since guest service is at the core of everything we do, our customer service team is thoroughly trained on social media, promptly responding to inquiries, suggestions, and compliments. And, if a customer is unhappy, we work quickly to resolve the issue, promptly delivering a response, making every effort to turn the lackluster experience into a positive one. Our goal is to provide guests with an ongoing communication channel that garners a quick response time. After all, we are "The Traveler's Best Friend."





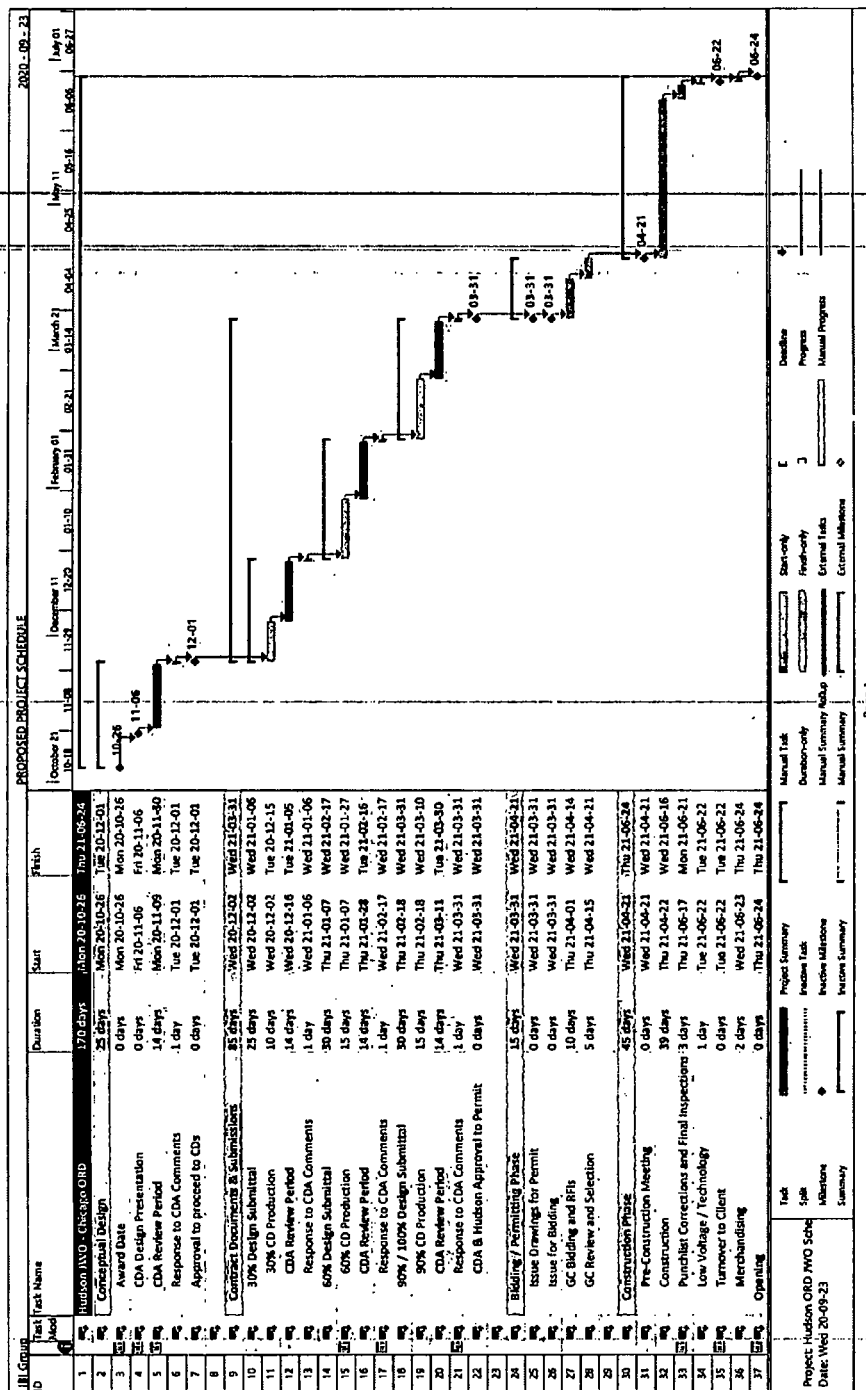
#### **Twitter Polls**

Using Twitter's newer survey function, we can quickly gather valuable insights into key markets. In addition to geo-targeting, enhanced targeting is achieved by polling users who share similar profiles with the fans of the individual airports. In this way, we gather valuable insights across promotions, corporate social responsibility, merchandise, and brand awareness / sentiment. We use this insight in developing travel retail programs and special promotions specific to individual airports and target customer demographics.

In fact, through Twitter polling, we found that more than 74% of our customers care about education and military causes most. In reaction to the information, we align our social responsibility activities and promotions around these two causes. In 2018, Hudson customers gave more than \$1.5 million in donations to our Communities In Schools program, and \$3 million in donations to local USOs throughout the country. We are proud of our efforts, because they reflect both our values, and those of our customers.

#### **Twitter Chats**

Using social media, Hudson Group can promote Newark Terminal One, launching online contests and tweets that involve the community, raise awareness of exciting retail opportunities, offering new experiences that enhance the guest experience. We are excited to develop this strategy with you and develop promotional campaigns that drive world-class customer service and satisfaction for Newark Terminal One passengers.





## Proposal Form G Proposed Concession Fee Rates

*Compensation to the City consists of the Minimum Annual Guarantee Fee ("MAG") and Percentage Fee as described in Section D.2. of the RFP. The City has established the MAG to be paid the City during the Lease Years of the Term. This amount is not "biddable." Any respondent who states a different amount in its proposal will be deemed non-responsive and eliminated from further consideration for award of the offered concession. The City has not established a range of Percentage Fee Rate (s) for each concession category. Respondents must propose a Percentage fee rate(s) for each Package. Any respondent who fails to propose a Percentage Fee Rate(s) will be deemed non-responsive and eliminated from further consideration for award of the offered concession.*

**Respondent:** HG ORD Tech Retail JV

**1) Proposed Percentage Fee Rate:**

Concession Category	Percentage Fee Rate Ranges (for product categories)	Sales Tiers	Proposed Percentage Fee Rate
Alternative Mobile Self-Ordering and Delivery Service	N/A	N/A	N/A
Automated Self-Checkout Micro Marts	N/A	N/A	22% on all sales
Automated Retail, Services and Food	N/A	N/A	25% on all sales

*Note: if not proposing on one or more concession categories (packages) indicate with an "n/a" in the corresponding boxes.*

Proposal Form C*									
Projected Gross Receipts by Concession Type									
Instructions: Provide a good faith estimate of Gross Receipts for each proposed Concession for the 2020 through 2026 Lease Years. The listing of proposed Concessions on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary. On a separate sheet, provide major assumptions in narrative form.									
Respondent:	HG ORD Tech Retail JV								
Proposed Concept/Brand:	Automated Self-Checkout Micro Mart								
Anticipated Opening Date	0 Months 2020	6 Months 2021	12 Months 2022	12 Months 2023	12 Months 2024	12 Months 2025	12 Months 2026	12 Months 2027	6 Months 2028
July 2021									
Gross Revenue	\$ 2,688,349	\$ 7,074,658	\$ 7,991,308	\$ 8,314,137	\$ 8,550,049	\$ 8,959,511	\$ 9,363,091	\$ 9,767,680	\$ 4,970,680
Cost of Goods Sold	\$ 1,021,572	\$ 2,688,370	\$ 3,036,697	\$ 3,159,380	\$ 3,187,019	\$ 3,419,814	\$ 3,557,975	\$ 3,695,858	\$ 1,850,858
Gross Margin	\$ 1,666,776	\$ 4,386,288	\$ 4,954,611	\$ 5,154,757	\$ 5,363,030	\$ 5,539,697	\$ 5,805,117	\$ 6,071,822	\$ 3,119,822
Expenses									
Wages and Salaries	\$ 243,360	\$ 501,322	\$ 516,361	\$ 531,852	\$ 547,808	\$ 564,242	\$ 581,169	\$ 599,302	\$ 299,302
Direct Expenses	\$ 348,211	\$ 875,864	\$ 972,737	\$ 1,000,987	\$ 1,030,261	\$ 1,060,598	\$ 1,092,039	\$ 1,124,312	\$ 562,312
General and Administrative	\$ 169,356	\$ 445,703	\$ 503,452	\$ 523,792	\$ 544,953	\$ 566,969	\$ 589,875	\$ 613,853	\$ 306,853
Rent	\$ 591,437	\$ 1,556,425	\$ 1,758,084	\$ 1,829,115	\$ 1,903,011	\$ 1,979,892	\$ 2,059,880	\$ 2,143,550	\$ 1,071,550
EBITDA	\$ 314,402	\$ 1,006,974	\$ 1,203,973	\$ 1,269,032	\$ 1,336,988	\$ 1,407,995	\$ 1,482,154	\$ 1,561,803	\$ 779,803
Depreciation	\$ 127,475	\$ 254,951	\$ 254,951	\$ 254,951	\$ 254,951	\$ 254,951	\$ 254,951	\$ 254,951	\$ 178,456
Net Income	\$ 186,927	\$ 752,023	\$ 949,022	\$ 1,014,081	\$ 1,082,037	\$ 1,153,044	\$ 1,227,203	\$ 1,306,852	\$ 601,347
* HG ORD Tech Retail JV has revised Proposal Form C to include Expected Annual Gross Revenue, Cost of Goods Sold, Wages and Salaries, Rent, Other Direct Expenses, General and Administrative Expenses, Depreciation and Amortization and EBIT									

#### Package 2 - Projected Sales, Net Income and Cash Flow - Proposal Form C - MAJOR ASSUMPTIONS

**Sales Forecast:** Sales projections are based on the location of the spaces and exposed passenger flow. Our team then reviewed our historical sales in the airport and data from our technology partners street Just Walk Out stores. For example, in Terminal 3, our convenience shop generated \$4.5M last year.

Based on our understanding of the CDA design and review process and Chicago Building permit process, we anticipate the Just Walk Out stores to commence operations in July 2021. Sales increase significantly in Year 2 from Year 1 due to the partial opening and the anticipated increase in enplanement growth from 2021.

We anticipate enplanements to return to pre-COVID levels in 2023.

**Payroll Cost:** As Hudson already operates in ORD, we are extremely knowledgeable of payroll expense, benefit costs and all of the general expenses of operating in the airport. Payroll costs are based on our current pay rates per our labor agreement and required wage ordinances. Personnel expense also contains a contingent amount which has been budgeted for extended hours of operation due to flight delays or other irregular operations.

**Cost of Goods Sold:** Cost of Goods Sold are based upon our existing costs in our convenience stores in ORD.

**Direct Expenses/General and Administrative:** Direct Expenses, including selling expenses, premises expense and other operational expenses as well as General and Administrative, are based upon our existing operations in the airport.

**Depreciation:** Our Capital investment is depreciated over the term of the agreement. In addition, to the initial capital investment, we have included a mid-term refurbishment in Year 5.

# Proposal Form C\*

## Projected Gross Receipts by Concession Type

Instructions: Provide a good faith estimate of Gross Receipts for each proposed Concession for the 2020 through 2026 Lease Years. The listing of Proposed Concessions on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary. On a separate sheet, provide major assumptions in narrative form.

Respondent:	HG ORD Tech Retail JV	11 Months 2020	12 Months 2021	12 Months 2022	12 Months 2023	12 Months 2024	12 Months 2025	1 Month 2026
Proposed Concept/Brand:	Automated Retail, Services and Food							
Anticipated Opening Date	0 Months 2020							
February 2021								
Gross Revenue	\$	10,398,682	\$	24,876,702	\$	16,860,449	\$	18,250,293
Cost of Goods Sold	\$	4,401,578	\$	6,297,044	\$	7,136,730	\$	7,725,026
Gross Margin	\$	5,997,104	\$	8,579,657	\$	9,723,720	\$	10,525,267
Expenses								
Wages and Salaries	\$	706,420	\$	793,759	\$	817,572	\$	867,362
Direct Expenses	\$	1,044,862	\$	1,494,815	\$	1,694,143	\$	1,833,795
General and Administrative	\$	655,117	\$	937,232	\$	1,062,208	\$	1,149,768
Rent	\$	2,287,710	\$	3,272,874	\$	3,709,299	\$	4,315,064
EBITDA	\$	1,301,994	\$	2,080,976	\$	2,440,498	\$	2,659,277
Depreciation	\$	350,272	\$	382,115	\$	382,115	\$	382,115
Net Income	\$	951,722	\$	1,698,861	\$	2,058,382	\$	2,277,162
* HG ORD Tech Retail JV has revised Proposal Form C to include Expected Annual Gross Revenue, Cost of Goods Sold, Wages and Salaries, Rent, Other Direct Expenses, General and Administrative, Expenses, Depreciation and Amortization and EBIT.								

## Package 3 - Projected Sales, Net Income and Cash Flow - Proposal Form C - MAJOR ASSUMPTIONS

Sales Forecast: Our sales forecast was based on exposed passenger volume of each location. We also analyzed Automated Retail and Food sales of other major airports to determine a benchmark sales per brand. The sales opportunity of this package is significant as a result of the installation of over 70 brand choices across the 20 locations. Based on our understanding of the CDA design and review process and Chicago Building permit process, we anticipate the vending to commence operations in February 2021. Sales increase significantly in Year 2 from Year 1 due to the partial opening and the anticipated increase in enplanement growth from 2021. We anticipate enplanements to return to pre-COVID levels in 2023.

Payroll Cost: is based on the stocking and management team that is required to oversee this operation. Payroll costs are based on our existing ORD pay rates as these associates will be part of our labor agreement.

Cost of Goods Sold: is an aggregate of the multiple individual brands based on our agreements with each brand.

Direct Expenses/General and Administrative: Direct Expenses, including selling expenses, premises expense and other operational expenses as well as General and Administrative, are based upon our existing operations in the airport.

Depreciation: Our Capital Investment is depreciated over the term of the agreement. Capital Investment and Financial Sources Plan are reflected in Form D.

**Proposal Form D\***  
**Capital Investment and Financing Sources Plan**

*Instructions: Provide proposed capital investment and financing sources for each proposed Concession Package. Investment includes leasehold improvements; furniture, fixtures, and equipment; franchise fees. Investment does not include other start-up costs. The listing of Proposed Concessions on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary.*

**Respondent: HG ORD Tech Retail JV**

**Proposed Packages:**  
**Package 2 – Automated Self-Checkout Micro Marts**  
**Package 3 – Automated Retail, Services and Food**

Concession Location ID	Proposed Capital Investment	Financing Sources (Investor and Debt or Equity) and Amount				
		Source 1	Amount 1	Source 2	Amount 2	Source 3 Amount 3
Alternative Mobile Self-Ordering and Delivery Service						
Automated Self-Checkout Micro Marts	\$1,784,657	Equity (Internal Cash Flows)	\$1,313,508	Loan	\$471,149	
Automated Retail, Services and Food	\$1,910,577	Equity (Internal Cash Flows)	\$1,406,185	Loan	\$504,392	

*\*Figures above do not include initial inventory. The Loan amount for each package is the cumulative amount for the three ACDBE partners. This reflects their 33% ownership, of which 20% of their total funding will come from Equity and 80% will be a loan.*

Chicago Department of Aviation  
 Proposal Form D

July 30, 2020



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**PACKAGE 2**

As indicated on Form D, our Joint Venture (JV) will invest a total of ~~\$1,784,657~~. These estimates of costs are based on our current Just Walk Out design and bidding work in Dallas Love and our extensive recent construction work in the Chicago market.

**PACKAGE 3**

For Package 3, our Joint Venture will invest a total of **\$1,910,577**. These cost estimates are based on our installation of over 50 Signifi automated retail machines this June and again, our deep understanding and current working relationships with Chicago based contractors

The source of funds for each package will be provided by each Joint Venture partner equal to their In the JV. As stated in Form E, each partner's share of capital contribution is noted below.

	Package 2	Package 3
Hudson Group:	\$1,333,492	\$1,779,741
BT II:	\$218,932	\$292,197
Coriliss:	\$218,932	\$292,197
Dee Robinson:	\$218,932	\$292,197

It should be noted that the amounts in Form E and above are for the total funding of the Joint Venture which include capital investment for construction and inventory. The amounts in Form D do NOT include inventory and therefore are different.

Hudson will fund its share of capital from our existing cash flows. Each partner will fund 20% of their share of capital from cash and will borrow the balance of funds from banking institutions or Hudson Group, as a lender of last resort.

As noted in our Annual report Hudson had a net profit of **\$46.3 million dollars** in 2019 and over **\$560 million** in current assets. Additionally, Hudson has financial debt agreements with our primary shareholder, Dufry, to secure any necessary liquidity and capital resources necessary.

**EXHIBIT 4**  
**CITY'S SHELL AND CORE OBLIGATIONS**

Unless expressly stated otherwise below, the City shall have no Shell and Core Obligations.

**EXHIBIT 5**  
**PRODUCTS AND**  
**PRICE LIST**

# EXHIBIT 5

## PRODUCTS AND PRICE LIST

Request For Proposal  
Chicago O'Hare International Airport  
Automated Retail, Services, and Food

Concessions Development Plan  
Concept Summary  
Micro Mart (Just Walk Out)

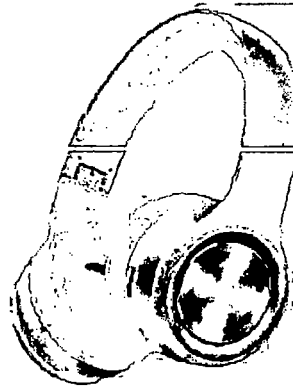
### MARKETPLACE

Pre-packaged Snacks	\$1.99 to \$19.99
Candy, Gum & Mints	\$1.99 to \$19.99
Beverages	\$1.99 to \$19.99



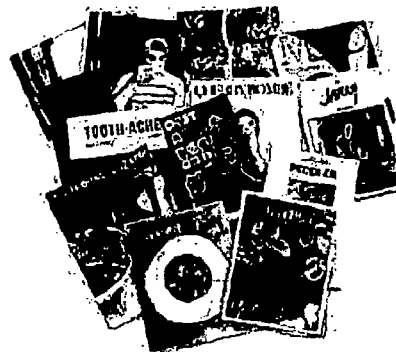
### ESSENTIALS

Sundries	\$0.99 to \$249.00
Health & Beauty Aids	\$0.99 to \$249.00
Travel Electronics	\$0.99 to \$249.00
Electronic Accessories	\$0.99 to \$249.00



### MEDIA

Magazines	Publisher's Retail Price
Newspapers	Publisher's Retail Price



**EXHIBIT 6**  
**FORM OF LETTER OF CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

Issuing Bank Letterhead

(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No.

Date: , 20

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

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

8. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
9. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
10. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
11. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name:

Title:

**THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT  
NO. \_\_\_\_\_**

**EXHIBIT A**

**CERTIFICATE FOR DRAWING**

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

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

2. Payment of the draft shall be made by bank wire paid to our account as per our wire instructions below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name of Bank)  
(City & State)  
(ABA No.)  
(Account Name)  
(Account No.)  
(Reference No., if any)

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

In witness hereof, the City has executed this certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF CHICAGO

BY: \_\_\_\_\_  
Its: Commissioner of Aviation



EXHIBIT 7  
INSURANCE REQUIREMENTS

**Chicago Department of Aviation**  
**HG ORD Tech Retail JV**  
**Concession Lease and License Agreement**  
**O'Hare International Airports**  
**(Micro Mart)**

**A. INSURANCE REQUIRED**

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

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

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

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

The City must be provided additional insured status with respect to liability arising out of Tenant's work, services or operations performed. The City's additional insured status must apply to liability and defense of suits arising out of Tenant's acts or omissions, whether such liability is attributable to the Tenant or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Tenant's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Tenant may use a combination of primary and excess/umbrella policy/policies to satisfy

the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

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

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

4) Excess/Umbrella

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

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

5) Property

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

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is

named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

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

8) Builders Risk

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

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

**B. Additional Requirements**

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

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

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

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

Waiver of Subrogation. Tenant hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance herein for any loss arising from or relating to this Agreement. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Tenant's insurer(s).

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

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

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

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

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

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

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

Insurance required of Subcontractors. Tenant must name the Subcontractor(s) as a named insured(s) under Tenant's insurance or Tenant will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Tenant but be no less than \$5,000,000 per occurrence for access to airside and \$2,000,000 per occurrence for

access to landside for Commercial General Liability and Auto Liability. Tenant must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Tenant is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Tenant is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Tenant must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Tenant's liability or responsibility.

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

**EXHIBIT 8**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

JV 33% ACDBE Consisting of:  
BT II-Mr. Blanton Vanady (11%)  
Corliss Stone Littles, LLC. (11%)  
Robinson-Hill Group, Inc. (11%)

City of Chicago Department of Aviation

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

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

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

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

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

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



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

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart II. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### 1. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

### B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program") was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for

businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **III. INITIAL ACDBE COMMITMENT**

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

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **IV. CHANGES IN ACDBE PARTICIPATION**

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

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

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

### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

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

### V. ACDBE SUBSTITUTION AND ADDITIONAL ACDBES

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire

must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

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

#### **VI. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

#### **IV. COUNTING ACDBE PARTICIPATION**

- **CONCESSIONS OTHER THAN RENTAL CAR**

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

- *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not counted.

**VII. *Separate locations.*** When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.

**VIII. *Joint venture, no separate locations.*** When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts

attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.

**IX. Subcontractor participation.** When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.

1. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
2. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
3. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
4. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

- **RENTAL CAR CONCESSIONS**

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

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

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

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

- **CERTIFICATION**

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

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

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

- **RECORDKEEPING**

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

## **XIII. REPORTING**

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

## **XIV. MONITORING**

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt

cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

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

## **VI. GOOD FAITH EFFORTS**

### **A. EXAMPLES**

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49

• Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

- Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
- Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
- Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in responding to a solicitation.

**XV.** Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.

**XVI.** NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.

**XVII.** Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social

affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.

- XVIII.** Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
- XIX.** Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- XX.** Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

- **DOCUMENTATION**

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

- A listing of all ACDBE firms that were contacted that includes:
  - names, address and telephone numbers of ACDBE firms contacted;
  - date and time of contact;
  - method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - name of the person contacted.
- XXI.** Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - 1. concession identification and location;
  - 2. descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - 3. date, time and location for submittal of bids or proposals.
- XXII.** Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
- XXIII.** Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
- XXIV.** Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
- XXV.** Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
- XXVI.** Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.



- XXVII.** Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
- XXVIII.** Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- XXIX.** Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
- XXX.** Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
- A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

#### C. ADMINISTRATIVE RECONSIDERATION

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

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

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

With copies to:

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

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

City of Chicago Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

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

## **VII. NON-COMPLIANCE AND DAMAGES**

### **I. NON-COMPLIANCE GENERALLY**

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

### **II. NON-COMPLIANCE WITH ACDBE AGREEMENT**

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

**EXHIBIT 9**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

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

**I. Policy and Terms**

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

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

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

**Contract Specific Goals and Bids**

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

- I.** An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- II.** Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

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

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

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

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

### **Contract Specific Goals and Contract Modifications**

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

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

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

## **II. Definitions**

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

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

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

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

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

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

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

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

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

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

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

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

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

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

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates,

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

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

### **III. Joint Ventures**

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

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

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

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

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

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

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

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

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

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

1. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
2. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

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

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

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

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only be listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract



Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual- certified firm chooses to count itself as.

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

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

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

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

- If the MBE or WBE performs the work itself:
  - 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- If the MBE or WBE is a manufacturer:
  - 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- If the MBE or WBE is a distributor or supplier:
  - 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- If the MBE or WBE is a broker:
  - 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  - As defined above, Brokers provide no commercially useful function.
- If the MBE or WBE is a member of the joint venture contractor/bidder:

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

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

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

## **V. Procedure to Determine Bid Compliance**

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

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

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

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

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

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

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

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

#### **E. Letters of Certification**

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

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must

conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

**F. Schedule F: Report of Subcontractor Solicitations**

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

**G. Schedule H: Documentation of Good Faith Efforts**

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

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

**I.** Documentation must include but is not necessarily limited to:

1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  2. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - Names, addresses, emails and telephone numbers of firms solicited;
    - Date and time of contact;
    - Person contacted;
    - Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  3. Evidence of contact, including:
    - Project identification and location;
    - Classification/commodity of work items for which quotations were sought;
    - Date, item, and location for acceptance of subcontractor bids;
    - Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - Bids received from all subcontractors.
  4. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.

- Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

## **VI. Demonstration of Good Faith Efforts**

**I.** In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.

**II.** The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:

1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or

associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.

6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.
- J. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
- K. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
- L. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
  1. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the

Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

- Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
  - Unavailability after receipt of reasonable notice to proceed;
  - Failure of performance;
  - Financial incapacity;
  - Refusal by the subcontractor to honor the bid or proposal price or scope;
  - Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  - Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  - The subcontractor's withdrawal of its bid or proposal; or
  - De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:
  - M.** The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  - N.** The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  - O.** Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non- MBE or non-WBE.
  - P.** If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

**Q.** A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

**D.** The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

### **VIII. Reporting and Record Keeping**

- During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- R.** The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute



for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.

- S. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

#### **IX. Non-Compliance**

- Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- Payments due to the contractor may be withheld until corrective action is taken.
- Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740 of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

## EXHIBIT 10

### DESIGN AND CONSTRUCTION STANDARD OPERATING PROCEDURES – CONCESSIONS



# Design and Construction Standard Operating Procedures

## Concessions Projects (C-SOP)

O'Hare International Airport Midway  
International Airport

Chicago Department of Aviation Revised  
June, 2020



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## Definitions

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

**“Airport”** refers to O'Hare International Airport (ORD) and/or Midway International Airport (MDW).

**“Airport Concession Program Handbook”** refers to the manual created by CDA to coordinate operations of the Concession location with the CDA, including inspections, daily operations, and construction.

**“As-Built Drawings”** refers to the drawings that document on-site changes to the original construction documents. The initial plan markups are submitted by the General Contractor to the Architect of Record for submission to CDA. These drawings are required by Chicago Department of Aviation as part of the close out documentation package.

**“Business Day”** refers to a measurement of time that typically is a day in which normal business is conducted Monday through Friday; excluding Saturday, Sunday and City of Chicago holidays for all documentation and design submittals.

**“Chicago Department of Aviation” (CDA)** refers to the managing entity for the Airports on behalf of the City of Chicago.

**“CDA CAD / BIM Standards”** refers to the standards created by the Chicago Department of Aviation describing requirements for drawings

**“CDA's Coordinating Architect of Design and Construction”** refers to the designee appointed by the CDA to oversee the design creation and review process. This entity may also be involved in the review of the construction process to ensure coordination with the design.

**“CDA Concessions” (CDA-C)** refers to the department within CDA responsible for the oversight of the concessions program or its Concessions Management Representative (CMR)

**“CDA Point of Contact” (CDA POC)** refers to a designee assigned by CDA to oversee the development of the construction project on behalf of CDA.

**“CDA Project Number”** refers to the CDA project identification number that is required to be included on all correspondence and applications submitted throughout the design and construction process.

**“CDA Construction Safety Manual”** refers to the manual, as amended from time to time, created by The City of Chicago, to incorporate health and safety regulations as the responsibility of the Contractor working on airport premises. See **Exhibit D.5**

**“CDA Safety”** refers to any party working for, or on behalf of, the CDA in regard to safety, security, or similar airport operations.

**“Chicago Department of Public Health” (CDPH)** refers to the City of Chicago entity responsible for enforcing Chicago Health Codes, by performing inspections and administering permits. **“Concessionaire”** refers to the leaseholder or tenant in the business of selling products or services to the public at the Airport.

**“Concessionaire Point of Contact” (Concessionaire POC)** refers to any party working on behalf of a concessionaire; which will include architects and their engineers and consultants (POC Architect), and the general contractors and their subcontractors (POC Contractor).

**“Concessions”** refers to non-rental car concession businesses at the Airport selling products or services to the public.

**“Concessions Design Guidelines for Midway”** refers to the guidelines established by the CDA regarding overall design intent and to provide quality, material, signage, lighting and system standards for concessions development at Chicago Midway International Airport (MDW).

**“Concessions Design Guidelines for O'Hare”** refers to the guidelines established by the CDA regarding overall design intent and to provide quality, material, signage, lighting and system standards for concessions development at Chicago O'Hare International Airport (ORD).



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**"Concessions Management Representative" (CMR)** refers to the entity or entities retained by the CDA to assist in overseeing Concessions, including construction of Improvements at the airport.

**"Construction Services"** refers to the portion of the project involving construction, including but not limited to trade labor, material purchase, equipment purchase, tool or equipment rentals, support services such as safety monitoring, clean up labor, delivery costs, taxes, etc. that directly results in a code compliant concession location.

**"Department of Buildings"** refers to the City of Chicago entities responsible for enforcing Chicago Building Codes, by performing inspections and administering permits including the Ventilation Department, Electrical Department, Plumbing Department, and New Construction Department.

**"Design and Construction Standard Operating Procedures; Concessions Projects" (C-SOP)** refers to the guidelines established by CDA and CDA Concessions as the process by which all Concessions projects are reviewed and approved.

**"Design Documents"** refers to the documents that illustrate and describe the project design by defining scope, relationships, forms, size and appearance of the project with specifications, plans, sections, elevations, perspectives, typical sectional details, diagrams and equipment layouts.

**"Liquor License"** refers to the City of Chicago entity responsible to enforce the Chicago Liquor Licensure by performing inspections and administering permits.

**"Pre-Construction Meeting"** refers to the mandatory meeting held prior to project construction.

**"Project's Digital Design Coordinator" (DDC)** refers to the Concessionaire's architect's and engineer's point of contact for document exchange. Multiple members of the design team may have password access, but only the DDC should contact the CDA POC if follow up coordination is required.

**"Project Initiation Letter" (PIL)** refers to the concessionaire's formal letter submittal to CDA Design and Construction requesting a CDA Project Number. The Project Initiation Letter should clearly define the project and scope. Please refer to **Exhibit A** for a list of items to be included in the PIL.

**"Professional Services"** refers to the portion of the project involving design, coordination, or post-construction work including but not limited to design, code review, project or program coordination, etc. that is associated with, but not necessarily required for the concession location. Note that work performed by an employee of the Concessionaire does not count as Professional Services.

**"Retail Management System" (RMS)** refers to the CDA's secure concessions portal, AirportWare™ Software Suite, for Capital Program Management, Lease Management, Aviation Statistics, and Facilities Inspection.

**"Review Comments Form"** refers to the CDA template used to document all reviewing parties' comments regarding the drawing submittal.

**"Review and Conditions Letter"** refers to the document that is issued by CDA and used at all submittals throughout the drawing review process as a communication and response tool between review parties and the Concessionaire.

**"The Sustainable Airport Manual (SAM™)"** refers to the manual created by CDA to incorporate and track sustainability in administrative procedures, planning, design and construction, operations and maintenance, and concessions and tenants with minimal impact to project schedules or budgets.



## Introduction

O'Hare and Midway International Airports are owned by the City of Chicago and operated by the Chicago Department of Aviation (CDA). As a department within the City of Chicago, CDA is responsible for the management of the Airports, including the concessions program, and accordingly CDA reserves the right to review and approve the construction or modification of any Concession on Airport property.

For O'Hare International Airport official addresses and site map refer to:

**T. Exhibit 1:** O'Hare International Airport Official Addresses and Site Map(s)

For Midway International Airport official addresses and site map refer to:

**U. Exhibit 2:** Midway International Airport Official Addresses and Site Map

The procedures, submission requirements, and deadlines set forth in this C-SOP document are mandatory and may only be waived in unique circumstances upon written approval by CDA Concessions. CDA reserves the right to modify the requirements at any time.

The Concessionaire shall provide evidence of professional services throughout all stages of work. All project documentation shall be prepared, signed, and stamped by a licensed design professional. Throughout the design process the Concessionaire is to utilize the most sustainable design practices in the industry with reference to the Sustainable Airport Manual (SAM™) to the extent dictated in the **Concessionaire's signed Lease and License Agreement**. The CDA, through its Design and Construction Division & CDA Concessions, reviews, oversees, and approves design and work for all new construction, renovation, and remodeling projects at the Airports.

### Project oversight varies based on milestones

CDA Concessions / CDA D&C			CDA D&C / Facilities / CDA Concessions			CDA Concessions			
Step 1 • Project Initiation	Step 2 • Design Review	Step 3 • Final Doc Rev & Cond Approval to Construct	Step 4 • Pre-Construction	Step 5 • Notice to Airport User Form (eForm)	Step 6 • Construction	Step 7 • Substantive Completion	Step 8 • Project Closeouts	Step 9 • Compliance Overview	Step 10 • Supplemental Exhibits

## Development and Design Process Overview

The concept development and design process has been established to provide a systematic and organized process by which a concessions concept and design are reviewed and approved by CDA Concessions. It should be noted that field verification is mandatory for all projects.

### STEP 1.0: Project Initiation

#### 1.1: Concept Proposal and Design Presentation

In order to begin a remodel project, store renovation or concept change, CDA Concessions must approve the proposed project and/or concept. The Concessionaire's concept design should include spatial relationships or models as necessary to describe the image and function of the project for CDA's review. CDA Concessions will be available to assist with the presentation scheduling.



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The Concessionaire must provide the following items at the Conceptual Design presentation:

- Site Plan
- Concept plan
- Proposed terminal, concourse and requested square footage,
- The existing to remain or newly proposed lease line
- Design perspectives / renderings (illustrative images)
- Design plans / elevations
- Proposed materials / finish board (to be mailed to the address below)
- Preliminary overall project schedule
- Preliminary construction budget
- Sample menu

The concepts documents should be submitted via email to:

**O'Hare International Airport Contacts** Chicago Department of Aviation Administration Building  
Attn: Deputy Commissioner Concessions 10510 West Zemke Rd.  
Chicago, IL 60666  
Email: [ordetailconstruction@cityofchicago.org](mailto:ordetailconstruction@cityofchicago.org)

**Midway International Airport Contacts**  
Chicago Department of Aviation Administration Building  
Attn: Deputy Commissioner Concessions 10510 West Zemke Rd.  
Chicago, IL 60666  
Email: [mdwetailconstruction@cityofchicago.org](mailto:mdwetailconstruction@cityofchicago.org)

These items will be reviewed by CDA Concessions for completeness. The Concessionaire will be contacted via email or hard copy letter with review results within ten (10) business days of the Concept presentation with comments and direction regarding items that need revisions or enhancements, and that should be addressed before the Concessionaire moves forward to submit a Project Initiation Letter.

## **2. : Project Initiation Letter**

When CDA Concessions issues written approval for the conceptual design, the Concessionaire shall submit to CDA's Coordinating Architect of Design and Construction, a Project Initiation Letter (PIL) on Concessionaire's or Concessionaire's Architect's letterhead. Within ten (10) business days of receiving the PIL, CDA will send a "Response to Project Initiation Letter" to the Concessionaire with comments and direction regarding the required number of and completion level of design submittals, along with the assigned CDA Project Number which must be included on all future project correspondence and submittals including permits.

CDA's Coordinating Architect of Design and Construction will determine if the scope of work requires a CDA Project Number as well as a full design and construction review. At that time, it is also determined if compliance with the SAM™ is required. Not all projects will be assigned a CDA Project Number or must be SAM™ compliant. Based on the construction scope and duration, some projects may be eligible to proceed through CDA's eForm system (for

more information on eForms see **Step 5**). All Concessionaire questions, concerns, or requests for information or project coordination should be directed to the CDA POC.

For a list of required documentation to include in the PIL refer to:

- **Exhibit A:** Project Initiation Letter Submittal Check List

Please refer to **Step 1.1** for where O'Hare and Midway Pre-Construction Submittals should be sent.

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Once the PIL has been received and acknowledged, the project owner and/or representative is responsible and required to provide the following project documentation and electronic documentation to the CDA Concessions POC:

- Project written reports pertaining to all Design Reviews, Pre-Construction, Construction and Post-Construction updates e-mailed to the CDA POC as requested. The project owner and/or representative is to ensure all project meetings be attended by a project representative. Please refer to **Step 6.6** for further information.

### **1.3: Sustainable Airport Manual (SAM™)**

The Concessionaire is required to submit a Sustainable Airport Manual (SAM™) Checklist. The Designer will complete and submit a checklist for the SAM™ Terminal Occupants – Design & Construction Chapter (SAM™ TO- DC Credits 1.0 to 6.0) and include all relevant supporting documentation. Be advised that the Terminal Occupants – Operations & Maintenance (CT-OM) checklist is not required for construction projects (all projects would need to submit a checklist). Please refer to link below:

[SAM™ Manual](#)

**End of STEP 1**

## **STEP 2.0: Design Review**

All projects require review by CDA Concessions. The Concessionaire's design professional shall perform code review to determine what permits are required. If it is determined that the scope of work does not require permit(s), the design professional shall provide this determination in writing to CDA Concessions. Otherwise, building permits are issued by the Department of Buildings. CDA encourages the Concessionaire to allow ample schedule time to acquire the required building permits. Please note that if a sign construction permit is required, it can only be obtained by a licensed sign contractor. All projects are to conform and comply with all applicable CDA standards.

### **.1 : Concessionaire and Concessionaire's Consultants' Responsibilities**

The Concessionaire is ultimately responsible for all work designed, approved and constructed in the Airport by its vendors and consultants.

### **.2 : Design Overview**

The design review process includes design drawing, review, and approval. The project design timeline will vary

based on multiple factors, such as scope of work, existing conditions, drawing completeness at time of submittal, and/or as dictated by CDA.

Please note:

- CDA's design review requires a minimum of fifteen (15) business days.
- Concessionaire's design professional is allotted thirty (30) business days after receipt of CDA comments to submit the next drawing package.



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The Concessionaire will receive a "Review and Conditions Letter" that either approves the submittal with qualifications, "Reviewed as Noted" or a "Revise and Resubmit".

#### **.1 : Design Submittals**

The Concessionaire will submit to the CDA's Coordinating Architect of Design and Construction, at the 30%, 60%, 90%, and 100% design completion levels, or other completion level combinations based upon review and completeness of the initial and follow-up submittals. Less complex projects may be approved to deviate from this requirement, which will be addressed in CDA's "Response to Project Initiation Letter".

The Concessionaire is required to prepare and submit architectural and engineering drawings, material samples, specifications, lighting schedule and catalog cuts, display fixture and equipment plans, and other technical data as necessary to create a complete design package. The submittal must be in accordance with General Procedures and as described in the Concession Lease and License Agreement.

- The design drawing documents shall be prepared by design professionals licensed to practice in the State of Illinois.
- Particular attention should be given to the non-combustible classification of the building, related flame spread ratings and smoke development classification of materials. Documentation should demonstrate compliance with these requirements.
- Concessionaire documentation for all submissions shall be provided in imperial measurement at the following suggested minimum scales:
  - Key plans; 1/32" = 1'-0", with the location of the space clearly identified by the column line designation.
  - Floor plans, reflected ceiling plans, merchandising plans, interior elevations, sections and related details; 1/4" = 1'-0".
  - Passenger traffic flow diagrams (queuing) and adjacency plans at 1/8" = 1'-0".
- Storefronts, signage, logos and lettering, in elevation, section or detail; 1/2" = 1'-0".
- Sample boards identifying all proposed materials, 11" x 17" panel minimum, include legend.

- Sample boards identifying photos for all proposed furniture and lighting fixtures, 11" x 17" panel minimum, include legend.
- Renderings 11" x 17" or larger for presentation, provide 11" x 17" hand-out copies to be distributed to the attendees.
- All drawings shall be submitted in accordance to CDA CAD / BIM Standards. Electronic submittals will also be accepted in AutoCAD format or the current CDA standard format. A complete set of PDFs is also required as part of each Concessionaire design submission. During design development, at the Concessionaire's request, CDA will make available known as-built files.
- Concessionaire and design team to relay existing condition findings to CDA Facilities for review and approval before submitting the 30% design submittal. An in-person meeting maybe required. The CDA POC will help facilitate a meeting date and time.

## **.2 : Concessionaire and CDA Signage**

Sign design documents must be submitted for review and approval by CDA separate from the phase submittals. Each project must include an illuminated storefront sign. Where it is applicable a blade sign may also be included. Design documents for the signage must express the image, location, specifications, materials, and dimensions. All signage, with or without electrical components, require a sign permit from the Department of Buildings; which can only be obtained by a licensed sign contractor.

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The Concessionaire must inform the CDA Concessions POC if the project requires airport owned signage removal or modification. A walk through with CDA Concessions will be scheduled to ensure adequate time will be allotted for the required airport owned sign work to occur during the construction phase. Any CDA signage needing to be removed or relocated within the project area must be performed by CDA. If CDA signage is located within the project area, the Concessionaire must include specifications in the construction documents, detailing steps to be taken by the contractor to adequately protect all CDA signage to ensure it is not damaged during construction.

## **.1 : Review Comments**

CDA's Coordinating Architect of Design and Construction will distribute a blank "Review Comments Form" form to the appropriate review team. This document will be distributed as an Excel Workbook file and will only be used by the reviewer for their comments. After all comments have been made, each reviewer will send back their comments to the CDA's Coordinating Architect of Design and Construction.

The designer is to provide written line item responses to all comments in the workbook file. This process will repeat for each review phase, as designated in the CDA's "Response to Project Initiation Letter".

Please refer to:

- **Exhibit B:** Submittal Review Comments Form Concessions

## **.2 : Response to Comments**

The Concessionaire is required to respond to all review comments listed on the Review Comments Form, as well as any issues identified in the "Review and Conditions Letter". The spreadsheet column titled "Concessionaire Response" must be completed and accompany the preceding design submittal. Failure to do so will affect the design review process timeline. Concessionaire must respond to **all** review comments, in writing and submit within or no less than three (3) business days prior to the request for a Pre-Construction Meeting.

### **.3 : Requests for Information**

Concessionaire questions, concerns or requests for information or project coordination should be directed to the CDA Concessions POC.

### **.4 : Requests for As-Built Drawings**

The Concessionaire, their architect and/or engineer may submit an as-built drawing request from CDA for use in their design. Use the link below "Document Request Form" and submit it to the CDA for approval. As-built drawings will not be available until the form is signed by CDA. The Concessionaire, their architect and/or engineer will be notified by the CDA if and when the drawings are available. Please refer to:

- **Exhibit B.1:** CDA Standard Electronic Document Request Form

### **.5 : Requests for CDA Design Standards Variance**

The Concessionaire, their architect and/or engineer may submit a request for a variance to the CDA Design Standards. Use the link below to access the "Designer's Request for CDA Design Standards Variance" form. The variance must be reviewed and approved by CDA Design and Construction. Please refer to:

- **Exhibit B.2:** Designer's Request For CDA Design Standards Variance Form

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### **2.10: 30% Schematic Design (SD) Submittal**

The 30% SD submittal illustrates further development of the Concessionaire's design concept. The 30% SD should respond to the feedback given during the Concept Design Presentation and include, at a minimum, more definitive spatial relationships, updated perspectives, plans, elevations, sections, and overall dimensions and other illustrative materials critical to describing the development of the project.

Work required outside the Concessionaire's lease/license line should be clearly identified on all drawings and communicated directly to the CDA POC. Designs must also specify affected Airport base building structure or utilities, including but not limited to: advertising space, public telephones, vending devices, internet kiosks, charging stations, AED's, fire extinguishers, signage, public address speakers, mechanical, electrical, plumbing, fire protection equipment, etc.

For a detailed list of **30% SD Submittal** refer to:

- **Exhibit C:** 30% Schematic Design (SD) Submittal Check List

### **2.11: CDA Review and Response to 30% SD Submittal**

The CDA will provide a "Review and Conditions Letter" as well as a Review Comments Form (see **Steps 2.5 and 2.6**), which is used for all submittals throughout the design review process between CDA review parties and the Concessionaire's architect or design professional.

The letter will include the following information:

- 1) Identify the project status as "Reviewed as Noted" or "Revise and Resubmit".
- 2) Provide comments and direction regarding the proposed scope of work and design submittals.
- 3) If applicable, display the assigned CDA Project Number.
- 4) Determine if the project will require (SAM™) compliance.

## 2.12: 60% Design Development (DD) Submittal

The 60% DD drawings further enhance the previous submittals and should include: architectural, structural, mechanical, electrical, plumbing, fire protection, and equipment demolition plans as well as MEP existing conditions, floor and reflected ceiling plans, elevations, sections, details, specifications, system diagrams, and structural load calculations. Additionally, this submittal should include meter locations: water, gas and electrical. The 60% DD drawings should convey the full scope of work and all impacts to the Airport base building and adjacent spaces. The Concessionaire, their architect and/or engineer may also be required to attend coordination meetings with CDA to present and clarify the submittal documents.

For a detailed list of **60% DD Submittal** refer to:

- **Exhibit C.1:** 60% Design Development (DD) Submittal Check List
- **Exhibit C.2:** Electrical Submittal Check List
- **Exhibit C.3:** Mechanical, Fire Protection & Plumbing Submittal Check List

## 2.13: Additional Submittals

CDA Concessions or CDA Design and Construction may determine that the proposed design is more complex and will require an intermediate design review, page turn with the CDA, or site walkthrough to confirm all concerns and questions are sufficiently resolved. The CDA will identify in the 60% "Review and Conditions Letter" that an additional submittal is required and will list the reasons for the request before continuing to the next major phase.

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The additional submittal(s) must address the issues identified by CDA. The Concessionaire is encouraged to schedule a coordination meeting with CDA to discuss the issues identified. See Step 2.15 for where to send Design submittals via email and hardcopies. All submittals to include the project number and design submittal phase on the email subject line i.e. THXXX.19-00 Concession's Project Name 60% Submission

## 2.14: Compliance Overview

All Concessionaires are required to comply with the City of Chicago construction compliance rules, city residency requirement and certified payroll requirements. See **Step 9** for more information.

## 2.15: 90% Construction Document (CD) Submittal

The 90% CD drawings further enhance the previous submittals and should include: specifications, signage details and locations, and additional mechanical, electrical, fire protection, and plumbing details. With the 90% submittal, comments should include minimal outstanding issues that need to be incorporated into the 100% CDs.

For a detailed list of **90% CD Submittal** refer to:

- **Exhibit C.4:** 90 and 100% Construction Document (CD) Submittal Check List

### O'Hare International Airport Contacts

CDA Aviation Administration Building

Attn: Coordinating Architect, Design and Construction 10510 West Zemke Rd.

Chicago, IL 60666

cc: [ordretailconstruction@cityofchicago.org](mailto:ordretailconstruction@cityofchicago.org)

### **Midway International Airport Contacts**

CDA Aviation Administration Building

Attn: Coordinating Architect, Design and Construction 10510 West Zemke Rd.

Chicago, IL 60666

cc: [mdwretailconstruction@cityofchicago.org](mailto:mdwretailconstruction@cityofchicago.org)

## **End of STEP 2**

## **STEP 3.0: Final CDA Document Review and Conditional Approval to Construct**

### **3.1: Final CDA Document Submittal**

When the documents are 100% complete, the Concessionaire will need to submit the final documents to CDA for review. If approved, CDA will issue a "Review and Conditions Letter" with a "Reviewed as Noted" status to the Concessionaire, and if applicable, a separate letter to the City of Chicago, Department of Buildings, indicating the construction documents have been reviewed and approved, allowing for the start of the permit application process.

For a detailed list of **100% CD Submittal** refer to:

- **Exhibit C.4:** 90 and 100% Construction Document (CD) Submittal Check List

### **3.2: Pre-Permitting Drawing Set Review and Response**

The Concessionaire is required to respond to all review comments listed on the Review Comments Form throughout all design phases. The Concessionaire is to submit a Pre-Permitting Drawing Set for CDA review and approval prior to applying for the project required permits. If any or all review comments have not been incorporated into the Pre-Permitting Drawing Set, the set will not receive approval and/or no construction activities are able to take place until all review comments are incorporated.

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### **3.3: Applying for Permit with the Chicago Department of Buildings**

Following approval of 100% CDs, the project is bid and construction contracts are awarded. It is necessary for the awarded contractor to apply for the required permits from the City of Chicago's Department of Buildings, and any other applicable state and federal authority. The Concessionaire must coordinate the method, process and schedule for the permit application submittals as well as coordinate conduction of final inspections. It is the Concessionaire's sole responsibility to follow-up on the permit issuance process. Note, the Description of Work on the permit must include the associated terminal (i.e. Terminal 2), the closest gate (i.e. E4), the project name and, if applicable, CDA project number.

A list of required work permits is located on the Department of Buildings website. Please note that when a sign construction permit is required, it can only be obtained by a licensed sign contractor.

All Chicago Department of Buildings permit applications and submittals are fully electronic and available via the City's online system "**E-Plan**" at the following website: <https://www.chicago.gov/city/en/depts/bldgs>

### **3.4: Self-Certification**



The Self-Certification Permit Program simplifies the building permit process for eligible residential, business and mercantile and small assembly projects where the Architect of Record takes full responsibility for code compliance. The Department of Buildings plan reviews are eliminated by allowing the Professional of Record to certify that the permit drawings comply with the Chicago Building Code. The Professional of Record must have prepared and sealed the permit drawings, completed DOB's Self-Certification Training Class, and hold an active Self-Certification registration. Structural work cannot be self-certified.

For more information please visit: [Chicago Dept. of Buildings Self Certification Program](#)

### End of STEP 3

## STEP 4.0: Pre-Construction

### 4.1: Pre-Construction Meeting

The Concessionaire POC shall request a Pre-Construction Meeting through CDA as directed in the final CDA review comments. All Pre-Construction documents must be compiled, and electronic copies sent to the CDA prior to scheduling the Pre-Construction Meeting. The Pre-Construction Meeting can be scheduled no sooner than three (3) business days after the final pre-construction document is received.

CDA or the CDA POC will schedule a Pre-Construction Meeting and notify the Concessionaire of the meeting time and location. At the Pre-Construction Meeting, the Concessionaire and their representatives should be prepared to answer any questions regarding the required documentation and the proposed construction. If applicable, the General Contractor must provide proof that the barricade graphic has been produced and is ready for installation; the barricade and graphic must be installed within (7) seven business days from the start of construction. The Pre-Construction Meeting will **NOT** take place until MBE/WBE Compliance Plans have been reviewed and accepted by the CDA. Please refer to **Step 9** for more information on compliance.

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At the conclusion of the pre-construction meeting, CDA will determine if the documentation and Concessionaire's response to any questions are complete and, if so, CDA will issue a letter authorizing construction to start. Note that an eForm must also be submitted and approved before construction can start. Please refer to **Step 5** for more information on the eForm.

### 4.2: Pre-Construction Documentation

It is the Concessionaire's POC's responsibility to compile and submit the required documentation in a timely manner in order to maintain the overall project schedule. The list of required documents can be found in Exhibit D. Allow two (2) to four (4) weeks to acquire badging, vehicle permits, building permits and other necessary pre-construction documentation, identified below. Processes for all required Airport badges and permits must be completed for every employee/worker and vehicle involved in the project before work begins. Construction will **NOT** begin until all required documentation has been submitted and reviewed by the CDA POC.

Pre-Construction document submittal shall include the following: one (1) full size hard copy set of stamped approved plans by the Department of Buildings, one (1) half size set of stamped approved plans by the Department of Buildings, and one (1) PDF of stamped plans approved by the Department of Buildings.

The **Pre-Construction Documentation** includes the following:

- Exhibit D:** Pre-Construction Meeting Check List
- Exhibit D.1a or D.1b:** Pre-Construction Meeting Form
- Exhibit D.2:** FAA Approved 7460 Forms – FAA Letter of Determination
- Exhibit D.3:** Impact to CDA Security and TSA Approval
- Exhibit D.4:** Certificate of Insurance (COI)
- Exhibit D.5:** General Contractor Safety, CDA Construction Safety Manual & Safety Manager Credentials
- Exhibit D.6:** Safety and Security Plan
- Exhibit D.7 & D.8:** Incident Notification Plan
- Exhibit D.9:** Building Permit (example)

### 4.3: Logistics

The General Contractor must develop a logistic plan prior to the Pre-Construction Meeting. The logistic plan should identify the following:

- 1) **Hours of Construction are 10:00 PM to 5:00 AM**, unless approved otherwise by the CDA.
- 2) Obtain employee/worker and vehicle badging, employer /worker information, authorization form and permits. (See **Exhibits D.10 & D.11**)
- 3) Identify dock location for deliveries / Determine dumpster locations. (See **Exhibit D.12 & D.13**)
- 4) Determine site access / Elevator matrix & maps. (See **Exhibits D.14 - D.17**)
- 5) Vehicle Access Form - Airfield (See **Exhibit D.18**)
- 6) Operations Plan - Material delivery and debris removal. (See **Exhibit D.19**)
- 7) Create a detailed project schedule that identifies all work phasing
- 8) Identify, any building systems that will be required to be shutdown
- 9) All material storage and staging areas, should be off site or within the barricaded concession area; and
- 10) Contractors and Sub-Contractors new to the Airport are required to perform an onsite facilities training. The CDA POC will facilitate a meeting date time

Please refer to **Step 2.15** for where O'Hare and Midway Pre-Construction Submittals should be sent.




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### 4.4: Pre-Construction Meeting Attendance

The following is a list of required attendees: Concessionaire and/or Owner's representative(s); General Contractor's, Project Manager, Superintendent, and Safety Manager. Concessionaire's design consultant's attendance is optional. The CDA Concessions POC will notify all Airport stakeholders necessary to attend the meeting.

**End of STEP 4**

## STEP 5.0: Notice to Airport User Form (eForm)

### 5.1: Notice to Airport Users Form (eForm)

For all construction projects, the Concessionaire is required to submit a Notice to Airport User Form. The Concessionaire shall register or login to the online Notice to Airport Users Form at <https://eforms.cityofchicago.org/uforms> and create a project start up form indicating scope, start and completion

dates. Additional User Forms required during the course of construction will be discussed at the Pre-Construction Meeting. All User Forms must be submitted at least three (3) business days in advance of the anticipated start of construction to allow adequate time for review. Select the link below to learn more about how to submit a Notice to Airport Users Form for O'Hare International Airport and Midway International Airport. The eForm must be approved by the CDA before the Concessionaire can begin construction.

[ORD Quick Reference Guide](#)

[MDW Quick Reference Guide](#)

Any work on the fire protection system within the tenant space which requires a fire protection shutdown should have a separate user form submitted and follow the CDA fire shutdown procedures.

Any work on the domestic water service within the tenant space which requires partial domestic water service shutdown should have a separate user form submitted and follow the CDA domestic water service shutdown procedures.

## **End of STEP 5**

## **STEP 6.0: Construction**

### **6.1: Site Maintenance / Construction Administration**

All permits, user forms, emergency contact directory, and construction alerts shall be prominently displayed in a locked glass display cabinet 30" high by 36" wide approved by the CDA. One full size stamped set of drawings and the original permit must be kept on site at all times.

### **6.2: Building Inspections**

Department of Buildings Inspection Bureau will be conducting inspections throughout construction. Contractors must request inspections of ventilation, electrical, plumbing, and new construction on all projects with issued building permits, regardless of scope, for both rough and final inspections. Failure to request these inspections may result in

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suspension or revocation of the permit, and issuance of citations by the Chicago Department of Buildings for violation of licensing requirements against the General Contractor and subcontractors.

Chicago Department of Buildings inspections shall be scheduled via the on-line inspection scheduling system at [www.cityofchicago.org/buildings](http://www.cityofchicago.org/buildings). All requests for rough and final Chicago Department of Buildings inspections should be requested at least fourteen (14) business days in advance.

If needed, contact the Department of Buildings Inspection Bureaus by phone as listed below:

- Ventilation Department – (312) 743-3573
- Electrical Department – (312) 743-3622
- Plumbing Department – (312) 743-3572
- New Construction Department – (312) 743-3531

In addition, contractors must offer the terminal manager and building engineer an opportunity to perform an

inspection at demolition, rough, and final phases. The Concessionaire shall contact the CDA Concessions POC to coordinate these inspections.

### **6.3: Chicago Department of Public Health Inspections and Liquor License**

Food establishments and retail establishments serving food require a health inspection to be conducted by the Chicago Department of Public Health (CDPH). Concessionaires applying for a liquor license require a separate inspection coordinated by the Business Affairs and Consumer Protection Department, in addition to the Department of Buildings inspections. For both inspections, allow one (1) to three (3) weeks to schedule and obtain a final inspection and certificate.

Please note, the construction barricade cannot be removed until applicable licenses and inspections are complete.

- PDF of the Health Inspection Approval and supporting documentation must be supplied and sent to CDA Concessions prior to store opening.

For Chicago Department of Public Health (CDPH) visit their website at:

<https://www.cityofchicago.org/city/en/depts/cdph.html> or call (312) 747-9884.

For Business Affairs and Consumer Protection Department information visit their website at:

<https://www.cityofchicago.org/city/en/depts/bacp/provdrs/bus.html> or call (312) 744-6249.

### **6.4: Safety and Security Plan**

All contractors and subcontractors and the work they perform are subject to the CDA Construction Safety Manual. Each project requires an onsite full time Safety Manager who is solely responsible to monitor job site safety and security (See **Exhibit D.5 for more details**).

Please refer to link below:

[CDA Construction Safety Manual](#)

CDA Safety will perform site safety walkthroughs during construction to ensure all work is being performed per the CDA Construction Safety Manual. CDA Safety and the CDA POC have the authority to stop work if unsafe conditions or practices are observed.

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### **6.5: Demolition**

Prior to demolition, pre-construction photos must be taken, documenting all of the existing conditions. Failure to provide photo documentation of the existing conditions before construction will result in the contractor and Concessionaire assuming responsibility for all damages and perceived damage to existing base building materials. Damaged materials must be repaired or replaced at the contractor's and/or Concessionaire's expense. Once demolition is complete, the CDA terminal manager, the CDA building engineer, and CDA POC shall perform a site inspection prior to the start of construction.

Core drilling, cutting of floors, walls or roofs may be required for tenants needing plumbing and/or additional mechanical HVAC provisions. Under no circumstances shall the Concessionaire or its contractor(s), at any time be permitted to drill or cut conduit, pipe sleeves, chases or duct equipment openings in the floor, columns, walls or roofs of the structure without prior review and acceptance of the proposed locations and sizes by the CDA's structural consultant. The Concessionaire is required to x-ray or scan the area prior to beginning work utilizing a 3D ground

penetrating radar and will provide a copy of x-ray / scan results to CDA. Scan / x-ray to be submitted via eForm three (3) business days prior to performing coring or drilling work.

## **6.6: Construction Meetings and Reporting**

During construction, the General Contractor is required to provide the following project documentation and electronic documentation to the CDA Concessions POC:

- 1) Minutes from a weekly contractor led meeting (in person or via telecom) including the project owner and/or representative and CDA POC, at an agreed location (project site or POC conferenceroom).
- 2) A weekly status summary report describing the progression of the work. The weekly status report must contain at a minimum the following:
  - Project title
  - Project number
  - Forecasted / actual start / completion date(s)
  - What construction occurred since the last weekly report
  - Revised three (3) week "Look Ahead" construction task schedule (CDA Design and Construction / CDA Concessions will determine if applicable to a given project)
  - What issues occurred and / or are projected
  - At least three (3) photos taken daily to document in-progress installation of materials
  - Other items as requested by CDA
- 3) A revised overall schedule when necessary
- 4) All Issued for Construction Drawings (IFC), addenda to the permit drawings, and resolved RFIs as they become available

## **6.7: Non-Compliance and Unauthorized Construction**

Non-compliance or construction that deviates from the approved permit documents without CDA's prior written approval may be just cause for CDA to order work stoppage until corrective measures are taken and compliance is obtained. Any cost or claims due to this work stoppage shall be borne by the Concessionaire and the General Contractor.

### **End of STEP 6**

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## **STEP 7.0: Substantial Completion**

### **7.1: Substantial Completion Notification**

The General Contractor shall notify the CDA POC a minimum of seven (7) business days prior to the anticipated substantial completion date to request a site inspection project completion walk through. The construction space must be clean and all tools and surplus materials must be removed from the site or the walk through will be canceled. Mandatory attendance at the walk through includes: Concessionaire and/or Owner's Representative(s), and the General Contractor's Project Manager and Superintendent. The CDA POC will notify the CDA terminal manager, the CDA building engineer, the CDA Project Manager, and any other attendees identified during the Pre- Construction meeting or as deemed necessary. The items listed below are required to support the substantial completion walk through process:

- (1) The Concessionaire's architect should compile their punch list items. The Concessionaire or concessionaire's architect will provide a copy of their punch list to CDA for review prior to the walk through.
- (2) The concessionaire will receive final CDPH and Department of Buildings inspector's approval before the substantial completion walk through.
- (3) The substantial completion walk through must occur 5-10 business days prior to concessions opening.

## **7.2: Final Walk Through and Punch List**

At the substantial completion walk through, the General Contractor will conduct a brief meeting to distribute and discuss the punch list items that they have identified and the proposed date of substantial completion. The General Contractor and Concessionaire must show proof of all final Department of Buildings and CDPH inspections, Certificate of Occupancy, Business and Liquor licenses and Certificate of Insurance. If a Certificate of Occupancy is required as determined by the Department of Buildings, it will need to be submitted to the CDA prior to any occupancy of the renovated or newly constructed space. It is the Tenant's responsibility to arrange for inspection by the Department of Buildings for the Certificate of Occupancy. The Concessionaire should identify meter locations to be properly labeled and provide the meter number and the room name of meter location(s).

After all attendees have completed the walk through, the parties will reassemble to discuss their punch list items with the Concessionaire and General Contractor. CDA Concessions will review the Concessionaire's architect's punch list and relay any additional items identified during the substantial completion walk through on a separate punch list. Any punch list items that are noted as critical and thus require immediate correction will be identified during the substantial completion walk through. The concessions location cannot open until these critical punch list items have been corrected.

Within five (5) business days after the substantial completion walk through, the Concessionaire, Concessionaire's architect, and/or the contractors will consolidate all agreed upon punch list items and issue via e-mail, a composite formal punch list. This list will be distributed to all parties invited from the substantial completion walk through. The Concessionaire's architect will also submit their substantial completion letter to the CDA.

Depending on issues presented, CDA will determine which option below is acceptable.

### ***For Retail Concessions:***

- (1) Concessionaire may proceed to stock, train, and open their concession, while non-critical punch list repairs continue.
- (2) Concessionaire may stock and train for their concession but cannot open until the identified critical punch list items are corrected.

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- (3) Concessionaire may NOT stock, or train for, or open their concession until the identified critical punch list items are corrected.

### ***For Food and Beverage Concessions:***

- (1) Concessionaire may proceed to train, furnish, and prep their food and beverage, while non-critical punch list repairs continue.
- (2) Concessionaire may proceed to train, furnish, and prep their food and beverage but cannot open until the identified critical punch list items are corrected.
- (3) The Concessionaire may NOT furnish, prep, or train for their facility until the identified critical

punch list items are corrected.

CDA Concessions will review and then issue a response/acceptance letter back to the Concessionaire or Concessionaire's architect after receipt of the substantial completion letter. The concession location cannot open until they have received CDA Concession's notice to open.

The Concessionaire will track the completion of the punch list and periodically send CDA the list of completed and outstanding punch list items (with reason for incomplete items and lead times for materials not immediately available).

**Please note, the construction barricade may not be removed without written approval from CDA Concessions.**

The General Contractor is to complete the punch list items within thirty (30) business days of the initial walk through or as dictated in the **Concessionaire's signed Lease and License Agreement**.

**If after thirty (30) business days**, the punch list items remain incomplete CDA may elect to:

- Impose a fine of \$200 per item, per day, until the work is finished.

**If after sixty (60) business days**, the punch list items remain incomplete CDA may elect to:

- Hire contractors to complete the work at the Concessionaire's expense.

The punch list completion tracking document will be sent to CDA Concessions for review within the thirty (30) business day period after the substantial completion walk through takes place. All punch list items should be resolved to the satisfaction of CDA or include an agreed upon completion schedule.

### **7.3: Business License and Certificate of Insurance**

Prior to opening, the Concessionaire must obtain a Business License from the City of Chicago Business Affairs & Consumer Protection Department (BACP) City Hall, Room 805, 121 N. LaSalle St, 60602.

Concessionaire is also responsible for providing a current Certificate of Insurance per the Concessionaire's signed Lease and License Agreement.

- PDF of the Business License must be sent to CDA Concessions **prior** to store opening.

For Business License and Certificate of Insurance information visit their website at:  
<https://www.cityofchicago.org/city/en/depts/bacp/provdrs/bus.html> or call (312) 744-6060.

### **7.4: ComEd Verification of Meter(s)**

Prior to opening, the Concessionaire must reference the meter #, and provide its tax ID and billing mailing address. For more information call (877) 426-6331.

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### **7.5: Open for Business**

After written approval has been obtained from CDA Concessions, the construction barricade may be removed no earlier than the evening prior to the concession's opening.

- Please refer to the 'Airport Concession Program Handbook' for other operational procedures as dictated in the **Concessionaire's signed Lease and License Agreement**.

## End of STEP 7

## STEP 8.0: Project Closeouts

### 8.1: Close Out Documents

The Concessionaire's architect and engineer of record must transmit to the CDA POC as dictated in the **Concessionaire's signed Lease and License Agreement** all architectural and engineering "As-Built Documents". If no time period is specified, then the "As-Built Documents" must be submitted within thirty (30) business days. The items listed below are required to support maintenance of accurate facility records and future construction. The Concessionaire must submit two (2) copies of the below documents on CD and (1) full size hard copy:

- 1) One (1) full size hard copy As-Built Documents, including the General Contractor's redline mark-ups and clouding construction changes
- 2) One (1) CD / DVD of CAD files either in AutoCAD and/or BIM format – all CAD files to be submitted per CDA BIM standards
- 3) One (1) CD / DVD of all image files in PDF format
- 4) If applicable, one (1) PDF of the finalized SAM™ Construction Checklist
- 5) If applicable, one (1) PDF of all Operating and Maintenance Manuals (O&M Manual) for equipment being maintained by the CDA
- 6) One (1) PDF of the General Contractor's, and if applicable, subcontractor's, manufacturer's, and equipment warranties
- 7) One (1) PDF of all the specifications
- 8) One (1) PDF of the Building Permit (both sides) with all required rough and final inspection signoffs
- 9) If applicable, PDFs of the preventative maintenance schedules listing:
  - (a) the systems and equipment that require preventative maintenance
  - (b) scope of maintenance to be performed
  - (c) frequency
  - (d) clarification on which entity is responsible for maintenance

Closeout and Warranty documents should be both emailed and one (1) full size hard copy sent to O'Hare or Midway Airport, see address below:

#### **O'Hare International Airport Contacts**

CDA Aviation Administration Building  
 Attn: Coordinating Architect, Design and Construction 10510 West Zemke Rd.  
 Chicago, IL 60666  
 cc: [ordretailconstruction@cityofchicago.org](mailto:ordretailconstruction@cityofchicago.org)

#### **Midway International Airport Contacts**

CDA Aviation Administration Building  
 Attn: Coordinating Architect, Design and Construction 10510 West Zemke Rd.  
 Chicago, IL 60666  
 cc: [mdwretailconstruction@cityofchicago.org](mailto:mdwretailconstruction@cityofchicago.org)



In addition, the following close out documents must be transmitted to the CDA POC as dictated in the Concessionaire's signed Lease and License Agreement. If no time period is specified, then the documents must be submitted within sixty (60) business days

- 1) PDFs containing the Concessionaire's Sworn Statement of Improvement Costs, and all final lien waivers, including change orders.
- 2) PDFs containing the General Contractor's Sworn Statement of Improvement Costs, and all final lien waivers.
- 3) PDFs containing the Professional Services Contractor's Sworn Statement of Improvement Costs, and all final lien waivers.

## **8.2: Final SAM™ Checklist**

If applicable, the Concessionaire must submit a final construction SAM™ Checklist that incorporates information on final quantities, contractor submittals, and other SAM™ related data that is incorporated during the construction phase. The Sustainable Review Panel (SRP) will evaluate the final SAM™ checklist and as recognition for participation in the SAM™ Checklist, a Green Airplane Certification will be awarded to the Concessionaire.

## **8.3: Contractor's Warranty**

The General Contractor must warrant to the City of Chicago and CDA that the work, materials, and equipment furnished and installed under the contract are of good quality and new, and that the work conforms to the requirements of the contract documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty shall exclude remedy for damage or defect caused by abuse, modifications, improper or insufficient maintenance and operation, or normal wear and tear, and normal usage, not executed by the contractor.

## **8.4: Subcontractor's Manufacturer's and Equipment Warranties**

The General Contractor must ensure that all required subcontractor's, manufacturer's, and equipment warranties are passed on to the CDA. The warranties must include the name of the project as designated in the contract documents, project reference number and must be signed by an officer of the company having authority to provide the warranty. Include wording such as "this document serves as a (list duration of the warranty) written guarantee for the work performed, and the material and equipment installed on the above referenced project. This warranty incorporates all provisions of the contract documents that refer or relate to the guarantee. This warranty will commence on the date of the store opening."

During the warranty period, the Contractor must repair and replace at its own expense, all materials or equipment that may develop defects whether these defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material that is repaired or replaced will have the warranty period extended for a period of one additional year from the date of the last repair.

## **8.5: Final Notice to Airport Users Form**

After the punch list is complete, the General Contractor shall close out the Notice to Airport Users Form by electronically attaching a PDF of the all permits, front and back sides showing the inspector sign-offs. Enter the last day the punch list was completed, and the anticipated submittal date of the General Contractor redlined drawings.



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## 8.6: Final Closeout Notice and Acceptance

After all the close out documentation has been reviewed and verified complete, CDA will issue a response/acceptance letter.

**End of STEP 8**

## STEP 9.0: Compliance Overview

Throughout the Design and Construction process, the Concessionaire will be responsible for complying with various City of Chicago participation requirements. The Concessionaire will also be responsible for tracking their participation and providing verifying documents to CDA for review.

### 9.1: City of Chicago Minority and Women Owned Business Participation Rules

In accordance with the Municipal Code of Chicago 2-92-650, or as dictated in the Lease and License Agreement, the City's Minority Owned Business Enterprise Commitment and Women Owned Business Enterprise Commitment in Construction Contracts has set goals of **MBE** participation and **WBE** participation on all contracts.

Please refer to link below for additional information pertaining to this Compliance Rule:

- ☐ **Exhibit E.1:** Special Conditions Regarding Minority Owned Business Enterprise Commitment and Women Owned Business Enterprise Commitment in **Professional Services**
- ☐ **Exhibit E.2:** Special Conditions Regarding Minority Owned Business Enterprise Commitment and Women Owned Business Enterprise Commitment in **Construction Contracts**

**MBE** and **WBE** participation shall be separately documented for Construction Services and Professional Services.

### 9.2: Required MBE and WBE Documentation

Required compliance documentation will be submitted through the web-based Retail Management System ("RMS") which is the City of Chicago, Department of Aviation's, secure concession's portal. All compliance reporting must be submitted electronically using RMS.

The Concessionaire and General Contractors are required to enter the Compliance Plans, Certified Payroll and Sworn Statements into RMS. Once the Concessionaire selects a Professional Service Contractor and General Contractor, the designated Concessionaire POCs will be provided with RMS log in information. The RMS links and User Guide are listed below. The individual **Exhibits E.1 – E.12** listed below should be used **as reference only**; **all required documents must be submitted electronically using RMS.**

- ☐ **RMS Portal:** [https://www.airportware.com/rms\\_prod/App\\_forms/General/Login.aspx](https://www.airportware.com/rms_prod/App_forms/General/Login.aspx)
- ☐ **Exhibit E.3:** RMS Construction Compliance User Guide

### 9.3: MBE and WBE Compliance Plans

Once the Final or 100% Construction Document Submittal is approved by CDA (see **Step 3.0**), and the Concessionaire has selected a General Contractor, then the Concessionaire is required to submit, via RMS, the Concessions' Compliance Plans: Affidavit of Concessionaire, Affidavit of Prime Contractor for Construction and



Contractor for Professional Services. **Exhibits E.4 – E.7**, which includes a selection of MBE, WBE and Non-Minority Sub-Contractors.

- **Exhibit E.4:** Concession's Compliance Plan – Affidavit of Concessionaire
- **Exhibit E.5:** Concession's Compliance Plan – Affidavit of Professional Services
- **Exhibit E.6:** Concession's Compliance Plan – Affidavit of Prime Contractor

**PLEASE NOTE:**

**If at any point during the construction phase of the project, there is a change in MBE or WBE participation, the CDA POC must be immediately notified.**

**Resource:**

To aid in outreach efforts to meet or exceed the City of Chicago's Construction and Professional Services Program goals, a list of City of Chicago certified MBE and WBE firms may be found at:

- ☐ [https://www.cityofchicago.org/city/en/depts/dps/supp\\_info/process\\_improvements.html](https://www.cityofchicago.org/city/en/depts/dps/supp_info/process_improvements.html)
- ☐ <http://www.idot.illinois.gov/doing-business/certifications/disadvantaged-business-enterprise-certification/il-ucp-directory/index>

**MBE and WBE Good Faith Efforts**

If the Concessionaires' and Prime Contractors' Compliance Plans fall short of the MBE or WBE Construction Program goals, a Good Faith Efforts form must be included with the submitted Compliance Plans. Good Faith Efforts are achieved by actively soliciting MBE and WBE firms to perform work on the contract in accordance with **Exhibit E.2: Special Conditions Regarding Minority Owned Business Enterprise Commitment and Women Owned Business Enterprise Commitment in Construction Contracts**. The Good Faith Efforts form must contain contact information for not less than **five (5)** MBEs and/or WBEs.

- ☐ **Exhibit E.7:** Good Faith Efforts Form

A Compliance Plan may be rejected as non-responsive if the Concessionaire and/or General Contractor fail to submit one or more of the documents (**Exhibits E.4 – E.7**) with the response.

**PLEASE NOTE:**

**If a Concessionaire's and/or General Contractor's Compliance Plan fails to meet the Construction Program goals for MBE and WBE participation, the project will be delayed and not move toward a Pre-Construction Meeting until either the goal is satisfied or Good Faith Efforts have been demonstrated and approved.**

**9.4: City Resident Construction Worker Employment Requirement & Certified Payroll Requirements**

In accordance with the Municipal Code of Chicago 2-92-330 and Article 5 of the Concession Lease and License Agreement, at least 50% of the total construction worker hours worked by persons on the site of the Work must be performed by actual residents of the City and at least 7.5% by project area residents. The Airport will identify the

project area for the purposes of calculating project area residents.



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The Concessionaire will provide each general contractor bidding on the project with a Compliance Plan (**Exhibit E.5**) and the "City Resident Construction Worker Employment Requirement" (**Exhibit E.8**) for use in the bid preparation process.

Once a project has been approved by CDA and construction has commenced, the General Contractor must submit on a weekly basis, the following Certified Payroll Report for all contractors and subcontractors:

- ☐ **Exhibit E.8:** City Resident Construction Worker Employment & Certified Payroll Requirements
- ☐ **Exhibit E.9:** Excel Certified Payroll Worksheet (example)

#### **9.5: Compliance Close Out Documents**

Within sixty (60) business days of substantial completion, the Concessionaire, the General Contractor and the Professional Services Contractor are required to submit the following documents, along with final lien waivers.

- **Exhibit E.10:** Concession's Sworn Statement – Affidavit of Concessionaire
- **Exhibit E.11:** Concession's Sworn Statement – Affidavit of Prime Contractor for Professional Services
- **Exhibit E.12:** Concession's Sworn Statement – Affidavit of Prime Contractor for Construction Services

**End of STEP 9**

#### **STEP 10.0: Supplemental Exhibits**

These Guidelines should be read in conjunction with the Design and Construction Standard Operating Procedures Concessions Projects Exhibits (C-SOP Exhibits) and referenced with the Concessionaire Design Guidelines.

Please refer to links below:

[Concession Projects \(C-SOP Exhibits\) ORD](#)

[Concessionaire Design Guidelines MDW](#)

[Concessionaire Design Guidelines](#)

**End of STEP 10**

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**EXHIBIT 11**  
**ECONOMIC DISCLOSURES AND**  
**AFFIDAVITS**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I - GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a if applicable:

BT II Inc.

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant.

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: HC ORD Tech Retail JV

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)). State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: 1100 E. 56<sup>th</sup> Street Chicago, IL 60637  
Suite 3609

C. Telephone: (773) 493-5708 Fax: (773) 493-1660 Email: btebriiinc.com

D. Name of contact person: Blanton Canady

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Self-Checkout Micro Markets RFP

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II - DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

#### 1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

#### 2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Organized in New Jersey

#### 3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☒ Yes ☐ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>Blanton Canady</u>	<u>President</u>

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a



limited liability company), or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

NOTE: Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
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None

### SECTION III – INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes

☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV – DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets, if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V - CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92.415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrears on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes ☒ No ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax, or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes; nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;

- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");

- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly, controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;

- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS; or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government, or of any state or local government in the United States of America, in that officer's or employee's official capacity;

b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions referenced in MCC Subsection 2-92.320(a)(4) (Contracts Requiring a Base Wage); (a)(5) (Debarment Regulations); or (a)(6) (Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the Federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one):  
☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party is a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

None

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

**D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS**

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest.

Name	Business Address	Nature of Financial Interest
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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

X 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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#### SECTION VI - CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

#### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter. (Add sheets if necessary).

None

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee.

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, Federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☒ Yes

☐ No

If "Yes," answer the three questions below.

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☒ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☒ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☒ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:



## **SECTION VII – FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void, or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

**CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate, and complete as of the date furnished to the City.

BT II Inc.  
(Print or type exact legal name of Disclosing Party)

By: *Blanton T. Canady*  
(Sign here)

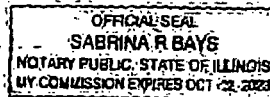
Blanton T. Canady  
(Print or type name of person signing)

President  
(Print or type title of person signing)

Signed and sworn to before me on (date) 7/13/22

at Cook County, Illinois state.

*Sabrina R. Baye*  
Notary Public



Commission expires: 10/02/2023

**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT**  
**APPENDIX A.**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS.**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes.

☒ No.

If yes, please identify below (1) the name and title of such person; (2) the name of the legal entity in which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a "contractor" as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amllegal.com](http://www.amllegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants' wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☒ Yes.

☐ No.

☐ N/A - I am not an Applicant that is a "contractor" as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked "no" to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

**HG ORD TECH RETAIL JV**

---

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party:

**One Meadowlands Plaza, 11th Floor  
East Rutherford, NJ 07073**

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C. Telephone: **201-528-2534** Fax: **201-939-4910** Email: **aratner@hudsongroup.com**

D. Name of contact person: **Adam Ratner**

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E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

**ORD Automated Self-Checkout Micro Marts RFP**

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G. Which City agency or department is requesting this EDS? **Department of Aviation**

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If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person                                   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership   |
| <input type="checkbox"/> Privately held business corporation      | <input checked="" type="checkbox"/> Joint venture        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)          |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Organized in New Jersey

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☒ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
Hudson Group (HG) Retail, LLC	Partner
BT II Inc.	Partner
Corliss Stone-Littles LLC	Partner
Robinson Hill, Inc.	Partner
Courtney Thornton	Manager

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Hudson Group (HG) Retail, LLC	One Meadowlands Plaza, East Rutherford, NJ 07073	67%
BT II Inc.	1500 East 50th Street, Chicago, IL 60637	11%
Corliss Stone-Littles LLC	8180 Precinct Line Road, Suite 150, Colleyville, TX 76034	11%
Robinson Hill Group, Inc.	435 Erie Street, Chicago, IL 60654	11%

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

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Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

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### **SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.



Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded**, complete this Section VI. **If the Matter is not federally funded**, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.



## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

**HG ORD TECH RETAIL JV**

(Print or type exact legal name of Disclosing Party)

By: Courtney C. Thornton  
(Sign here)

**Courtney Thornton**

(Print or type name of person signing)

**Manager**

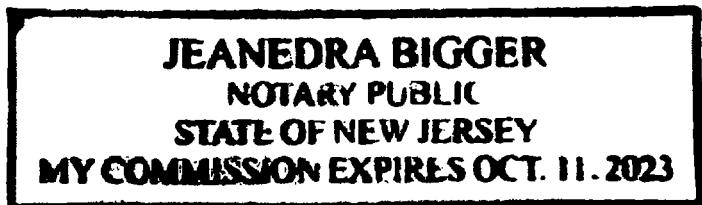
(Print or type title of person signing)

Signed and sworn to before me on (date) July 12, 2021,

at Bergen County, New Jersey (state).

Jeannedra Bigger  
Notary Public

Commission expires: 10/11/2023



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☒ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Hudson Group (HG) Retail, LLC

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: HG ORD TECH RETAIL JV

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: One Meadowlands Plaza, 11th Floor  
East Rutherford, NJ 07073

C. Telephone: 201-528-2534 Fax: 201-939-4910 Email: aratner@hudsongroup.com

D. Name of contact person: Adam Ratner

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Self-Checkout Micro Marts RFP

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☒ Yes ☐ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title	
Roger Fordyce	President	William Wolf Senior Vice President
Jordi Martin-Consuegra	Executive Vice President	
Adrian Bartella	Chief Financial Officer	
Adam Ratner	Senior Vice President, General Counsel, Secretary & Chief Compliance Officer	

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Hudson Group (HG) Inc	One Meadowlands Plaza, East Rutherford, NJ 07073	100%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
Jeff F. Dunn, Esq / Cozen O'Connor	123 N Wacker Drive, Chicago, IL 60606	Lobbyist	\$4,000.00 per month

(Add sheets if necessary)

☐ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.



3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded**, complete this Section VI. **If the Matter is not federally funded**, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

**Hudson Group (HG) Retail, LLC**

(Print or type exact legal name of Disclosing Party)

By: 

(Sign here)

**Adam Ratner**

(Print or type name of person signing)

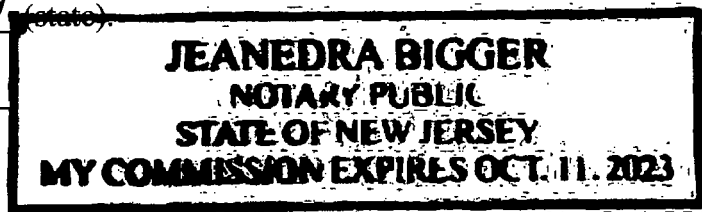
SVP, General Counsel, Secretary and Chief Compliance Officer

(Print or type title of person signing)

Signed and sworn to before me on (date) July 12, 2021,

at Bergen County, New Jersey (state).

  
Notary Public



Commission expires: 10/11/2023



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Dufry Americas Holding, Inc.

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: HG ORD TECH RETAIL JV

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: One Meadowlands Plaza, 11th Floor  
East Rutherford, NJ 07073

C. Telephone: 201-528-2534 Fax: 201-939-4910 Email: aratner@hudsonsongroup.com

D. Name of contact person: Adam Ratner

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Self-Checkout Micro Marts RFP.

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☒ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
Julian Diaz	Director and Officer
Jordi Martin-Consuegra	Officer
Jose Antonio Gea	Director and Officer
Yves Gerster	Director and Officer

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Hudson Ltd.	One Meadowlands Plaza, East Rutherford, NJ 07073	100%
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<hr/>		

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

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Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes

☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

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### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☐ No    ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").



Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII.** For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Dufry Americas Holding, Inc.

(Print or type exact legal name of Disclosing Party)

By: Jordi Martin-Consuegra

(Sign here)

Jordi Martin-Consuegra

(Print or type name of person signing)

Officer

(Print or type title of person signing)

Signed and sworn to before me on (date) July 12, 2021,

at Bergen (County, New Jersey (state).

[Signature]  
Notary Public

Commission expires: 10/11/2023

**JEANEDRA BIGGER**  
**NOTARY PUBLIC**  
**STATE OF NEW JERSEY**  
**MY COMMISSION EXPIRES OCT. 11. 2023**

UNANIMOUS WRITTEN CONSENT  
IN LIEU OF A MEETING  
OF THE  
BOARD OF DIRECTORS  
OF  
DUFREY AMERICAS HOLDING, INC.

The undersigned, being all the directors (the "Directors") of Dufre Americas Holding, Inc., a corporation organized and existing under the laws of Delaware (the "Company"), hereby agree that the resolutions set forth below shall be deemed to have been adopted to the same extent and to have the same force and effect as though adopted at a formal meeting of the Directors of the Company duly called and held for the purposes of acting upon proposals to adopt such Resolutions in accordance with the Delaware General Corporation Law.

RESOLVED, that Andreas Schneiter be and he is hereby removed as officer of the Company;

RESOLVED, that Yves Gerster be and he is hereby appointed as Treasurer of the Company as of the date hereof, to hold office until the next annual meeting of the shareholders of the Company or until his respective successor is appointed;

RESOLVED, that the following individuals are hereby confirmed as the officers of the Company (the "Officers"):

Julian Diaz  
Jordi Martin-Consuegra  
Yves Gerster

RESOLVED, that each of the Officers, having consented to act as such, be, and, each of them hereby is, appointed to the office set forth above until his or her successor is duly elected and qualified or until his death, resignation or removal.

RESOLVED, that the Officers of the Company are hereby authorized to act in the name of the Company, provided that any document or other writing in the name of the Company, including but not limited to all (i) filings or submissions to any governmental or regulatory authority and (ii) all agreements entered into by the Company, shall require two signatures consisting of either (A) two Officers, or (B) one Officer together with the signature of an attorney from the Hudson Group Legal Department.

RESOLVED, that the Officers and the members of the Legal Department signing such documents and agreements are authorized to use electronic signatures to bind the Company.



IN WITNESS WHEREOF the foregoing resolutions of the Directors have been adopted  
as of the 9th day of February, 2019.

Julian Diaz

Yves Gerster

Jose Antonio Gera

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☐ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☐ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Hudson Group (HG) Inc.

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: HG ORD TECH RETAIL JV

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party:

One Meadowlands Plaza, 11th Floor  
East Rutherford, NJ 07073

C. Telephone: 201-528-2534 Fax: 201-939-4910 Email: aratner@hudsongroup.com

D. Name of contact person: Adam Ratner

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Self-Checkout Micro Marts RFP.

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☒ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

See Schedule II-B-1

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2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

**SCHEDULE II-B-1**

**HUDSON GROUP (HG) INC.**

Roger Fordyce  
Adrian Bartella  
Adam Ratner

Jordi Martin-Consuegra  
William Wolf  
Julian Diaz  
Yves Gerster

President and Chief Executive Officer  
Chief Financial Officer  
Senior Vice President, General Counsel,  
Secretary and Chief Compliance Officer  
Executive Vice President  
Senior Vice President, Finance  
Director  
Director

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Dufry Americas Holding, Inc.	One Meadowlands Plaza, East Rutherford, NJ 07073	100%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.



Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☐ No    ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;

b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded**, complete this Section VI. **If the Matter is not federally funded**, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.



## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

**Hudson Group (HG) Inc.**

(Print or type exact legal name of Disclosing Party)

By: *Adam Ratner*

(Sign here)

**Adam Ratner**

(Print or type name of person signing)

SVP, General Counsel, Secretary, and Chief Compliance Officer

(Print or type title of person signing)

Signed and sworn to before me on (date) July 12, 2021,

at Bergen County, New Jersey (state).

*[Signature]*  
Notary Public

Commission expires: 10/11/2023

**JEANEDRA BIGGER**  
**NOTARY PUBLIC**  
**STATE OF NEW JERSEY**  
**MY COMMISSION EXPIRES OCT 11 2023**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☐ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☐ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Hudson Ltd.

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: HG ORD TECH RETAIL JV

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party:

One Meadowlands Plaza, 11th Floor  
East Rutherford, NJ 07073

C. Telephone: 201-528-2534 Fax: 201-939-4910 Email: aratner@hudsongroup.com

D. Name of contact person: Adam Ratner

E. Federal Employer Identification No. (if you have one): N/A

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Self-Checkout Micro Marts RFP.

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Bermuda

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☒ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

See Schedule II-B-1

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2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

**SCHEDULE II-B-1**

**HUDSON LTD.**

Roger Fordyce	President and Chief Executive Officer
Brian Quinn	Chief Operating Officer
Adam Ratner	Senior Vice President, General Counsel, Secretary and Chief Compliance Officer
Jordi Martin-Consuegra	Executive Vice President
Courtney Thornton	Executive Vice President, Corporate Strategy & Business Development
Hope Remoundos	Executive Vice President, Sales and Marketing
David Haldimann	Director
Yves Gerster	Director

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Dufry AG	Brunngasslein, 12 Basel, 4010 Switzerland	100%*

\*Dufry AG is publicly traded on the Swiss stock market only. please refer to annual report at [www.dufry.com/en/annual-report-2020](http://www.dufry.com/en/annual-report-2020)

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.



Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
<hr/>			
<hr/>			
<hr/>			

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is

☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes                      ☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes                      ☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded**, complete this Section VI. **If the Matter is not federally funded**, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☒ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.



**CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

**Hudson Ltd.**

(Print or type exact legal name of Disclosing Party)

By: *Adam Ratner*

(Sign here)

**Adam Ratner**

(Print or type name of person signing)

SVP, General Counsel, Secretary, & Chief Compliance Officer

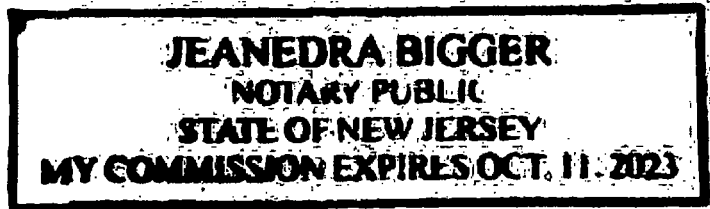
(Print or type title of person signing)

Signed and sworn to before me on (date) July 12, 2021,

at Bergen County, New Jersey (state).

*[Signature]*  
Notary Public

Commission expires: 10/11/2023



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☐ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☐ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

**ROBINSON HILL INC.**

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**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: HG ORD TECH RETAIL JV

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

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B. Business address of the Disclosing Party:

7030 S. CONSTANCE AVE  
CHICAGO, IL 60649

C. Telephone: 312-775-4080 Fax: \_\_\_\_\_ Email: DEE@ROBINSONHILLUSA.COM

D. Name of contact person: DEE ROBINSON

E. Federal Employer Identification No. (if you have one):                     }

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

**ORD Automated Self-Checkout Micro Marts RFP**

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G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
DEE ROBINSON	CEO

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2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Dee Robinson	7050 S CONSTANCE AVE, CHICAGO, IL 60649	100%

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### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

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Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes

☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

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### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.



3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;

b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII.** For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

**ROBINSON HILL INC.**

(Print or type exact legal name of Disclosing Party)

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

(Sign here)

**DEE ROBINSON**

(Print or type name of person signing)

**CEO**

(Print or type title of person signing)

Signed and sworn to before me on (date) July 15, 2021,

at Bergen County, NJ (state).

Notary Public

Commission expires: 10/11/2023

**JEANEDRA BIGGER**  
**NOTARY PUBLIC**  
**STATE OF NEW JERSEY**  
**MY COMMISSION EXPIRES OCT. 11, 2023**



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

**CORLISS STONE-LITTLES, LLC**

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**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: HG ORD TECH RETAIL JV

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

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B. Business address of the Disclosing Party:

8180 PRECINCT LINE RD, STE 180  
COLLEYVILLE, TX 76034

C. Telephone: 817-533-4073 Fax: \_\_\_\_\_ Email: HFOSTER@CSLLLC.BIZ

D. Name of contact person: HATTIE FOSTER

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

**ORD Automated Self-Checkout Micro Marts RFP**

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G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II – DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☒ Yes

☐ No

☐ Organized in Illinois.

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

Corliss Stone-Littles

Managing Member

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
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None

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes

☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V - CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes ☒ No ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;

- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");

- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly, controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;

- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").



Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements:

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

**D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS**

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

**NOTE:** If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City; or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter. (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII – FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on-line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

**Corliss Stone-Littles, LLC**

(Print or type exact legal name of Disclosing Party)

By: *Corliss Stone-Littles*  
(Sign here)

**Corliss Stone-Littles**

(Print or type name of person signing)

**Managing Member**

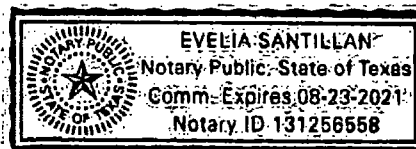
(Print or type title of person signing)

Signed and sworn to before me on (date) 13<sup>th</sup> day of July, 2021

at Tarrant County, Texas (state).

*Evelia Santillan*  
Notary Public

Commission expires: 8/23/21



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship:

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a "contractor" as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history; or (ii) seeking job applicants' wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions:

☐ Yes

☐ No

☒ N/A - I am not an Applicant that is a "contractor" as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked "no" to the above, please explain.

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EXHIBIT 12

AIRPORT CONCESSIONS HANDBOOK

# AIRPORT CONCESSION PROGRAM HANDBOOK



## ***CITY OF CHICAGO DEPARTMENT OF AVIATION***

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## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### **CDA UNIT FUNCTIONS**

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation and  
evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing Representative  
("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

## PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

## FINANCIAL AUDITS

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

## COMPLIANCE AUDITS

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

## SECRET SHOPPING

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

## **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

# **APPENDIX 1**

## **PHYSICAL INSPECTION STANDARDS:**

### FACILITY MAINTENANCE STANDARDS

#### **ITEMS:**

Overall appearance

Cleanliness of counters, displays, floors, fixtures, equipment, etc. Litter management/control

Pest control

#### **STANDARD:**

Clean and neat to the eye.



Free of dust and litter upon inspection.

**ACTION:**

Expect employees to clean/dust/sweep/vacuum/mop daily. Utilize covered metal waste receptacles.

Have waste receptacles in high traffic areas.

Empty waste receptacles into designated compactor areas on a regular basis. Have grease traps serviced and cleaned as often as necessary.

Instruct employees to look for and clean problem areas.

Provide for regular pest control service to sales and storage areas.

Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures. Report any damage to the premises to CDA and your insurance company (if applicable) immediately.

**ITEMS:**

Lease line maintenance "Pop-out" areas

**STANDARD:**

All customer lines must be maintained within the Leased area. Merchandise and displays must be maintained within the Leased area. Solicitation and sampling must be maintained within the Leased area.

Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

**ACTION:**

Train employees to direct customer lines so they do not spill out into the public corridor.

Review tenant design criteria for approved merchandising and fixtures.

Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

7

**ITEMS:**

Altering of layout Renovations/construction Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

Consider areas for improving the concession location either from layout changes or renovation. Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.

All signs must be professionally produced.

All signs and sign holders must be kept clean and in good repair.

All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

Properly functioning equipment

**STANDARD:**

Preventative maintenance program.  
Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

Have employees' spot check all equipment for possible malfunction.  
Maintain a back-up/alternative plan.  
Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

Courteous and professional appearance Proper dress  
Proper identification including CDA security badge Customer Service  
Attend customer service meetings, as offered

**STANDARD:**

Employees should be polite and courteous to the traveling public.  
Employees must wear clean and neat uniforms or approved attire.  
Employees must not eat while on duty.  
Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.  
Employees must be familiar with the Merchant Handbook.  
Employees are to offer general public services:  
-Making change  
-Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.  
Give all new employees airport tours so they are familiar with the airport layout and available services.  
Encourage employees to be polite and courteous.  
Provide necessary employee breaks to discourage eating while on duty.  
Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.  
Supply employees with company identification. Obtain CDA security badges for all employees.  
Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages  
Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods. Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation. A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only  
Adequate inventory level  
Proper/professional approved signage  
Merchandising  
Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement. Only use professionally produced or printed signage as approved by CDA.

Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.

Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.

Consider innovative ways to merchandise your products/services.

Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.

Maintain adequate inventory levels.

Notify the Department when adding, deleting or changing merchandise or changing prices.

Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area

Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.

Proper storage of potentially flammable items in accordance with fire codes.

Provide adequate ingress and egress within storage space.

Clear aisles and corridors.

Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.

Maintain a system providing for access by authorized personnel only. Report any tampering with or malfunctioning of security locks, gates, etc. Keep corridors and common areas free of debris, trash, carts and stock. Provide pest control service on a regular basis.

Refrain from using luggage carts for deliveries.

Dispose of refuse during designated hours.

## **APPENDIX 2**

### **CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS**

Airport Concessions Program Handbook Page 11 Rev. 07/30/2020

#### **F&B Storage**

##### **Dishwashing**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

#### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out? Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site? Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted? Is the Pest Control Log on-site?

#### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained? Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

#### **Exterior**

Are Blade, Facia, and Sign Holders in Good

Condition? Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor? Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

#### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained? Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained? Are Light Fixtures and Lights Clean and Maintained? Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained? Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained? Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

#### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

#### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

#### **Safe Food Handling**

Does all Food Appear to be Fresh? Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

#### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product? Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

#### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110) Is Mop Sink working properly?
- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

#### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area? Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers? Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire? Are Off-Shift Staff Affecting On-Shift Staff?

#### **Monthly F&B**

##### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- ☐ Debris on floor in dishwash area
- ☐ Standing water in dishwash area

#### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out? Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site? Is the Food Temp Log on-site?

- ☐ Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted? Is the Pest Control Log on-site?

#### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- ☐ Cooler needs repair
- ☐ External Temp gauges not working
- ☐ Freezer needs repair
- ☐ Inside of Cooler/Refrigerator/Freezer needs cleaning
- ☐ Outside Doors of Refrigerator/Freezer needs cleaning
- ☐ Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- ☐ Needs detail cleaning

Is Cash Register Clean and Maintained? Is Grill/Cook Line Equipment Clean?

- ☐ Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- ☐ Leaking/needs repair
- ☐ Mold

#### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition? Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor? Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

#### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained? Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained? Are Light Fixtures and Lights Clean and Maintained? Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained? Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained? Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

#### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

#### **Pest Control**

Is there Pest Evidence?

- ☐ Flies
- ☐ Mice
- ☐ Mouse Droppings
- ☐ Roach Droppings
- ☐ Roaches

#### **Safe Food Handling**

Does all Food Appear to be Fresh? Is Safe Food Handling Practiced?

- ☐ Food Product
- ☐ Personal

Is the Food Service Manager on-site?

#### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product? Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

#### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- ☐ Drains need cleaning
- ☐ Drains need cover/screen Are Sinks draining properly? Hot Water?

**Is 3 Compartment Sink working properly?**

- ☐ 3-Comp. Sink not draining properly
- ☐ Clean Grease and debris around grease trap
- ☐ Grease trap needs cleaning
- ☐ Grease trap needs to be sealed
- ☐ Leaking/needs to be sealed
- ☐ Standing water

**Is Dishwashing Area Dry and Clean?**

- ☐ Debris on floor in dishwash area
- ☐ Standing water in dishwash area Is Hand Sink working properly?
- ☐ Hand Sink not draining properly
- ☐ Leaking/needs to be sealed
- ☐ Standing water
- ☐ Water is not reaching Temp (110) Is Mop Sink working properly?
- ☐ Leaking/needs to be sealed
- ☐ Mop Sink not draining properly
- ☐ Mops not hung properly
- ☐ Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area? Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers? Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire? Are Off-Shift Staff Affecting On-Shift Staff?

**Reta**

Documents/Logs

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed? Is the Business License on-site?

Is the Food Temp Log on-site?

- ☐ Food Temps have not been taken/Temps okay Is the Pest Control Log on-site?

**Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- ☐ Cooler needs repair
- ☐ External Temp gauges not working
- ☐ Freezer needs repair
- ☐ Inside of Cooler/Refrigerator/Freezer needs cleaning
- ☐ Outside Doors of Refrigerator/Freezer needs cleaning
- ☐ Refrigerator needs repair



Is Cash Register Clean and Maintained?

**Exterior**

Are Blade, Facia, and Sign Holders in Good

Condition? Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor? Is Façade Clean and Maintained?

**Interior**

Are Ceilings/Walls/Floors Clean and Maintained? Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained? Are Light Fixtures and Lights Clean and Maintained? Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained? Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

**Merchandise/Product**

Are Merchandise/Product Levels Adequate?

**Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

**Safety Requirements**

Are Cleaning Supplies Segregated from Merchandise/Product? Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

**Staff**

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers? Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

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**Retail Storage**

**Documents/Logs**

Are Maintenance Audits Posted and Filled Out? Are Prices Prominently Marked or Signed?

Is the Business License on-site? Is the Food Temp Log on-site?

☐ Food Temps have not been taken/Temps okay Is the Pest Control Log on-site?

**Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- ☐ Cooler needs repair
- ☐ External Temp gauges not working
- ☐ Freezer needs repair
- ☐ Inside of Cooler/Refrigerator/Freezer needs cleaning
- ☐ Outside Doors of Refrigerator/Freezer needs cleaning
- ☐ Refrigerator needs repair

Is Cash Register Clean and Maintained?

#### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition? Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor? Is Façade Clean and Maintained?

#### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained? Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained? Are Light Fixtures and Lights Clean and Maintained? Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained? Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

#### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

#### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

#### **Safety Requirements**

Are Cleaning Supplies Segregated from Merchandise/Product? Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

#### **Staff**

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers? Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

#### **Weekly F&B**

##### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area

- Standing water in dishwash area

#### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay Is the Pest Control Log on-site?

#### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

#### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained? Is Bar Area Clean and Maintained?

#### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

#### **Safe Food Handling**

Is the Food Service Manager on-site?

#### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

#### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
  - Drains need cover/screen Hot Water?
- Is 3 Compartment Sink working properly?
- 3-Comp. Sink not draining properly
  - Clean Grease and debris around grease trap
  - Grease trap needs cleaning
  - Grease trap needs to be sealed
  - Leaking/needs to be sealed
  - Standing water
- Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

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## **FINANCIAL AUDIT STANDARDS:**

### **APPENDIX 3**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

### Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

### Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### General Airport Guidelines

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### Laws and Ordinances

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.

- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### Default Notices

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## **APPENDIX 5**

### **KEY DEPARTMENT OF AVIATION PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

## **APPENDIX 6**

### **KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump	(773) 894-3905

Managing Director |

Yolanda Woodruff (773) 894-5463  
Director of Retail Operations |

Dorine Litman (773) 894-3908  
Property Manager / ORD |

Patricia Grzyb (773) 838-0733  
Property Manager / MDW |

Sungjin Choi (773) 686-7606  
Construction and Design Manager |

Airport Concessions Program Handbook Rev 07/30/2020

## **APPENDIX 7**

### **RULES AND REGULATIONS:**

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.

8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.
14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.



20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.
22. Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.
23. Keep from public view all personal property, cups, papers, cleaning and other supplies.
24. Not permit employees to eat, drink or sleep in public view.
25. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

26. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
27. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
28. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
29. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
30. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
31. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
32. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
33. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
34. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
35. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or

impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

36. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
37. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
38. Not use luggage carts for product deliveries.
39. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
40. Use only designated elevators for deliveries.
41. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
42. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
43. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

**EXHIBIT 13**  
**LIQUIDATED**  
**DAMAGES**

**EXHIBIT 13**  
**LIQUIDATED DAMAGES**

Tenant acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its sole discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Tenant and the City agree that the fines set forth herein are reasonable, and Tenant further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Tenant further acknowledges that the liquidated damages are not exclusive remedies and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Tenant's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Tenant to correct the violation within the time specified in the notice.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

<b>Infraction</b>	<b>1<sup>st</sup> Violation</b>	<b>2<sup>nd</sup> Violation</b>	<b>3<sup>rd</sup> Violation</b>
Value Pricing, Article 4.3: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.4: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.5: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.6: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.7: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Refuse Handling, Article 4.9: Failure to comply with trash handling procedures.	Written Warning	\$100/incident	\$250/incident
Signs and Advertising, Article 4.10A: Failure to comply with any sign requirements referenced	Written Warning	\$100/incident	\$250/incident

Work Requirements, Article 5.5: Failure to complete improvements to be open for business by scheduled date of beneficial occupancy (DBO)	\$250 per day from scheduled DBO	N/A	N/A
Reports, Article 7.4: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives	Written Warning	\$500/incident	\$1,000/incident
Failure to utilize approved payment options, Article 4.4	Written Warning	\$100/day of occurrence	\$200/day of occurrence

\_\_\_\_\_ (Initial Here)

## **EXHIBIT B-1**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**MAG US Lounge Management LLC**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT**

**CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**



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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

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

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]

## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

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

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

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

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

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

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

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE/WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

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

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

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

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

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

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

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

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

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

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other



political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

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

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the

Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

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

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

4.1 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

4.2 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43     Products.

(a)     General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)     Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written a written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)     Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44     Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first- class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix I of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.



(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

#### 4.7 Operation of Concession.

##### (a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

##### (b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) **Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.**

(c) **Trade Name.** Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) **Records and Audit.** Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) **Licenses and Permits.** Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area (“AOA”) must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards (“PCI Standards”) at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation; which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors;' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

55 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## **ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS**

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

- (i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.
- (ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this



Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

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

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

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

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

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$ \_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

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

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

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

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

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

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

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

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

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

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

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

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

## **ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION**

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

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.



- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## **ARTICLE 10. SPECIAL CONDITIONS**

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

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

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

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

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

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

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

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

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

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

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

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

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

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

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

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

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

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

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

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

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

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

- a. City Council, in its sole discretion, if the Change in Ownership involves

a 100% Change in Ownership of Licensee, or

- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

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

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

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

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



Transfer over the Fees payable to the City under this Agreement.

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

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

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

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

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

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

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

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

During the period while this Agreement is executory, Licensee's or any Subcontractor's

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

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

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

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

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

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

(iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

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

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a “business relationship” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

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

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

106 Airport Security.

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

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

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

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

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

#### 107 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or



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

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

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

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

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

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

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

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

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

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

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

10.12 2014 Hiring Prohibitions.

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

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

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

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

## **ARTICLE 11. GENERAL CONDITIONS**

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

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

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be

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

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

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

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

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

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

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

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

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

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

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

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

11.9 Subordination.

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

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

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

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

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

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

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

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

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

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

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

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

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



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

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

**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**

EXHIBIT 1  
LICENSED SPACE  
(INCLUDING CONFIRMATION OF DBO)

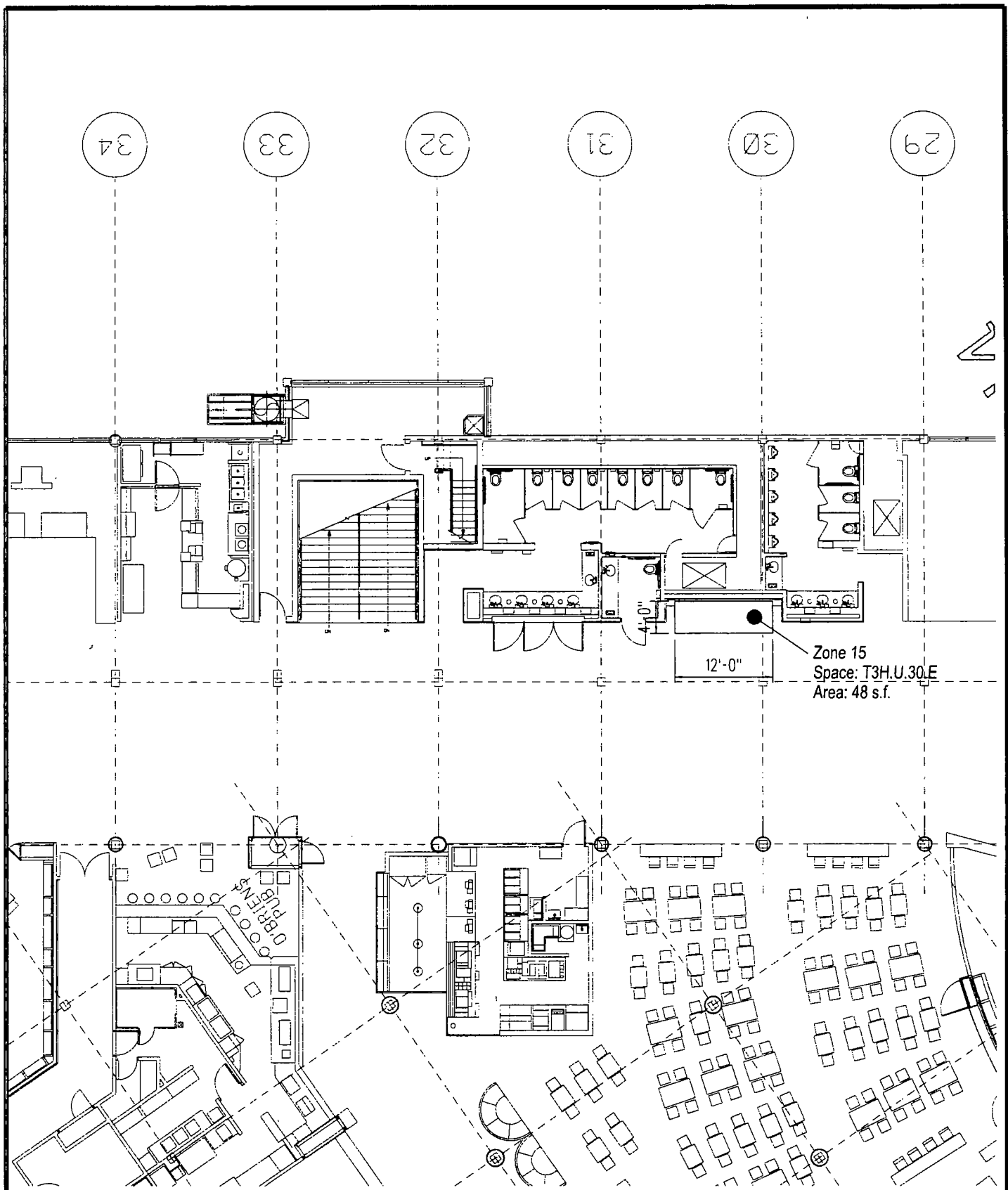
The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	n/a	T1B.U.107.B
2	Escape Pod/Jabbrrbox (2)	T1B.U.12.B
3	n/a	T1B.U.73.M
4	n/a	T1B.L.94.O
5A	n/a	T1C.T.G.C
5B	n/a	T1B.THH.V
6	n/a	T2E.U.39.A
7	n/a	TEF.U.5L.L
8	Escape Pod/Jabbrrbox (2)	T2F.U.45.E
9	n/a	T2E.U.48.A
10	n/a	T2.L.40.6
11	n/a	T2EF.U.16.D
12	n/a	T2.U.45.J
13	n/a	T3.U.8C.D
14	n/a	T3G.U.33.C
15	Escape Pod/Jabbrrbox (2)	T3H.U.30.E
16	Escape Pos/Jabbrrbox (1)	T3K.9Ma.A

17	Escape Pod/Jabrrbox (1)	T3K.U.75.L
18A	n/a	T3.L.8Y.C
18B	n/a	T3.L.8Y.C
19	n/a	CTA Pedway
20A	n/a	T2.U.4A.D
20B	n/a	T2.U.4C.E
21	n/a	T3.U.8AA.F
22	Escape Pod/Jabrrbox (2)	T3HK.U.9R.E
23	n/a	L Stinger.U.2.3.A
24A	n/a	T2 CTA Pedway
24B	n/a	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD





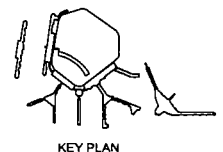
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"  
UNISON RETAIL MANAGEMENT

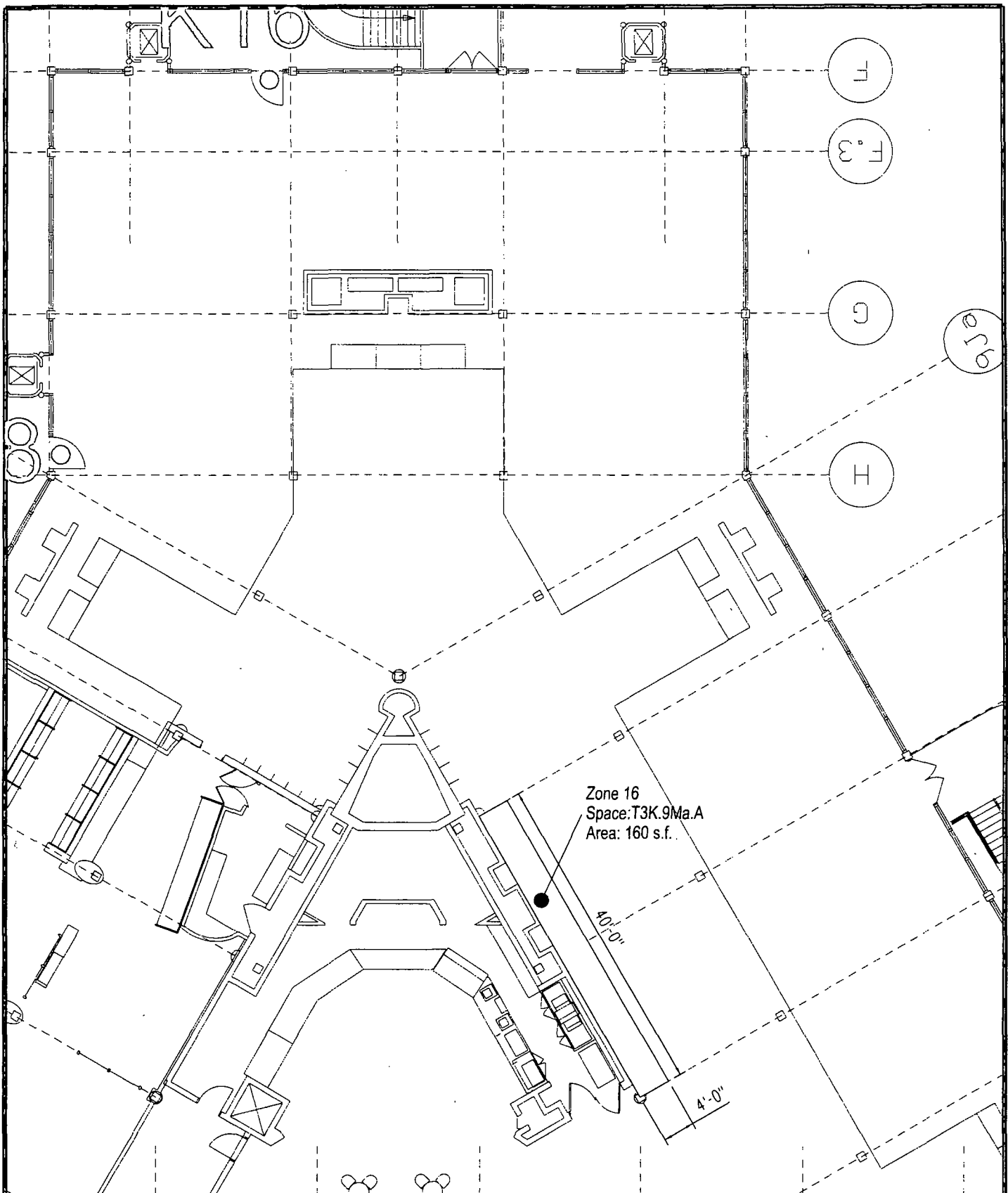
Terminal 3 / Concourse HK Upper Level

Automated Retail  
Zone #15 (T3H.U.30.E)



Date May, 2021

Created by CADJ Services



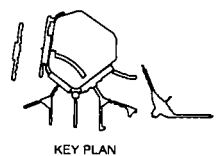
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

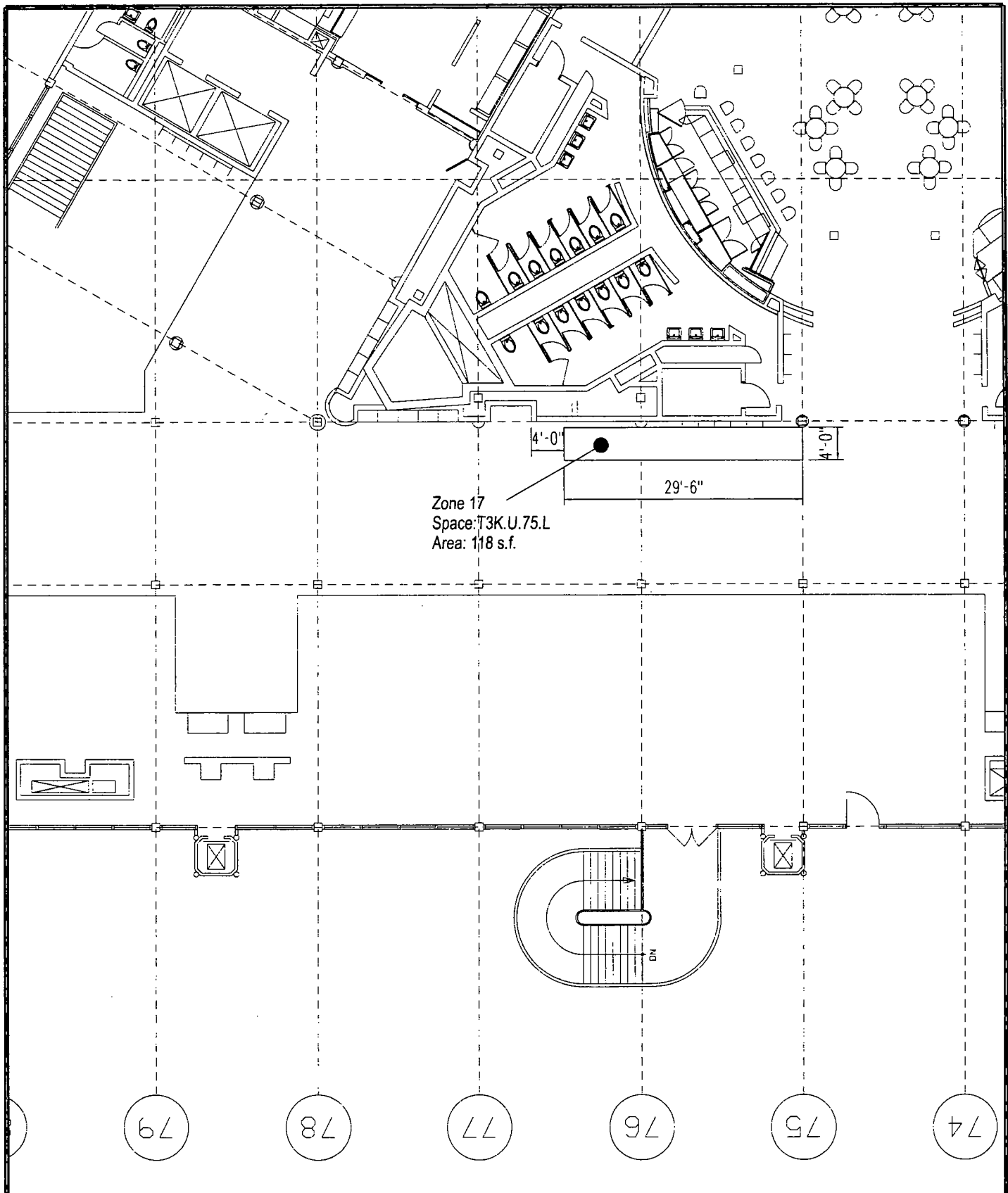
UNISON RETAIL MANAGEMENT

Terminal 3 / Concourse HK Upper Level

Automated Retail  
Zone #16 (T3K.9Ma.A)



Date: May, 2021  
Created by CADD Services



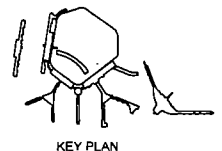
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 / Concourse HK Upper Level

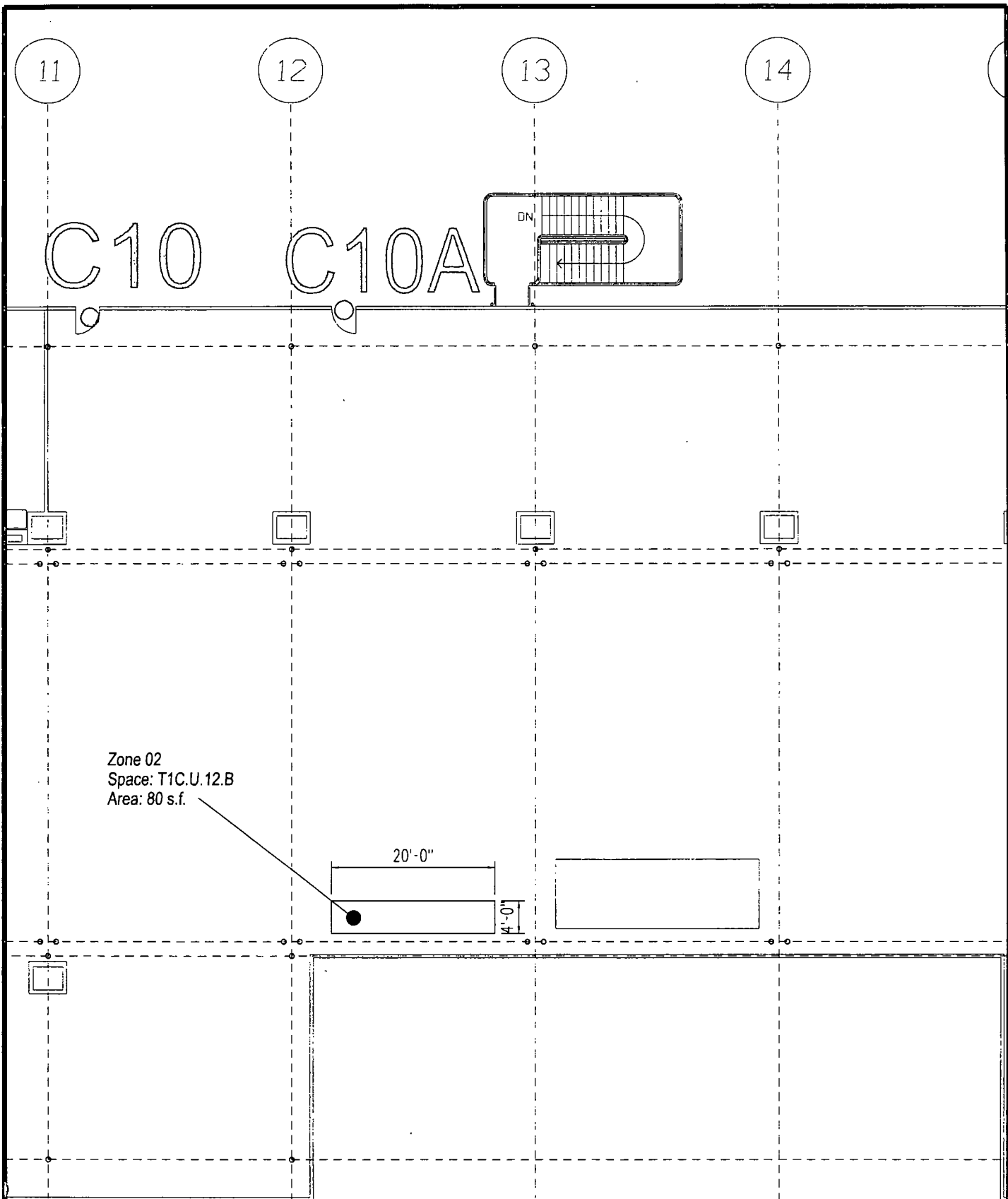
Automated Retail  
Zone #17 (T3K.U.75.L)



Date: May, 2021

Created by CAD Services





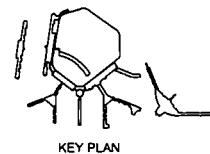
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

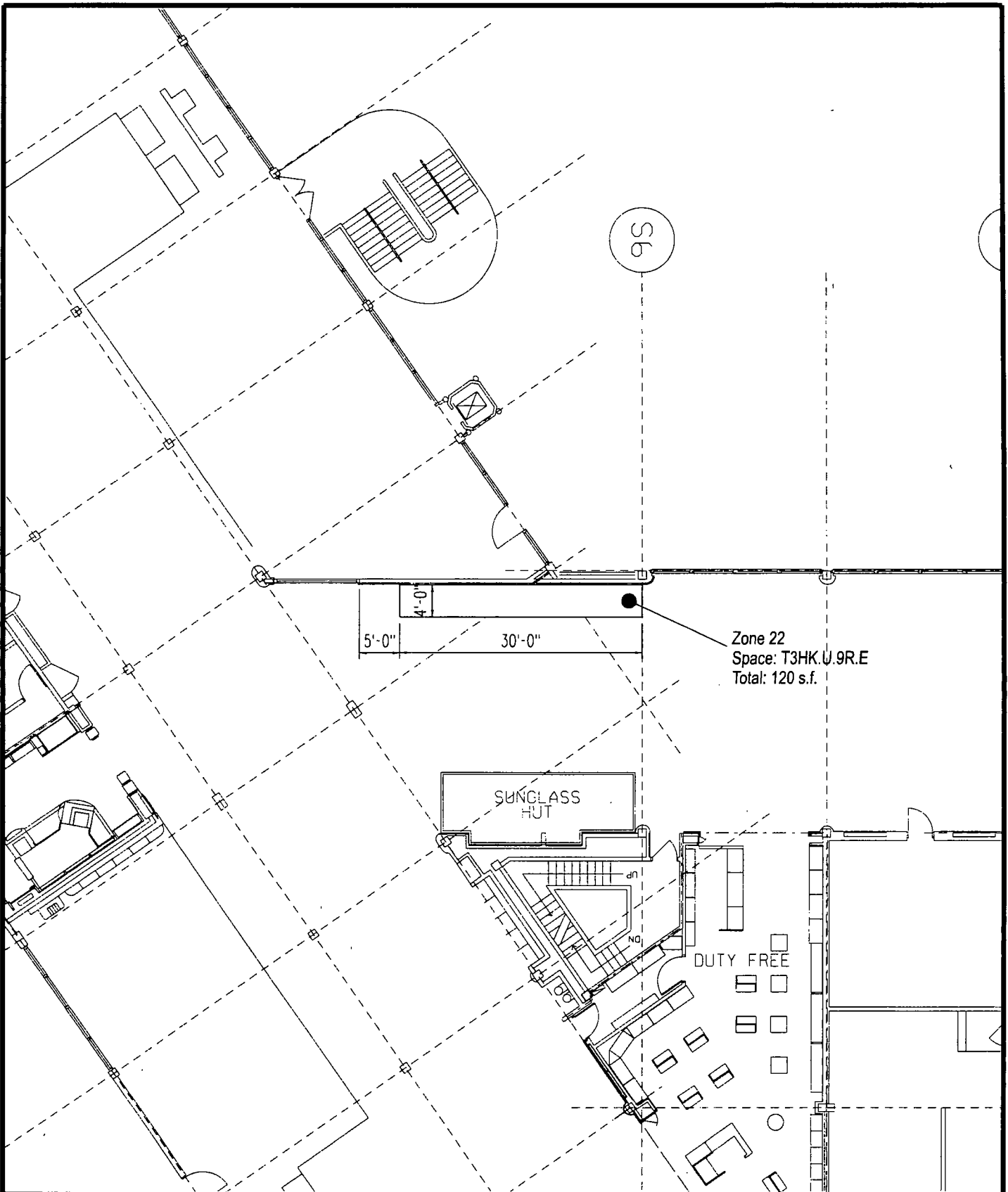
Terminal 1 / Concourse C Upper Level

Automated Retail  
Zone #02 (T1B.U.12.B)



Date: May, 2021

Created by CADO Services



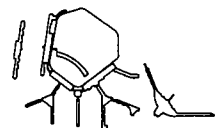
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 Upper Level

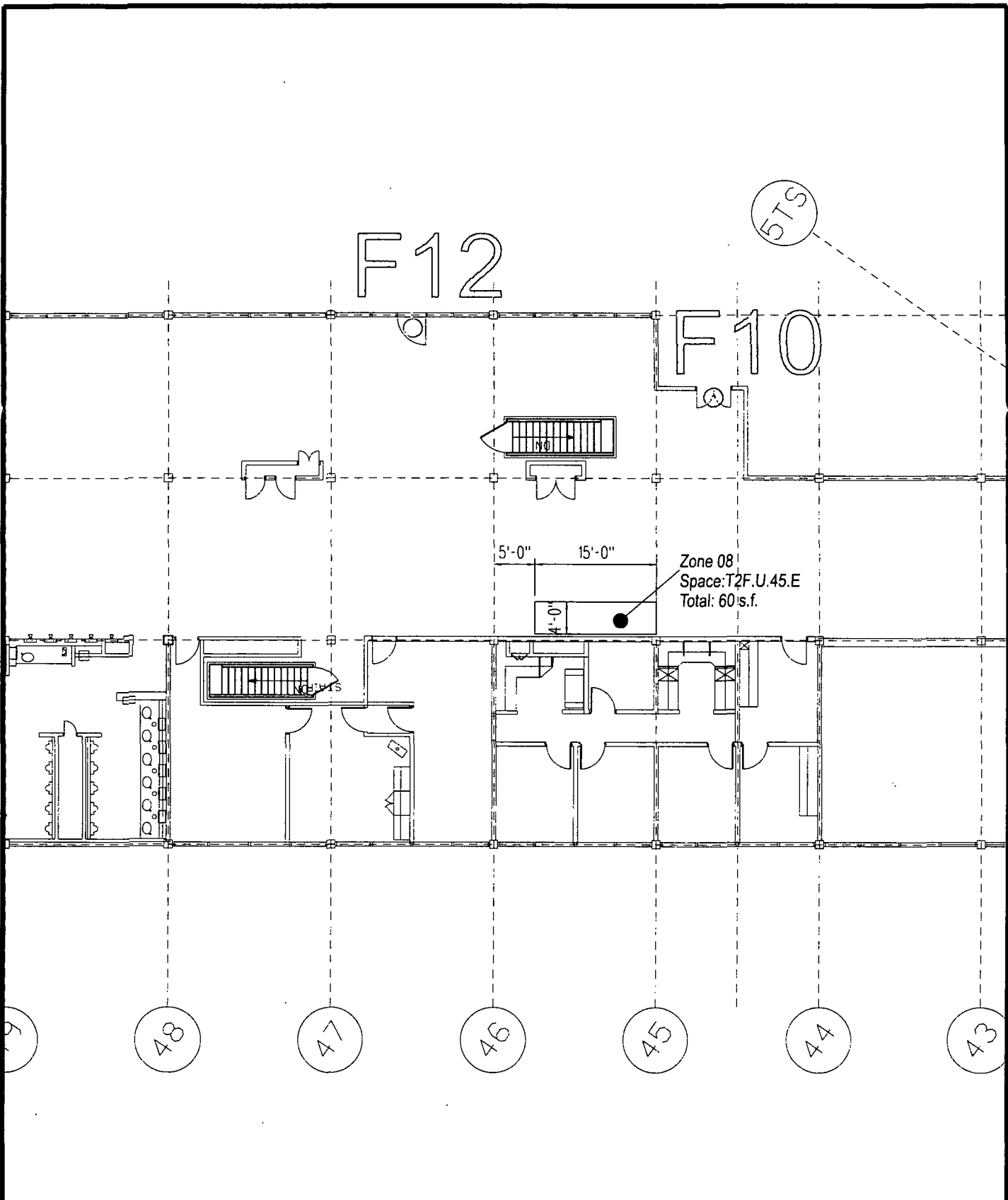
Automated Retail  
Location # 22 (T3HK.U.9R.E)



KEY PLAN

Date: May, 2021

Created by CAD Services



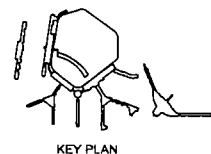
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2/Concourse EF Upper Level

Automated Retail  
Zone #08 (T2F.U.45.E)



Date: May, 2021

Created by CAD9 Services

## **EXHIBIT 2**

### **FEES**

## **EXHIBIT 2**

### **FEES**

1. Percentage Fee: MAG USA

Gross Revenues	Percentage Rent
All Sales	
- 4 or less locations	10.0%
- 5 or more locations	15.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

**EXHIBIT 3**  
**DEVELOPMENT PLAN**

# 4) CONCESSIONS DEVELOPMENT PLAN FORM B

## Proposal Form B Concept Plan Package 3 (Automated Retail, Services and Food)

Instructions: Provide respondent's proposed concept plan showing the following information for each proposed Concession Location. Use additional copies of this table as necessary. Submit additional information as set forth in the Proposal Requirements following this proposal

Respondent:

MAG US LOUNGE MANAGEMENT LLC

Concession Location	Location Description	Concession Description	Proposed Equipment/Facility	Proposed Operator	Anticipated Opening Date
<b>Terminal 1</b>					
Location #1 - T1,B12	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #2 - T1,C11	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #4 - T1,U1 Baggage					
Location #5 - T1,B1 Tunnel					
<b>Terminal 2</b>					
Location #3 - T2,E1	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #6 - T2,E6	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #7 - T2 Adjacent to ATM	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #8 - T2,F12	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #9 - T2,E8	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #10 - T2,E1	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #11 - T2,H3	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #12 - T2-T3 Bridge	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
<b>Terminal 3</b>					
Vacant Space F3HKU.9.H8					
Location # 13 - T3,M1	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #14 - T3,G11	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #15 - T3,H3	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #16 - T3, K18	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location # 17 - T3, K19	common space	IoT Privacy Booth	2) Jabbrrbox/ (2) Vend	MAG/ Jabbrrbox	SEE BELOW
Location #18 - T3, U1 Baggage					
Location #19 - T3,B1 Passageway to CTA					
<b>ANTICIPATED OPENING DATE: Jabbrrbox will install pods within 45-90 days after award date</b>					

Chicago Department of Aviation  
Proposal Form B

July 30, 2020

## 1) CONCEPT THEME

Jabbrrbox has become a highly sought after IoT passenger amenity that provides personal space for Privacy, Productivity and Wellness, all within less than 16 square feet of floor area.

Users select their preferred duration which has an associated price point, and users have the ability to book on-demand on the outside of each unit, or up to 14 days in advance via the mobile apps and web booking platforms.



When booking on-demand the Jabbrrbox comes to life and the door automatically unlocks when payment is confirmed. The user is sent a text message and email containing a 6-digit access code that serves as a code to unlock the door as well as connection to a reservation unique encrypted Wi-Fi session.

When booking via mobile application the user first creates a user profile and stores their credit card information. This allows for advanced reservations, reservation extensions, a listing of all past bookings, and the ability to assign saved units to their most loved location.

Our users are also able to see our entire ecosystem of units, including those in hospitality venues, convention centers, retail environments, office buildings and beyond, supporting the new “work from anywhere” world we now work in. This use-case speaks directly to our Productivity tenet and paints a picture for how our marketing efforts in all verticals strengthen the entire Jabbrrbox ecosystem.

Our loyal customers love how Jabbrrbox can instantly turn a crowded public space into a private oasis. Whether that means practicing the violin, recording a podcast or catching an important business meeting, the Jabbrrbox pods provide an essential space for privacy. We empower our users to be their best selves during their reservations.

Jabbrrbox’s Wellness tenet has quickly become our most sought-after use-case, whether that be for mediation and calm, or speaking with a doctor or mental health provider before jumping on a flight. In the past, passengers were forced to take these calls in public, not anymore with the privacy of a Jabbrrbox. Passengers are not the only recipients of this offering, as we offer reduced partner pricing to all airport employees that need access to utilize these services which help save them time and money from loss of work hours. To support our Wellness initiatives, we are initially providing PPE products via our Retail Kiosks and look to expand those offerings to other wellness type products in the future.

There is a reason why Jabbrrbox has been called the “ultimate escape to serenity” by our users!



## 2) PROPOSED SERVICES AND PRICING

Jabbrrboxes will be available for rent for varying time frames via our website or directly from the touchscreen display at the Jabbrrbox location. We will also provide an opportunity to sell Personal Protective Equipment (PPE) from outside of the Jabbrrbox, allowing for increase revenue opportunities.

### JABBRRBOX BOOKING PRICE RATES

\$10 for 15 minutes

\$15 for 30 minutes

\$25 for 45 minutes

\$30 for 60 minutes

\$45 for 90 minutes

\$60 for 120 minutes

### PPE RETAIL RATES

\$0.75 Alcohol Disinfectant Wipes

\$4.99 MEDEX Hand Sanitizer Bottle 4oz.

\$0.75 Hand Sanitizer Packet

\$7.99 K95 Face Mask

\$4.66 PPE Kit

\$5.48 Reusable Face Mask

## 3) SOURCES OF MERCHANDISE, PRODUCTS AND SUPPLIES

Jabbrrbox units are constructed in Des Plaines, IL out of the highest quality materials as described in the Preliminary Plans section below. PPE Supplies will be ordered from and provided by Vengo Labs. Cleaning supplies and required tools for regular maintenance will be purchased by our ACDBE, The Forrest Group.

## 4) PROPOSED CAPITAL IMPROVEMENTS

Our units require very little capital improvements to ORD, allowing us to deploy efficiently and economically, with a commitment of at least \$800,000 for capital investments. Where required, we will provide the necessary power to support our units.

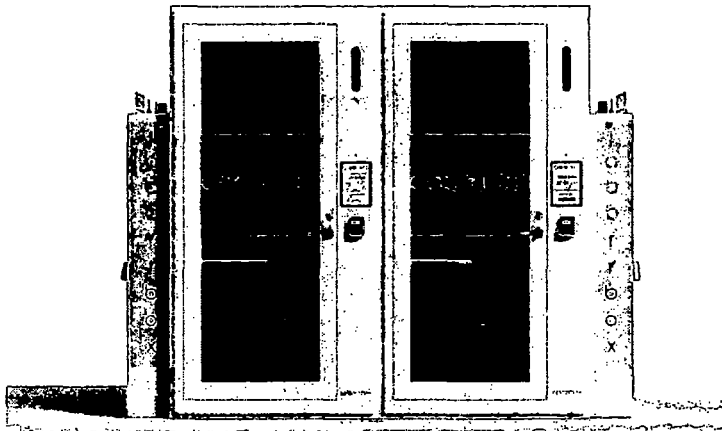
## 5) SUSTAINABILITY INITIATIVES

Jabbrrbox units are currently fabricated and assembled in Des Plaines Illinois, allowing for a short 4.5 miles travel distance from testing and compliance to onsite installation and setup. Further to this, all Jabbrrbox components and materials are made from low or no VOC's (volatile organic compounds) and formaldehyde. Jabbrrbox units are also 100% recyclable (upcycled) "cradle to cradle" for reuse and redeployment.

## 6) PRELIMINARY PLANS

### WHAT MAKES A JABRRBOX?

Jabrrbox units are constructed from a 3-layer wall system consisting of a 14 gauge, powder coated steel exterior shell, followed by 3" of P.E.T. (recycled plastic water bottles) followed by a metal panel backed ½" P.E.T. (recycled plastic water bottles) rigid wall panel. The Jabrrbox door is made from custom



aluminum extrusions which are also powder coat painted with a ⅜" laminated glass panel insert held in place with sound isolating rubber gaskets. User comfort is supplied via 180 cfm of airflow which translates into a complete air refresh rate of 60 seconds.

The interior provides two separate user-controlled lighting elements with one being overhead and the other being front facing. These are both color assignable as well as dimmable which allows a user to create their own "mood". A third set of lights are also

contained in the ceiling and are only activated when the unit is not in use. This light source combines three separate wavelengths of UV lighting to safely sanitize the air and surfaces between use. This light source is tied into occupancy sensors which automatically turn this light source off as the exterior door opens and before the user enters.

Each Jabrrbox unit contains two plug-in points for a user device power, plus two USB power points. The Jabrrbox door hardware is all commercially rated and UL compliant, with concealed door hinges, concealed overhead closer, and a mortise lock body. Each unit contains a built-in place work surface and foam cushion banquette style seat and seat back. All Jabrrbox materials meet or exceed CAL Bulletin 133 standards which specifically regulate the flammability of furniture that will be used in "public spaces."

### DESCRIPTION OF AUTOMATED RETAIL KIOSK

Jabrrbox has become the passengers "ultimate escape to serenity" by providing a bookable and reservable quiet oasis for Privacy, Productivity and Wellness. Jabrrbox users can book on-demand at an individual unit, or reserve time in advance via our mobile and web applications in as little as fifteen minutes and up to two hours in duration. Reservations can easily be extended via our mobile apps if a user requires more time or simply needs to wait out a flight delay.

When inside a Jabrrbox users are greeted by a 24" touchscreen running the Jabrrbox user interface which allows them to control their environment by changing the color of the lights and/or adjusting the light level brightness.

Users can also access a map view of the airport terminal to view available concessions and restaurants, and to plan the path to their departing gate.

If our users are curious about the status of their flight, they can enter their flight code and receive the latest updates on departing and arriving gates plus weather forecast at both locations. If our users are experiencing an issue while in the Jabrrbox they can contact Jabrrbox via our support tab.

If our users are running low on cell phone data, it is not a problem as every Jabrrbox session launches a private, encrypted Wi-Fi session with step by step directions on how to connect multiple devices to be productive with work deadlines or to kickback and stream their favorite media.

Our users can capture their moment at O'Hare by taking five photos via our photo booth feature and share their travel experience with their friends and family on social media networks.

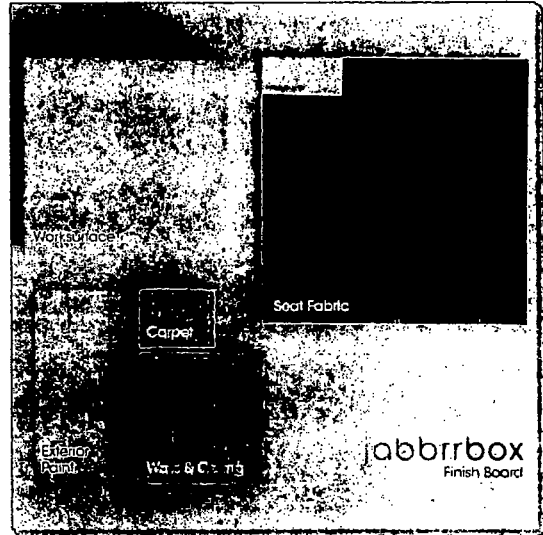
We invite user feedback and therefore have provided a short user Survey to which helps us iterate and update our product offerings.

At Jabrrbox we are constantly learning from our users and expanding our experiential services and will soon be launching Telehealth services in partnership with Illinois based Advocate Aurora Health to allow passengers and airport personnel to have live doctor visits while at the airport to reduce time away from the job for maximum work efficiency. We are also partnering with National Telehealth service providers to ensure no matter the insurance provider, they will have access to a doctor while on the move.

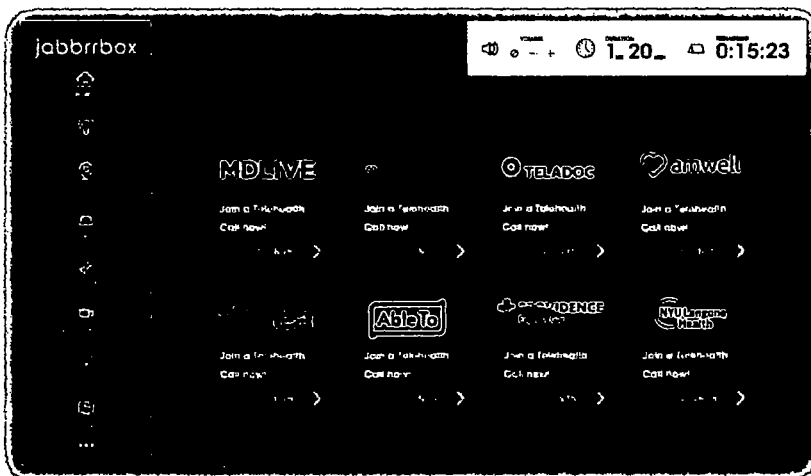
We are also currently in the process of integrating the World's largest video conference platforms to allow

our users to keep their laptop in their bag and connect to their team on our large display with front facing lighting so our users look their best!

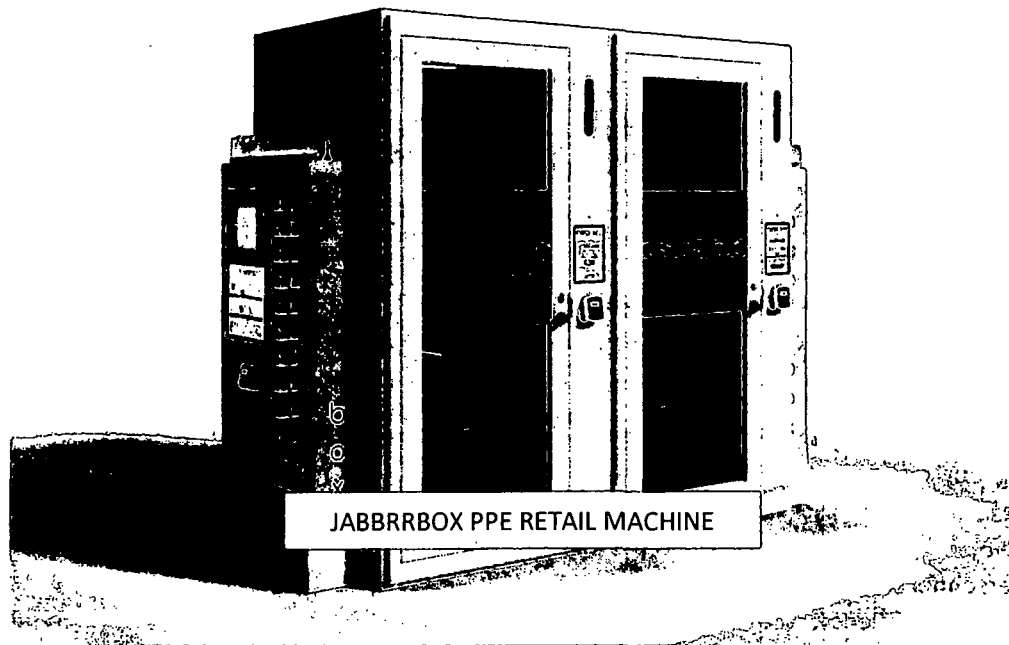
As a result of many user surveys, streaming is a huge request for users to enjoy their favorite movies and shows ahead of their flight. We are currently in direct discussion with various large streaming platforms to provide passengers with all of the media their hearts desire.



Jabrrbox Materials Board



Once placed in O'Hare, we will coordinate with other ORD concessionaires to bring their E-Commerce platforms to the Jabbrrbox screen. Users will be able to order from their favorite shops and restaurants, even having food delivered directly to the pod. The opportunities are truly endless.



Our PPE Retail Machines will be Jabbrrbox branded and stocked with necessary items for today's traveler. Each of our machines can hold 347 product SKUs and we will be offering a mixture of the following.

- Alcohol Disinfectant Wipes
- 4oz. Hand Sanitizer Bottles
- Hand Sanitizer Wipes
- K95 Face Masks
- PPE Multi-Product Kits
- Reusable Face Masks

We will closely monitor the top selling products and adjust our inventory to respond to sales, as well as offering new products as conditions demand.

#### MARKETING JABRRBOX

Jabbrrbox employs digital marketing strategies to reach our target market of experienced travelers who dream of a private space inside of a busy terminal. We utilize social media to target travelers within the airport, providing valuable information on how to access a Jabbrrbox, whether through our app, our online booking portal, or directly at the kiosk. When available, we also promote our services in airports on their digital displays to further educate and promote our feature rich amenity to travelers.

MAG USA will support marketing efforts through our Multi-Channel Commercial Strategy which diversifies and maximizes revenue sources. Each of these channels is addressed through direct contact, promotion,

and marketing by our Commercial and Marketing teams to maximize Jabbrrbox utilization and income to ORD and MAG USA. The channels we utilize include:

1. Airlines – We capitalize on the relationships of our parent company, MAG, dealing with 80+ international airlines to enhance our marketing in the US. These strategic partnerships allow for increased reach with the Jabbrrbox pods.
2. Digital Channels – Our flexible technology solutions allow us to tailor product messaging and distribution to potential guests. Our bespoke GOairports system interfaces with modern platforms, meaning that we can work with many partners and ensure seamless service.
3. National Networks – To increase awareness, we have made it possible to partner with any type of organization in flexible and technologically driven ways, allowing us to gain access to millions of guests through national partners quickly.



Current MAG airline partners that allow us to extend our reach domestically and internationally.

#### PROPOSED PROJECT SCHEDULE

The Jabbrrbox program will be deployed in Q1 of 2021 with a targeted activation date of February 1st. The units are delivered fully assembled in after hours following all logistics protocol and are fully tested and initialized on site to go live within 24 hours of delivery. We are able to deploy Jabbrrbox pods within 45-90 days of award of the bid.

COMPENSATION TO THE CITY  
FORM G

Chicago Department of Aviation

July 30, 2020

**Proposal Form G**  
**Proposed Concession Fee Rates**

*Compensation to the City consists of the Minimum Annual Guarantee Fee ("MAG") and Percentage Fee as described in Section D.2. of the RFP. The City has established the MAG to be paid the City during the Lease Years of the Term. This amount is not "biddable." Any respondent who states a different amount in its proposal will be deemed non-responsive and eliminated from further consideration for award of the offered concession. The City has not established a range of Percentage Fee Rate (s) for each concession category. Respondents must propose a Percentage fee rate(s) for each Package. Any respondent who fails to propose a Percentage Fee Rate(s) will be deemed non-responsive and eliminated from further consideration for award of the offered concession.*

**Respondent:** MAG US LOUNGE MANAGEMENT LLC

**1) Proposed Percentage Fee Rate:**

Concession Category	Percentage Fee Rate Ranges (for product categories)	Sales Tiers	Proposed Percentage Fee Rate
Alternative Mobile Self-Ordering and Delivery Service	n/a	n/a	n/a
Automated Self-Checkout Micro Marts	n/a	n/a	n/a
Automated Retail, Services and Food	n/a	n/a	See narrative below

*Note: if not proposing on one or more concession categories (packages) indicate with an "n/a" in the corresponding boxes.*

Automated Retail, Services and Food: Proposed Percentage Fee Rate

Two tiers:

- 1) 10% of gross revenue when operating 4 or less locations
- 2) 15% of gross revenue when operating 5 or more locations

1

Proposal From G

# FORM C - PROJECTED SALES, NET INCOME AND CASH FLOW

## Proposal Form C Projected Gross Receipts by Concession Type

Instructions: Provide a good faith estimate of Gross Receipts for each proposed Concession for the 2020 through 2026 Lease Years. The listing of Proposed Concession on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary. On a separate sheet, provide major assumptions in narrative format.

Respondent:

MAG US LOUNGE MANAGEMENT LLC

Proposed  
Packages:

PACKAGE 3

Concession Type	Proposed Concept/Brand	Anticipated Opening Date	XX Months 2020	2021	2022	2023	2024	2025	2026
Package 1	Alternative Mobile Electronic Self- Ordering and Delivery Service								
Package 2	Automated Self- Checkout Micro Marts								
Package 3	Automated Retail, Services and Food	SEE BELOW		\$1,074,053.00	\$1,382,333.00	\$1,800,293.00	\$2,259,995.00	\$2,373,157.00	\$2,395,552.00

Chicago Department of Aviation  
Proposal Form C

July 30, 2020

ANTICIPATED OPENING DATE: Jabbrrbox will install pods within 45-90 days after award date

PROFORMA

JBX / MAG CDA RFP	2021	2022	2023	2024	2025	2026	TTL
Gross Sales	\$ 1,074,533	\$ 1,382,333	\$ 1,800,293	\$ 2,259,995	\$ 2,373,157	\$ 2,395,552	\$ 11,285,861
- less COGS	\$ (273,543)	\$ (304,421)	\$ (336,330)	\$ (371,773)	\$ (422,894)	\$ (482,565)	\$ (2,191,526)
Gross Profits	\$ 800,989	\$ 1,077,911	\$ 1,463,962	\$ 1,888,222	\$ 1,950,263	\$ 1,912,987	\$ 9,094,335
Operating Expenses	\$ (695,282)	\$ (716,730)	\$ (755,875)	\$ (798,580)	\$ (814,736)	\$ (809,126)	\$ (4,590,328)
Rent 15%	\$ (161,180)	\$ (207,350)	\$ (270,044)	\$ (338,999)	\$ (355,974)	\$ (359,333)	\$ (1,692,879)
Staff Cost	\$ (130,000)	\$ (136,500)	\$ (143,325)	\$ (150,491)	\$ (158,016)	\$ (165,917)	\$ (884,249)
Marketing Fund	\$ (53,727)	\$ (69,117)	\$ (90,015)	\$ (113,000)	\$ (118,658)	\$ (119,778)	\$ (564,293)
Other GA expense (ie Saas, Service, Insurance, Data, etc)	\$ (350,375)	\$ (303,763)	\$ (252,491)	\$ (196,090)	\$ (182,089)	\$ (164,099)	\$ (1,448,907)
EBIDTA	\$ 105,708	\$ 361,182	\$ 708,088	\$ 1,089,641	\$ 1,135,527	\$ 1,103,861	\$ 4,504,007
Cash Flow	\$ 105,708	\$ 466,890	\$ 1,174,977	\$ 2,264,619	\$ 3,400,146	\$ 4,504,007	



# FORM D - CAPITAL INVESTMENT AND FINANCING PLAN

## Proposal Form D Capital Investment and Financing Sources Plan

*Instructions: Provide proposed capital investment and financing sources for each proposed Concession Package. Investment includes leasehold improvements, furniture, fixtures, and equipment; franchise fees. Investment does not include other start-up costs. The listing of Proposed Concessions on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary.*

**Respondent:**

MAG US LOUNGE MANAGEMENT LLC

**Packages Proposed:**

Package 3

Concession Location ID	Proposed Capital Investment	Source 1	Financing Sources (Investor and Debt or Equity) and Amount			
			Amount 1	Source 2	Amount 2	Source 3
Alternative Mobile Self-Ordering and Delivery Service	N/A	N/A	N/A	N/A	N/A	N/A
Automated Self-Checkout Micro Marts	N/A	N/A	N/A	N/A	N/A	N/A
Automated Retail, Services and Food	\$800,000.00 - assuming (30) units in (15) locations	See below	See below	See below	See below	See below

Chicago Department of Aviation  
Proposal Form D

July 30, 2020

**FINANCIAL SOURCE: Not applicable - self funded. See financial statements for additional clarity.**

**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**

## 2) PROPOSED SERVICES AND PRICING

Jabbrrboxes will be available for rent for varying time frames via our website or directly from the touchscreen display at the Jabbrrbox location. We will also provide an opportunity to sell Personal Protective Equipment (PPE) from outside of the Jabbrrbox, allowing for increase revenue opportunities.

### JABRRBOX BOOKING PRICE RATES

\$10 for 15 minutes

\$15 for 30 minutes

\$25 for 45 minutes

\$30 for 60 minutes

\$45 for 90 minutes

\$60 for 120 minutes

### PPE RETAIL RATES

\$0.75 Alcohol Disinfectant Wipes

\$4.99 MEDEX Hand Sanitizer Bottle 4oz.

\$0.75 Hand Sanitizer Packet

\$7.99 K95 Face Mask

\$4.66 PPE Kit

\$5.48 Reusable Face Mask

## 3) SOURCES OF MERCHANDISE, PRODUCTS AND SUPPLIES

Jabbrrbox units are constructed in Des Plaines, IL out of the highest quality materials as described in the Preliminary Plans section below. PPE Supplies will be ordered from and provided by Vengo Labs. Cleaning supplies and required tools for regular maintenance will be purchased by our ACDBE, The Forrest Group.

## 4) PROPOSED CAPITAL IMPROVEMENTS

Our units require very little capital improvements to ORD, allowing us to deploy efficiently and economically, with a commitment of at least \$800,000 for capital investments. Where required, we will provide the necessary power to support our units.

## 5) SUSTAINABILITY INITIATIVES

Jabbrrbox units are currently fabricated and assembled in Des Plaines Illinois, allowing for a short 4.5 miles travel distance from testing and compliance to onsite installation and setup. Further to this, all Jabbrrbox components and materials are made from low or no VOC's (volatile organic compounds) and formaldehyde. Jabbrrbox units are also 100% recyclable (upcycled) "cradle to cradle" for reuse and redeployment.

**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*  
(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

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

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

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

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the *Uniform Customs and Practice for Documentary Credits*, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BY: \_\_\_\_\_  
Its: Commissioner of Aviation

**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**



## **EXHIBIT 6**

### **INSURANCE REQUIREMENTS** **Chicago Department of Aviation**

#### **Automated Retail License Agreement** **Food, beverage, retail products gifts and vending merchandise at O'Hare** **(Vending Machines)**

#### **A. INSURANCE REQUIRED**

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

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

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

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

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

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

3) Automobile Liability (Primary and Umbrella)

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

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

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

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

5) Property

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

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) **Builders Risk**

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

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

**B. Additional Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

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

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

City of Chicago Department of Aviation

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

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

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

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

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

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

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

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

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

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the



concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

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

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

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

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

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs**

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

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

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

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

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

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

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

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

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

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

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

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

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

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

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

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

### **B. RECORDKEEPING**

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

representatives.

#### **C. REPORTING**

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

#### **D. MONITORING**

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

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

### **VI. GOOD FAITH EFFORTS**

#### **A. EXAMPLES**

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

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

#### B. DOCUMENTATION

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

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

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making

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

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

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

with copies to:

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

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

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

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

## **VII. NON-COMPLIANCE AND DAMAGES**



#### A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

#### B. NON-COMPLIANCE WITH ACDBE AGREEMENT

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

**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

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

**I. Policy and Terms**

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

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

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

**Contract Specific Goals and Bids**

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

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

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

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

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

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

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

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

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

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

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

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

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

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

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

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

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

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

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

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

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

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

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

### **III. Joint Ventures**

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

- A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:
1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
  2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
  3. Each joint venture partner executes the bid to the City; and
  4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.
- B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

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

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

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

- C. Schedule B: MBE/WBE Affidavit of Joint Venture

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

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

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

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

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

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

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.

1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

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

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.



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

**V. Procedure to Determine Bid Compliance**

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

**A. Schedule B: MBE/WBE Affidavit of Joint Venture**

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

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

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

original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

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

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

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

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

D. Letters of Certification

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

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

E. Schedule F: Report of Subcontractor Solicitations

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

F. Schedule H: Documentation of Good Faith Efforts

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

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

## **VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
  - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  - 2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  - 3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - 4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  - 5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  - 6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  - 7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  - 8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740

of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.



**EXHIBIT 9**

**ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS**



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164426**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

MAG US Lounge Management LLC

**Enter d/b/a if applicable:**

**The Disclosing Party submitting this EDS is:**

the Applicant

**B. Business address of the Disclosing Party:**

100 N. LaSalle St. Suite 900  
Chicago, IL 60602  
United States

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

**D. Name of contact person:**

Miss Rosemary Macadie

**E. Federal Employer Identification No. (if you have one):**

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains:

ORD Automated Retail, Food and Service Vending Units RFP

G. Which City agency or department is requesting this EDS?

DEPT OF PROCUREMENT SERVICES

Specification Number

Contract (PO) Number

Revision Number

Release Number

User Department Project Number

## **SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS**

### **A. NATURE OF THE DISCLOSING PARTY**

1. Indicate the nature of the Disclosing Party:

Limited liability company

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

Delaware

Registered to do business in the State of Illinois as a foreign entity?

Yes

### **B. DISCLOSING PARTY IS A LEGAL ENTITY:**

1.a.2 Does the Disclosing Party have any officers?

Yes

1.a.4 List below the full names and titles of all executive officers of the entity.

**Officer:** Mr. Martin Jones

**Title:** President

**Role:** Officer

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**Officer:** Mr. Bradley Comm

**Title:** Treasurer

**Role:** Officer  
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## B. CERTIFICATION REGARDING CONTROLLING INTEREST

1.b.1 Are there any individuals who directly or indirectly control the day-to-day management of the Disclosing Party as a general partner, managing member, manager, or other capacity?

No

1.b.3 Are there any legal entities that directly or indirectly control the day-to-day management of the Disclosing Party as a general partner, managing member, manager, or other capacity?

Yes

1.b.4 List all legal entities that function as general partners, managing members, managers, and any others who directly or indirectly control the day-to-day management of the Disclosing Party. Each legal entity listed below must submit an EDS on its own behalf.

**Name:** Manchester Airport Group US Holdings Inc

**Title:** Manager

**Business Address:** 100 N. LaSalle St. Suite 900  
Chicago, IL 60602 United States  
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## 2. Ownership Information

Please provide ownership information concerning each person or entity that holds, or is anticipated to hold (see next paragraph), a direct or indirect beneficial interest in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation,

partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

Please disclose present owners below. Please disclose anticipated owners in an attachment submitted through the "Additional Info" tab. "Anticipated owner" means an individual or entity in existence at the time application for City action is made, which is not an applicant or owner at such time, but which the applicant expects to assume a legal status, within six months of the time the City action occurs, that would render such individual or entity an applicant or owner if they had held such legal status at the time application was made.

- Manchester Airport Group US Holdings Inc - 100.0% - EDS 164427
  - MAG Investments US Limited - 100.0% - EDS 164432
    - MAG US (Apollo) Limited - 100.0% - EDS 164433
    - Manchester Airport Group Finance Ltd - 100.0% - EDS 164434
    - Manchester Airport Group Investments Ltd - 100.0% - EDS 164435
    - Manchester Airport Finance Holdings Ltd - 100.0% - EDS 164436
    - Manchester Airports Holdings Ltd - 100.0% - EDS 164437
    - Manchester City Council - 35.5% - EDS 164438
    - The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund - 35.5% - EDS 164439

#### Owner Details

Name	Business Address
MAG Investments US Limited	Olympic House Manchester Airport Manchester, United Kingdom
MAG US (Apollo) Limited	Olympic House Manchester Airport Manchester, United Kingdom

Manchester Airport Finance Holdings Ltd	Olympic House Manchester, United Kingdom
Manchester Airport Group Finance Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester Airport Group Investments Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester Airport Group US Holdings Inc	100 N. LaSalle St. Suite 900 Chicago, IL United States
Manchester Airports Holdings Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester City Council	Town Hall Manchester, United Kingdom
The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund	Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman , Cayman Islands

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

## SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

1. Has the Disclosing Party retained or does it anticipate retaining any legal entities in connection with the Matter?

Yes

2. List below the names of all legal entities which are retained parties.

<b>Name:</b>	Jabbrrbox, Inc.
<b>Anticipated/ Retained:</b>	Retained
<b>Business Address:</b>	, United States
<b>Relationship:</b>	Subcontractor - non MWDBE
<b>Fees (\$\$ or %):</b>	20%
<b>Estimated/Paid:</b>	Estimated

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3. Has the Disclosing Party retained or does it anticipate retaining any persons in connection with the Matter?

No

## **SECTION V -- CERTIFICATIONS**

### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;



- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

8. [FOR APPLICANT ONLY]

- i. Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency" ; and
- ii. the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City.

NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

I certify the above to be true

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM")

I certify the above to be true

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/ subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

No

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

## **SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS**

Is the Matter federally funded? For the purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

No

## **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/

or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited

partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

No

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

No

## **APPENDIX C-PROHIBITION ON WAGE & SALARY HISTORY SCREENING**

This Appendix is to be completed only by an Applicant that is completing this EDS as a "contractor" as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants' wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

Yes

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of vendor attachments uploaded by City staff

None .

List of attachments uploaded by vendor

None .

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021

Miss Rosemary Macadie

Legal Counsel

MAG US Lounge Management LLC

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164427**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

Manchester Airport Group US Holdings Inc

**Enter d/b/a if applicable:**

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**The Disclosing Party holds an interest in**

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

100 N. LaSalle St. Suite 900  
Chicago, IL 60602  
United States

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

**D. Name of contact person:**



Miss Rosemary Macadie

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

Delaware

Registered to do business in the State of Illinois as a foreign entity?

Yes

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

**Officer/Director:** Mr. Martin Jones

**Title:** President

**Role:** Both

-----  
**Officer/Director:** Mr. Bradley Comm

**Title:** CFO

**Role:** Both

-----  
**Officer/Director:** Mr. Charles Cornish

**Title:** Director

<b>Role:</b>	Director
-----	
<b>Officer/Director:</b>	Mrs. Jennifer Cochrane
<b>Title:</b>	Secretary
<b>Role:</b>	Officer
-----	

## 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/are listed below:

- MAG Investments US Limited - 100.0%

### Owner Details

Name	Business Address
MAG Investments US Limited	Olympic House Manchester Airport Manchester, United Kingdom

## SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a

financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

## **SECTION V -- CERTIFICATIONS**

### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

## **E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

## **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions.

Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all

managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

No

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

No

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None.

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in



this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021

Miss Rosemary Macadie

Legal Counsel

Manchester Airport Group US Holdings Inc

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164432**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

MAG Investments US Limited

Enter d/b/a if applicable:

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**The Disclosing Party holds an interest in**

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

Olympic House  
Manchester Airport  
Manchester, M90 1 QX  
United Kingdom

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

D. Name of contact person:

Rosemary Macadie

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

United Kingdom

Registered to do business in the State of Illinois as a foreign entity?

No

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

**Officer/Director:** Mr. Charles Cornish

**Title:** CEO

**Role:** Director

-----  
**Officer/Director:** Mrs. Janine Brammal

**Title:** CFO

**Role:** Director

-----  
**Officer/Director:** Mr. John O'Toole

**Title:** CCO  
**Role:** Director

-----

## 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/are listed below:

- MAG US (Apollo) Limited - 100.0%
  - Manchester Airport Group Finance Ltd - 100.0%
    - Manchester Airport Group Investments Ltd - 100.0%
    - Manchester Airport Finance Holdings Ltd - 100.0%
    - Manchester Airports Holdings Ltd - 100.0%
    - Manchester City Council - 35.5%
    - The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund - 35.5%

## Owner Details

Name	Business Address
MAG US (Apollo) Limited	Olympic House Manchester Airport Manchester, United Kingdom
Manchester Airport Finance Holdings Ltd	Olympic House Manchester, United Kingdom
Manchester Airport Group Finance Ltd	Olympic House Manchester Airport Manchester, United Kingdom

Manchester Airport Group Investments Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester Airports Holdings Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester City Council	Town Hall Manchester, United Kingdom
The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund	Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman , Cayman Islands

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

### **SECTION V -- CERTIFICATIONS**

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

## B. FURTHER CERTIFICATIONS

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or

- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery



era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

## **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

N/A because the Disclosing Party is neither the Applicant nor has a direct ownership interest

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

N/A because the Disclosing party is neither the Applicant nor has a direct ownership interest.

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None.

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021  
Rosemary Macadie  
Legal Counsel  
MAG Investments US Limited

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164433**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

MAG US (Apollo) Limited

*Enter d/b/a if applicable:*

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**The Disclosing Party holds an interest in**

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

Olympic House  
Manchester Airport  
Manchester, M90 1QX  
United Kingdom

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

D. Name of contact person:

Rosemary Macadie

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

United Kingdom

Registered to do business in the State of Illinois as a foreign entity?

No

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

**Officer/Director:** Mr. Charles Cornish

**Title:** CEO

**Role:** Director

-----  
**Officer/Director:** Mrs. Janine Bramall

**Title:** CFO

**Role:** Director

-----  
**Officer/Director:** Mr. John O'Toole

**Title:** CCO  
**Role:** Director  
-----

## 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/ are listed below:

- Manchester Airport Group Finance Ltd - 100.0%
  - Manchester Airport Group Investments Ltd - 100.0%
    - Manchester Airport Finance Holdings Ltd - 100.0%
      - Manchester Airports Holdings Ltd - 100.0%
        - Manchester City Council - 35.5%
        - The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund - 35.5%

### Owner Details

Name	Business Address
Manchester Airport Finance Holdings Ltd	Olympic House Manchester, United Kingdom
Manchester Airport Group Finance Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester Airport Group Investments Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester Airports Holdings Ltd	Olympic House Manchester Airport

	Manchester, United Kingdom
Manchester City Council	Town Hall Manchester, United Kingdom
The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund	Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman , Cayman Islands

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

### **SECTION V -- CERTIFICATIONS**

#### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?



Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

## B. FURTHER CERTIFICATIONS

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including

actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

## SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the

information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

N/A because the Disclosing Party is neither the Applicant nor has a direct ownership interest

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

N/A because the Disclosing party is neither the Applicant nor has a direct ownership interest.

### **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None .

### **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021  
Rosemary Macadie  
Legal Counsel  
MAG US (Apollo) Limited

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164434**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

Manchester Airport Group Finance Ltd

**Enter d/b/a if applicable:**

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**The Disclosing Party holds an interest in**

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

Olympic House  
Manchester Airport  
Manchester, M90 1QX  
United Kingdom

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

D. Name of contact person:

Miss Rosemary Macadie

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

United Kingdom

Registered to do business in the State of Illinois as a foreign entity?

No

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

**Officer/Director:** Mr. Charles Cornish

**Title:** CEO

**Role:** Director

-----  
**Officer/Director:** Mrs. Janine Brammal

**Title:** CFO

**Role:** Director

-----  
**Officer/Director:** Mr. John O'Toole



**Title:** CCO  
**Role:** Director  
-----

## 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/ are listed below:

- Manchester Airport Group Investments Ltd - 100.0%
  - Manchester Airport Finance Holdings Ltd - 100.0%
    - Manchester Airports Holdings Ltd - 100.0%
      - Manchester City Council - 35.5%
      - The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund - 35.5%

### Owner Details

Name	Business Address
Manchester Airport Finance Holdings Ltd	Olympic House Manchester, United Kingdom
Manchester Airport Group Investments Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester Airports Holdings Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester City Council	Town Hall Manchester, United Kingdom

The Conyers                      Cricket Square, Hutchins Drive  
Trust Company                  P.O. Box 2681  
(Cayman) Limited              Grand Cayman ,  
for IFM Global                Cayman Islands  
Infrastructure Fund

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

### **SECTION V -- CERTIFICATIONS**

#### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

#### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this

EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

#### **C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION**

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

#### **E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

### **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands

that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

N/A because the Disclosing Party is neither the Applicant nor has a direct ownership interest

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

N/A because the Disclosing party is neither the Applicant nor has a direct ownership interest.

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None.

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021

Miss Rosemary Macadie

Legal Counsel

Manchester Airport Group Finance Ltd

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.





**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164435**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

Manchester Airport Group Investments Ltd

**Enter d/b/a if applicable:**

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**The Disclosing Party holds an interest in**

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

Olympic House  
Manchester Airport  
Manchester, M90 1QX  
United Kingdom

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

D. Name of contact person:

Rosemary Macadie

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

United Kingdom

Registered to do business in the State of Illinois as a foreign entity?

No

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

**Officer/Director:** Charles Cornish

**Title:** CEO

**Role:** Director

-----  
**Officer/Director:** Janine Bramall

**Title:** CFO

**Role:** Director

-----  
**Officer/Director:** John O'Toole

**Title:** CCO  
**Role:** Director

-----

## 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/ are listed below:

- Manchester Airport Finance Holdings Ltd - 100.0%
  - Manchester Airports Holdings Ltd - 100.0%
    - Manchester City Council - 35.5%
    - The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund - 35.5%

## Owner Details

Name	Business Address
Manchester Airport Finance Holdings Ltd	Olympic House Manchester, United Kingdom
Manchester Airports Holdings Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester City Council	Town Hall Manchester, United Kingdom
The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund	Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman , Cayman Islands

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

### **SECTION V -- CERTIFICATIONS**

#### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

#### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official

City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

#### **C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION**

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

#### **E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

### **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from

the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof



currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

N/A because the Disclosing Party is neither the Applicant nor has a direct ownership interest

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

N/A because the Disclosing party is neither the Applicant nor has a direct ownership interest.

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS,

including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None .

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021

Rosemary Macadie

Legal Counsel

Manchester Airport Group Investments Ltd

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164436**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

Manchester Airport Finance Holdings Ltd

**Enter d/b/a if applicable:**

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**The Disclosing Party holds an interest in**

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

Olympic House  
Manchester, M90 1QX  
United Kingdom

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

**D. Name of contact person:**

Rosemary Macadie

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

United Kingdom

Registered to do business in the State of Illinois as a foreign entity?

No

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

**Officer/Director:** Charles Cornish

**Title:** CEO

**Role:** Director

-----  
**Officer/Director:** Janine Bramall

**Title:** CFO

**Role:** Director

-----  
**Officer/Director:** John O'Toole

**Title:** CCO

**Role:** Director

-----

## 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/ are listed below:

- Manchester Airports Holdings Ltd - 100.0%
  - Manchester City Council - 35.5%
  - The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund - 35.5%

### Owner Details

Name	Business Address
Manchester Airports Holdings Ltd	Olympic House Manchester Airport Manchester, United Kingdom
Manchester City Council	Town Hall Manchester, United Kingdom
The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund	Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman , Cayman Islands

## SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

## **SECTION V -- CERTIFICATIONS**

### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION



The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

#### **E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

### **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild,

father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

N/A because the Disclosing Party is neither the Applicant nor has a direct ownership interest

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

N/A because the Disclosing party is neither the Applicant nor has a direct ownership interest.

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None.

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021

Rosemary Macadie

Legal Counsel

Manchester Airport Finance Holdings Ltd

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164437**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

Manchester Airports Holdings Ltd

Enter d/b/a if applicable:

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**The Disclosing Party holds an interest in**

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

Olympic House  
Manchester Airport  
Manchester, M90 1QX  
United Kingdom

**C. Telephone:**

+447711574373

**Fax:**

**Email:**

rosie.macadie@magairports.com

D. Name of contact person:

Rosemary Macadie

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

United Kingdom

Registered to do business in the State of Illinois as a foreign entity?

No

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

**Officer/Director:** Janine Bramall

**Title:** CFO

**Role:** Director

-----  
**Officer/Director:** John Blundell

**Title:** Director

**Role:** Director

-----  
**Officer/Director:** Charles Cornish

<b>Title:</b>	CEO
<b>Role:</b>	Director
-----	
<b>Officer/Director:</b>	Richard Leese
<b>Title:</b>	Director
<b>Role:</b>	Director
-----	
<b>Officer/Director:</b>	Manoj Mehta
<b>Title:</b>	Director
<b>Role:</b>	Director
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<b>Officer/Director:</b>	Adrian Montague
<b>Title:</b>	Director
<b>Role:</b>	Director
-----	
<b>Officer/Director:</b>	Vanda Murray
<b>Title:</b>	Director
<b>Role:</b>	Director
-----	
<b>Officer/Director:</b>	Robert Napier
<b>Title:</b>	Director
<b>Role:</b>	Director
-----	
<b>Officer/Director:</b>	John O'Toole
<b>Title:</b>	CCO
<b>Role:</b>	Director
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<b>Officer/Director:</b>	Bernard Priest
<b>Title:</b>	Director
<b>Role:</b>	Director
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<b>Officer/Director:</b>	Catherine Scheffer
<b>Title:</b>	Director
<b>Role:</b>	Director
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<b>Officer/Director:</b>	Christian Seymour
<b>Title:</b>	Director
<b>Role:</b>	Director
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<b>Officer/Director:</b>	Jonathan Wragg
<b>Title:</b>	Director
<b>Role:</b>	Director
-----	

## 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/are listed below:

- Manchester City Council - 35.5%
- The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund - 35.5%

### Owner Details

Name	Business Address
Manchester City Council	Town Hall Manchester, United Kingdom
The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund	Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman , Cayman Islands

## SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a



financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

## **SECTION V -- CERTIFICATIONS**

### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

## **E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

## **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions.

Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all

managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

N/A because the Disclosing Party is neither the Applicant nor has a direct ownership interest

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

N/A because the Disclosing party is neither the Applicant nor has a direct ownership interest.

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None.

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/13/2021

Rosemary Macadie

Legal Counsel

Manchester Airports Holdings Ltd

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.

An official website of the City of Chicago Here's how you know

# ★ ONLINE ECONOMIC DISCLOSURE STATEMENT

Glen Ryniewski  
Dept of Aviation

HOME EDS SEARCH VENDOR INQUIRY MY EDS DEBARMENT SUPPORT LOGOUT

## EDS 164426 - History

Showing 1 to 19 of 19 entries

Search:

Status	Version On	Created By	Action	Comments
DRAFT	07/13/2021 03:51 AM	Miss Rosemary Macadie	EDS_SAVED	
DRAFT	07/13/2021 03:55 AM	Miss Rosemary Macadie	EDS_SAVED	
DRAFT	07/13/2021 04:03 AM	Miss Rosemary Macadie	EDS_SAVED	
DRAFT	07/13/2021 04:05 AM	Miss Rosemary Macadie	EDS_SAVED	
SUBMITTED	07/13/2021 04:07 AM	Miss Rosemary Macadie	EDS_SUBMITTED	
COMPLETE	07/13/2021 04:19 AM	Miss Rosemary Macadie	EDS_MARKED_COMPLETE	
IN_CA_REVIEW	07/13/2021 11:12 AM	Benjamin Ho	INITIATED_REVIEW	
IN_CA_REVIEW	07/13/2021 11:12 AM	Benjamin Ho	OPENED_FOR_CA_REVIEW	
RETURNED	07/13/2021 11:13 AM	Benjamin Ho	RETURN_EDS_CA	Please add the ownership structure per our conversation.
SUBMITTED	07/13/2021 11:50 AM	Miss Rosemary Macadie	EDS_SUBMITTED	
IN_CA_REVIEW	07/15/2021 11:35 AM	Glen Ryniewski	EDS_OVERRIDE_COMPLETE	
IN_CA_REVIEW	07/15/2021 11:38 AM	Glen Ryniewski	OPENED_FOR_CA_REVIEW	
IN_CA_REVIEW	07/15/2021 11:40 AM	Glen Ryniewski	OPENED_FOR_CA_REVIEW	

Manchester City Council is a Foreign Local Government and does not require an EDS per EDS Rules Section I(b).



Status	Version On	Created By	Action	Comments
IN_CA_REVIEW	07/15/2021 11:40 AM	Glen Ryniewski	PRIME_CANCELED_DEPUTY_REVIEW	
IN_CA_REVIEW	07/15/2021 11:41 AM	Saundra Fried	OPENED_FOR_CA_REVIEW	
IN_CA_REVIEW	07/15/2021 11:58 AM	Saundra Fried	OPENED_FOR_CA_REVIEW	
IN_CA_REVIEW	07/15/2021 12:02 PM	Saundra Fried	OPENED_FOR_CA_REVIEW	
IN_CA_REVIEW	07/15/2021 12:06 PM	Saundra Fried	CA_APPROVAL_WARNINGS	<ul style="list-style-type: none"> <li>- Manchester Airport Group US Holdings Inc defined a different ownership structure in their related EDS.</li> <li>- MAG Investments US Limited defined a different ownership structure in their related EDS.</li> <li>- MAG US (Apollo) Limited defined a different ownership structure in their related EDS.</li> <li>- Manchester Airport Group Finance Ltd defined a different ownership structure in their related EDS.</li> <li>- Manchester Airport Group Investments Ltd defined a different ownership structure in their related EDS.</li> <li>- Manchester Airport Finance Holdings Ltd defined a different ownership structure in their related EDS.</li> <li>- Manchester Airports Holdings Ltd defined a different ownership structure in their related EDS.</li> </ul>
IN_CA_REVIEW	07/15/2021 12:06 PM	Saundra Fried	CA_APPROVAL_COMMENT	The Department requesting this EDS is Aviation rather than Procurement Services.

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City of Chicago Department of Procurement  
Services

#### Contact Info

121 N. LaSalle St.  
Room 806  
Chicago, IL 60602  
Bid & Bond, Room 103



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164438**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

Manchester City Council

Enter d/b/a if applicable:

**The Disclosing Party submitting this EDS is:**

a legal entity currently holding an interest in the Applicant

**B. Business address of the Disclosing Party:**

Town Hall  
Manchester, M60 2LA  
United Kingdom

**C. Telephone:**

**Fax:**

**Email:**

**D. Name of contact person:**

**E. Federal Employer Identification No. (if you have one):**

## **SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS**

### **A. NATURE OF THE DISCLOSING PARTY**

#### **1. Indicate the nature of the Disclosing Party:**

Is the Disclosing Party incorporated or organized in the State of Illinois?

### **B. DISCLOSING PARTY IS A LEGAL ENTITY:**

#### **1.a.1 Does the Disclosing Party have any directors?**

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

#### **2. Ownership Information**

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/are listed below:

There are no owners with greater than 7.5 percent ownership in the Disclosing Party.

## **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

C. Please identify the name(s) of such City elected official(s) and describe such income or compensation.

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

## **SECTION V -- CERTIFICATIONS**

### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of

investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

## **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

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- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?



## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

### **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of attachments uploaded by vendor

None.

### **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/

Manchester City Council

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.



**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT**  
**Related to Contract/Amendment/Solicitation**  
**EDS # 164439**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting the EDS:**

The Conyers Trust Company (Cayman) Limited for IFM Global  
Infrastructure Fund

Enter d/b/a if applicable:

The Disclosing Party submitting this EDS is:

a legal entity currently holding an interest in the Applicant

The Disclosing Party holds an interest in

MAG US Lounge Management LLC and EDS is 164426

**B. Business address of the Disclosing Party:**

Cricket Square, Hutchins Drive  
P.O. Box 2681  
Grand Cayman , KY1-1111  
Cayman Islands

**C. Telephone:**

+442074489609

**Fax:**

**Email:**

shaun.gadher@ifminvestors.com

D. Name of contact person:

Mr. Shaun Gadher

E. Federal Employer Identification No. (if you have one):

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Limited liability company

Is the Disclosing Party incorporated or organized in the State of Illinois?

No

State or foreign country of incorporation or organization:

Cayman Islands

Registered to do business in the State of Illinois as a foreign entity?

No

### B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.2 Does the Disclosing Party have any officers?

Yes

1.a.4 List below the full names and titles of all executive officers of the entity.

**Officer:** Mr. Kevin C Butler

**Title:** Director

**Role:** Officer

-----  
**Officer:** Mr. Craig Fulton

**Title:** Director

**Role:** Officer

-----  
**Officer:** Mr. Alan Dickson

**Title:** Director

**Role:** Officer

-----

## B. CERTIFICATION REGARDING CONTROLLING INTEREST

1.b.1 Are there any individuals who directly or indirectly control the day-to-day management of the Disclosing Party as a general partner, managing member, manager, or other capacity?

No

1.b.3 Are there any legal entities that directly or indirectly control the day-to-day management of the Disclosing Party as a general partner, managing member, manager, or other capacity?

No

### 2. Ownership Information

Please confirm ownership information concerning each person or entity that having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party (your entity). Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Each legal entity below may be required to submit an EDS on its own behalf.

As reported by the Disclosing Party, the immediate owner(s) of the Disclosing Party is/are listed below:

There are no owners with greater than 7.5 percent ownership in the Disclosing Party.

## SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

A. Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?

No

B. Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?

No

D. Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a

financial interest (as defined in Chapter 2-156 of the Municipal Code ("MCC")) in the Disclosing Party?

No

## **SECTION V -- CERTIFICATIONS**

### **A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

No

### **B. FURTHER CERTIFICATIONS**

1. [This certification applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e. an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

I certify the above to be true

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

I certify the above to be true

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics).

I certify the above to be true

5. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

I certify the above to be true

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

I certify the above to be true

11. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law.

None

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies, as defined in MCC Section 2-32-455(b), the Disclosing Party

is not a "financial institution"

## **E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

## **SECTION VII - FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions.



Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

I acknowledge and consent to the above

## **APPENDIX A - FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

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"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all

managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

N/A because the Disclosing Party is neither the Applicant nor has a direct ownership interest

## **APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416??

N/A because the Disclosing party is neither the Applicant nor has a direct ownership interest.

## **ADDITIONAL INFO**

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

The formal name of the Disclosing Party is "The Conyers Trust Company (Cayman) Limited (in its capacity as trustee for IFM Global Infrastructure Fund)". System limitations did not allow changing the name in the system within the allotted timeframe

List of attachments uploaded by vendor

None.

## **CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable appendices, are true, accurate and complete as of the date furnished to the City. Submission of this form constitutes making the oath associated with notarization.

/s/ 07/14/2021

Mr. Shaun Gadher

Commercial Director

The Conyers Trust Company (Cayman) Limited for IFM Global Infrastructure Fund

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.

**EXHIBIT 10**  
**AIRPORT CONCESSIONS PROGRAM**  
**HANDBOOK**

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*

# **AIRPORT CONCESSION PROGRAM HANDBOOK**



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### **CDA UNIT FUNCTIONS**

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.



### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.  
Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.  
Give all new employees airport tours so they are familiar with the airport layout and available services.  
Encourage employees to be polite and courteous.  
Provide necessary employee breaks to discourage eating while on duty.  
Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.  
Supply employees with company identification.  
Obtain CDA security badges for all employees.  
Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages  
Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.  
Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.  
Obtain and post proper instructions regarding health information available from City, State and Federal sources.  
Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.  
A Certified Food Manager must be on-site during food preparation.  
A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only  
Adequate inventory level  
Proper/professional approved signage  
Merchandising  
Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

**CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS**

## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?



### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## Monthly F&B

### Dishwashing Area

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### Documents/Logs

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### Equipment

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### Exterior

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### Interior

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water

- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## APPENDIX 3

### FINANCIAL AUDIT STANDARDS:

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."



### Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### **General Airport Guidelines**

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### **Laws and Ordinances**

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### **Default Notices**

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

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**APPENDIX 6**

**KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905
Yolanda Woodruff Director of Retail Operations	(773) 894-5463
Dorine Litman Property Manager / ORD	(773) 894-3908
Patricia Grzyb Property Manager / MDW	(773) 838-0733
Sungjin Choi Construction and Design Manager	(773) 686-7606

## **APPENDIX 7**

### **RULES AND REGULATIONS:**

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.



**EXHIBIT 11**

**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<b>Infraction</b>	<b>1<sup>st</sup> Violation</b>	<b>2<sup>nd</sup> Violation</b>	<b>3<sup>rd</sup> Violation</b>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

\_\_\_\_ (Initial Here)

**EXHIBIT 12**

**UTILITY USAGE FEE**

**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## **EXHIBIT B-2**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**Prepango LLC**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT**

**CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

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

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]

## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

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

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

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

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

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

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

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE\WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

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

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

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

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

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

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

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

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

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

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

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

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the



Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

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

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

4.1 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

4.2 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43      Products.

(a)      General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)      Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written a written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)      Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44      Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first- class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix 1 of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail



vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

#### 4.7 Operation of Concession.

##### (a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

##### (b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

**No Obligation to Provide Additional Space.** Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

5.5 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

(i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.

(ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending



Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

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

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

#### 6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

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

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

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$ \_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

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

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

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

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

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

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

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

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

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

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

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

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

## ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION

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

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by



the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## ARTICLE 10. SPECIAL CONDITIONS

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

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

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

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

- (i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or
- (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

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

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

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

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

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

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

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

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

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

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

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

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

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

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

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

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

- a. City Council, in its sole discretion, if the Change in Ownership involves

- a 100% Change in Ownership of Licensee, or
- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

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

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

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

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

Transfer over the Fees payable to the City under this Agreement.

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

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

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

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days



of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

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

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

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

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

During the period while this Agreement is executory, Licensee's or any Subcontractor's

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

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

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

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

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

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

(iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

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

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a “business relationship” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A “contractual or other private business dealing” will not include any employment relationship of an official’s spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

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

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

106 Airport Security.

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

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

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

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

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

#### 10.7 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

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

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

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS



10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

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

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

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

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

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

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

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

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

10.12 2014 Hiring Prohibitions.

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

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

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

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

## **ARTICLE 11. GENERAL CONDITIONS**

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

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

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be

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

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

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

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

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

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

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

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

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

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

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

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

11.9 Subordination.

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

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

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

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

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

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

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

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

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

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

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

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

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

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

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



**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**

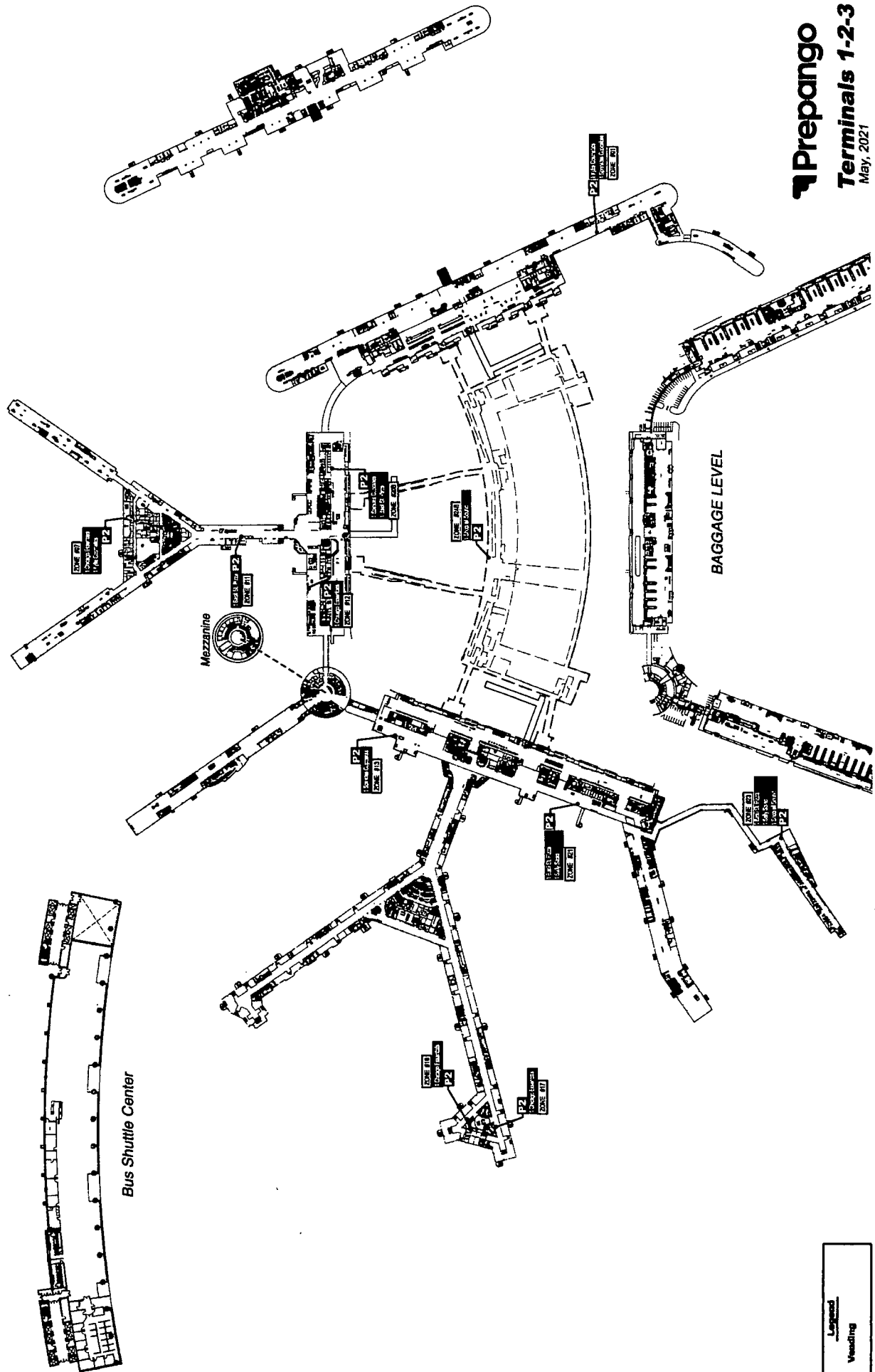
**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**

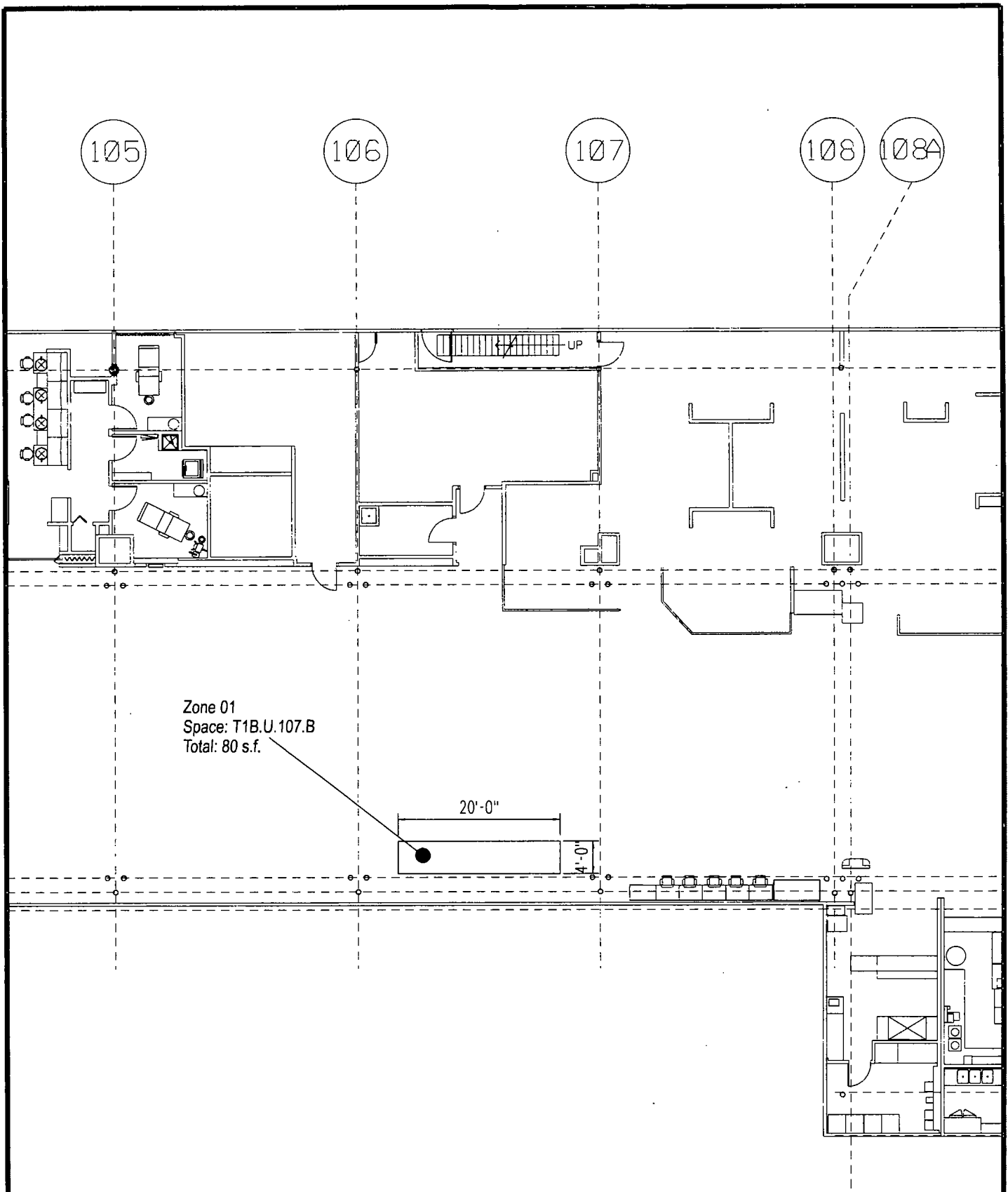
The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	Kylie Cosmetics Sprinkles Cupcakes	T1B.U.107.B
2	n/a	T1B.U.12.B
3	n/a	T1B.U.73.M
4	n/a	T1B.L.94.O
5A	n/a	T1C.T.G.C
5B	n/a	T1B.THH.V
6	n/a	T2E.U.39.A
7	Chicago Essentials Kylie Cosmetics	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	n/a	T2E.U.48.A
10	n/a	T2.L.40.6
11	Basil St. Pizza	T2EF.U.16.D
12	Chicago Essentials	T2.U.45.J
13	Sprinkles Cupcakes	T3.U.8C.D
14	n/a	T3G.U.33.C
15	n/a	T3H.U.30.E
16	Chicago Essentials	T3K.9Ma.A

17	Chicago Essentials	T3K.U.75.L
18A	n/a	T3.L.8Y.C
18B	n/a	T3.L.8Y.C
19	n/a	CTA Pedway
20A	n/a	T2.U.4A.D
20B	Sprinkles Cupcakes Basil St. Pizza	T2.U.4C.E
21	Basil St. Pizza Sally Salad	T3.U.8AA.F
22	n/a	T3HK.U.9R.E
23	Sally Salad Basil St. Pizza Shop all Sound	L Stinger.U.2.3.A
24A	n/a	T2 CTA Pedway
24B	Shop all Sound	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD





Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

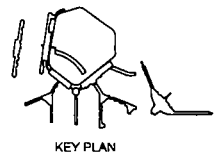
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 1 / Concourse B Upper Level

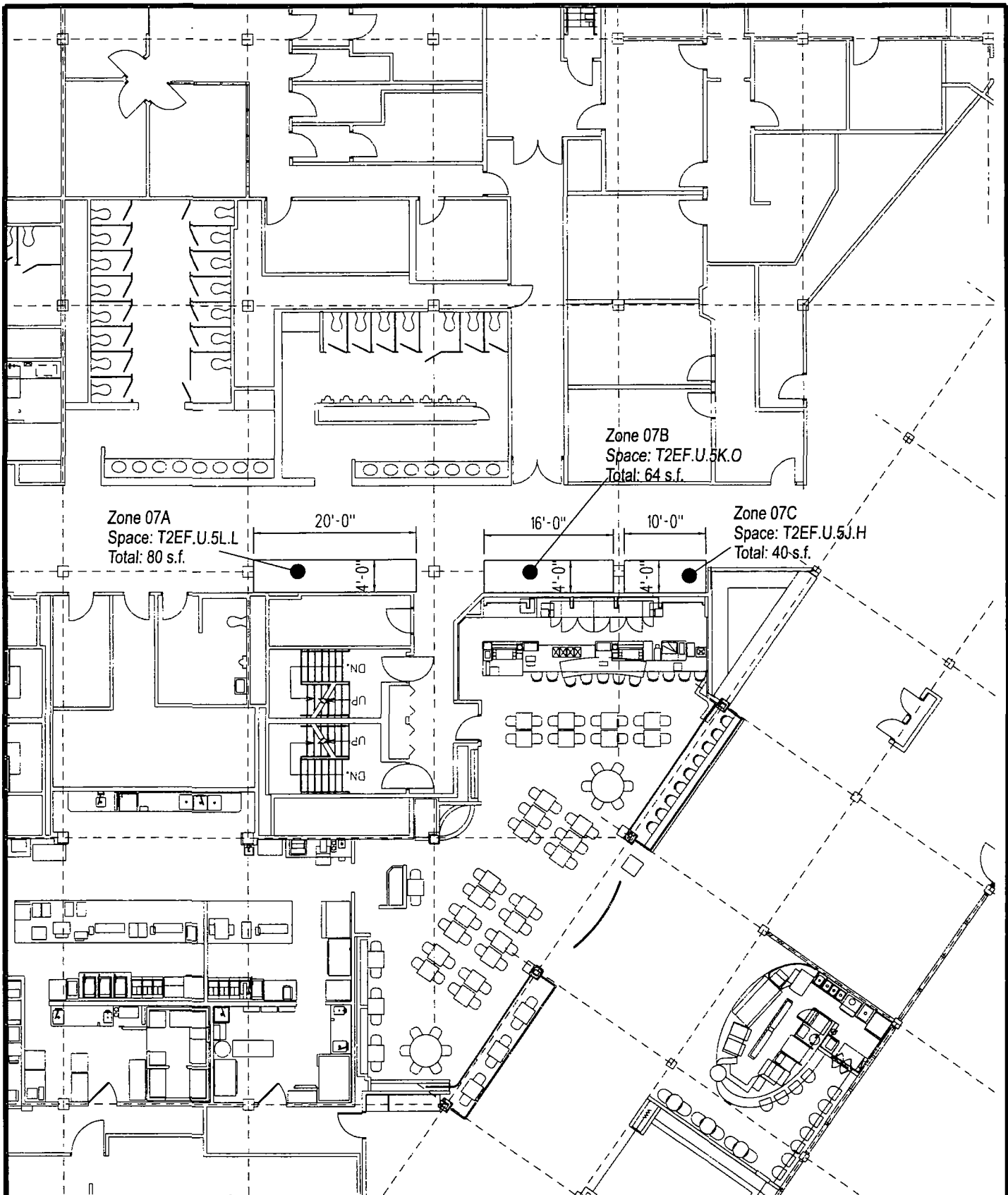
Automated Retail  
Zone # 01 (T1B.U.107.B)

Scale: 1/16" = 1'- 0"



Date: May, 2021

Created by CADDO Services



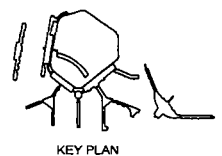
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

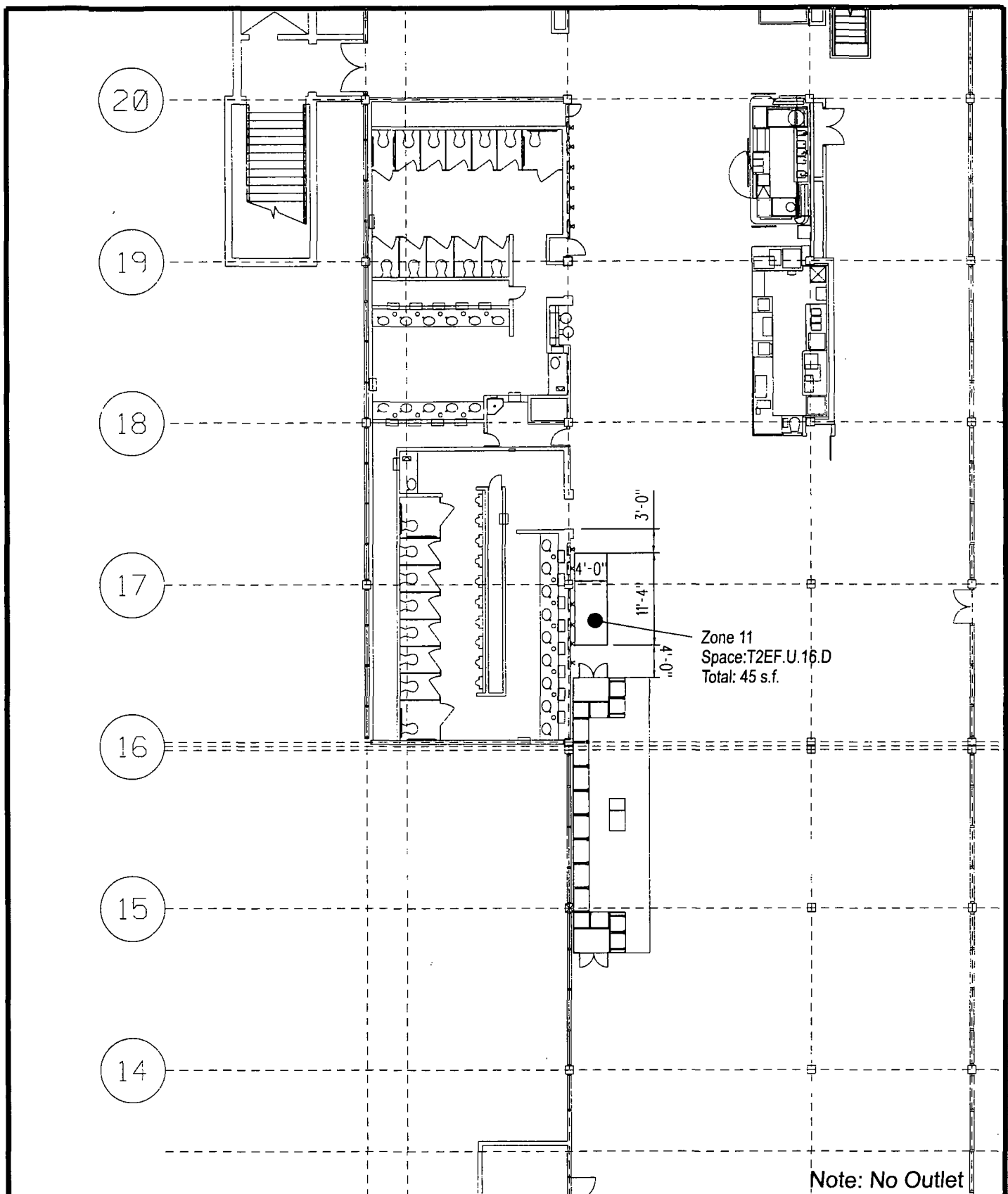
Terminal 2/Concourse EF Upper Level

Automated Retail  
Zone #07 A-B-C  
Space: TEF.U.5L.L  
Total: 184 s.f.



Date: May, 2021

Created by CADD Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

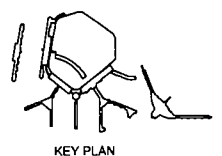
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 / Concourse E/F Upper Level

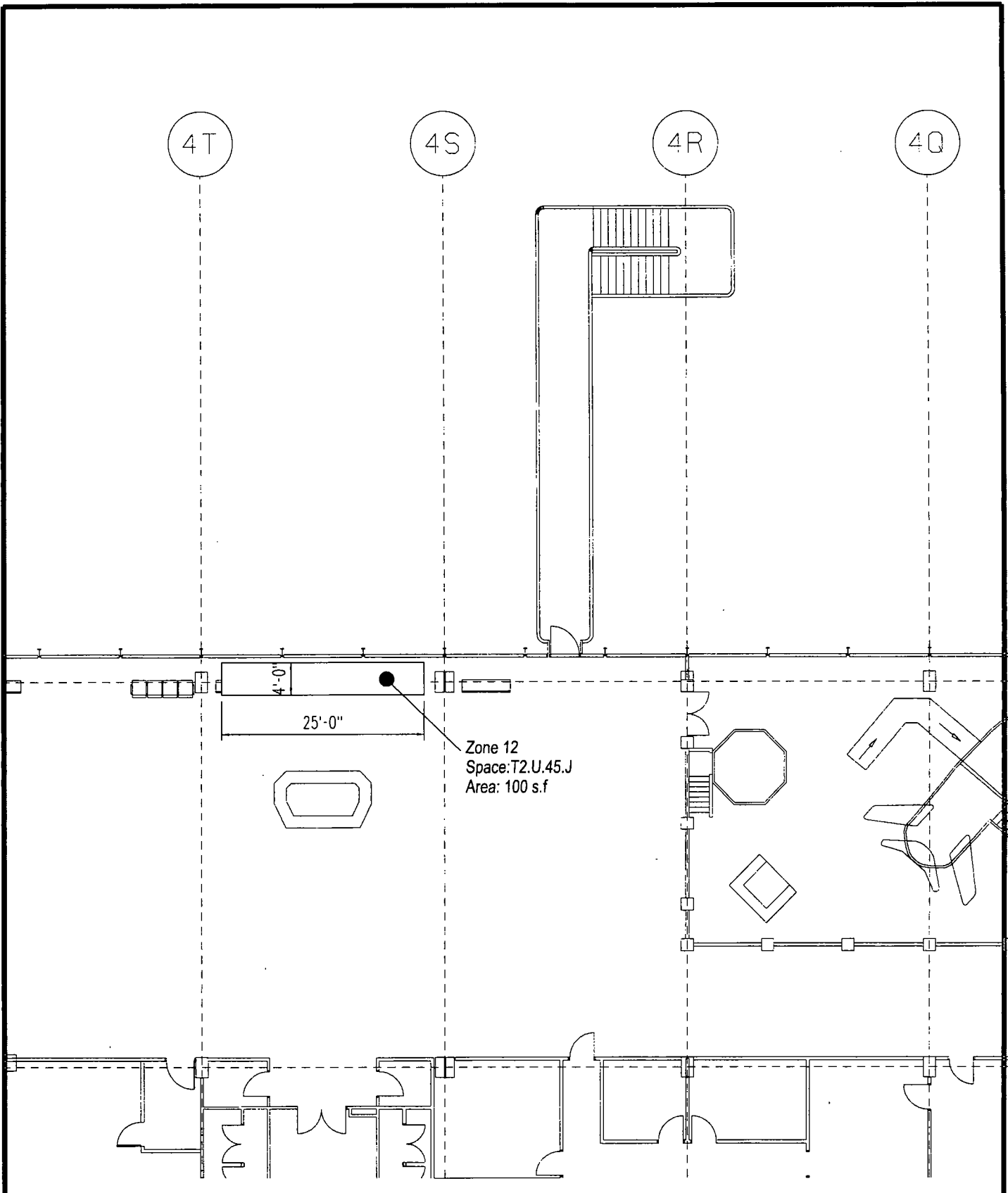
Automated Retail  
Zone #11 (T2EF.U.16.D)

Scale: 1/16" = 1'-0"



Date May, 2021

Created by CADD Services



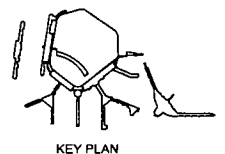
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Terminal 2 Upper Level

Automated Retail  
Zone #12 (T2.U.45.J)

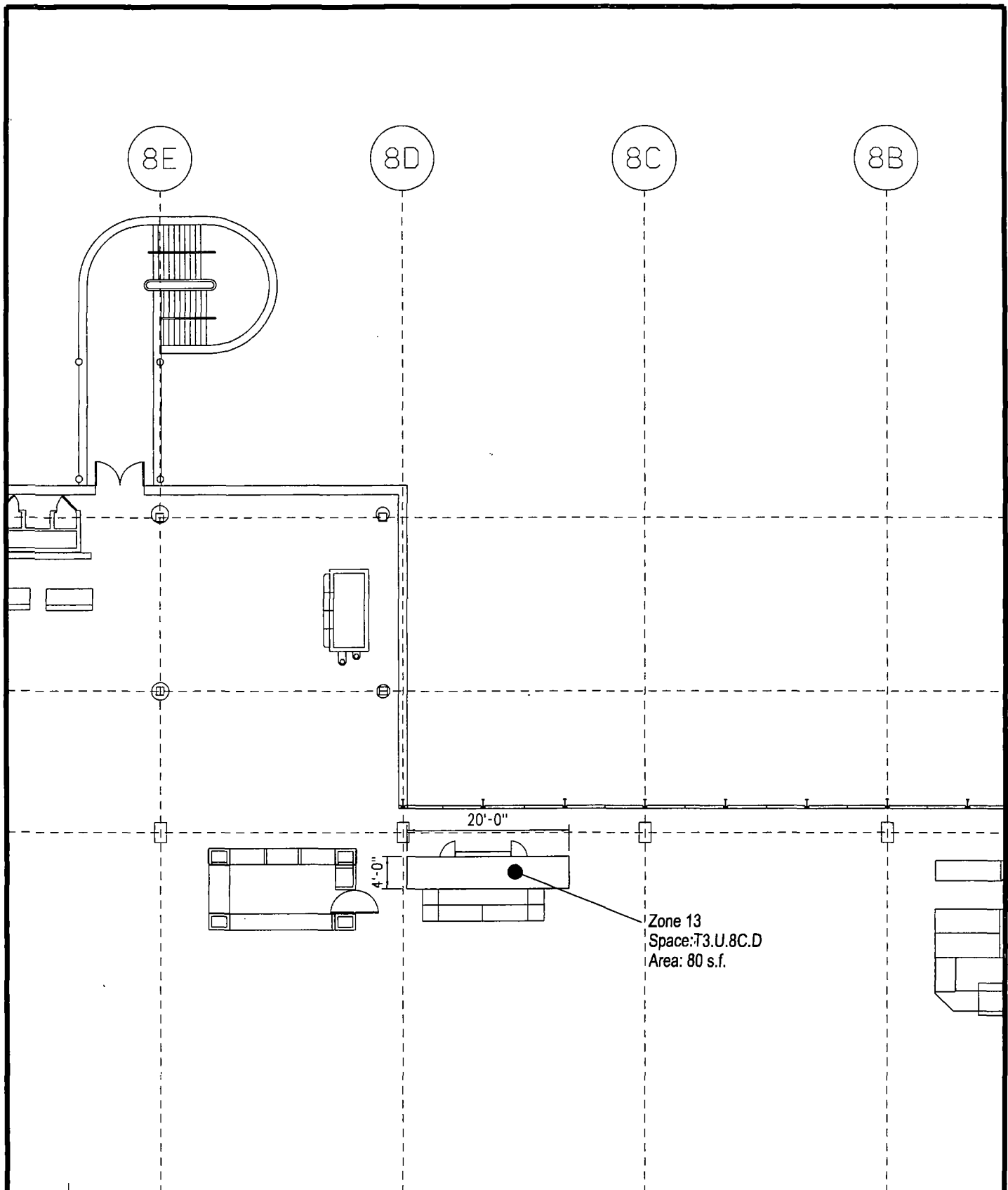
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Date: May, 2021

Created by CAD3 Services





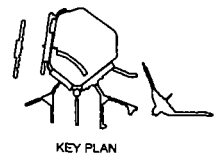
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

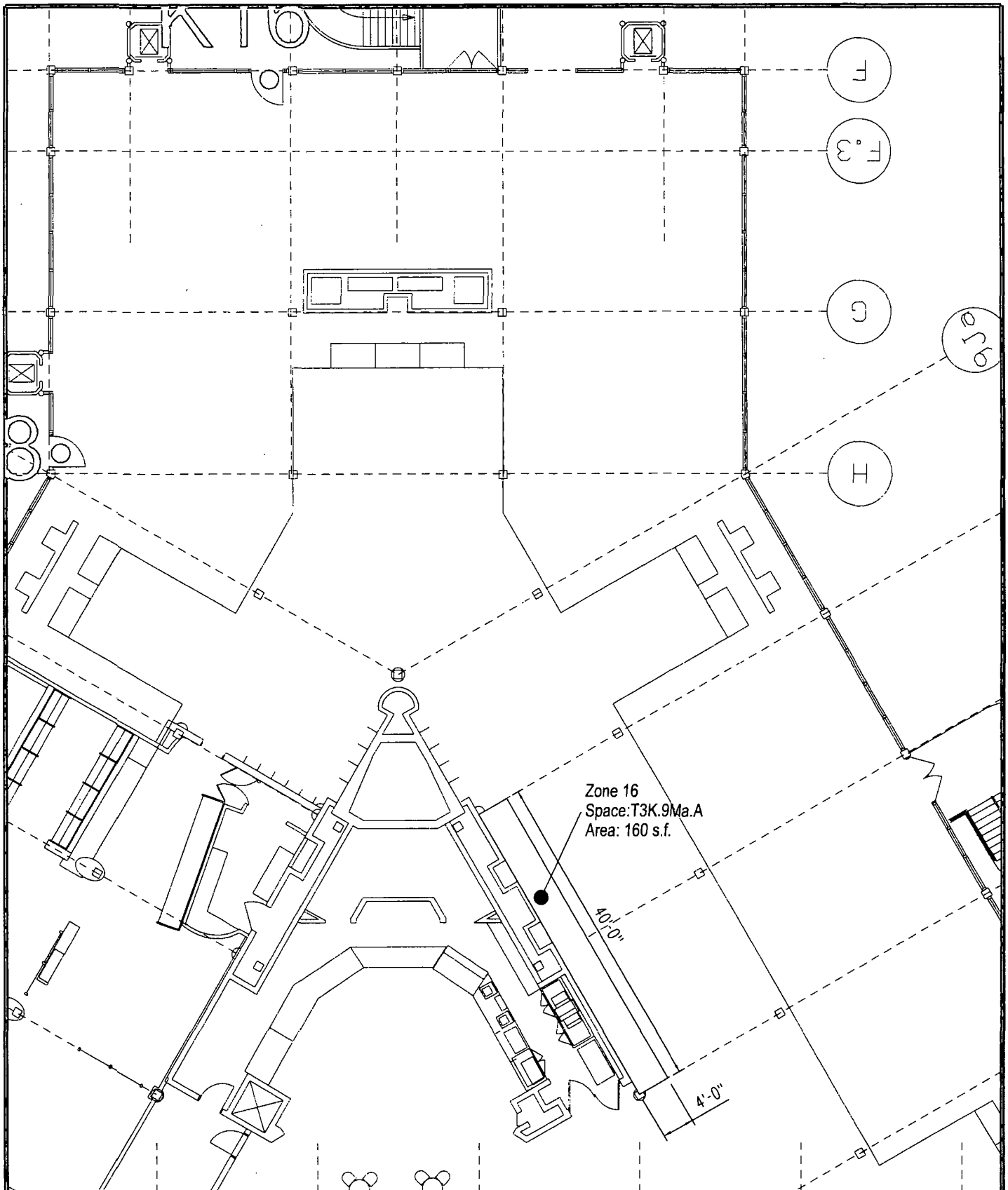
Terminal 3 Upper Level

Automated Retail  
Zone #13 (T3.U.8C.D)



Date: May, 2021

Created by CAD Services



Zone 16  
 Space: T3K.9Ma.A  
 Area: 160 s.f.

40'-0"

4'-0"

Chicago O'Hare International Airport  
 Mayor • Lori Lightfoot

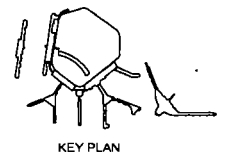
Chicago Department of Aviation  
 Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Scale: 1" = 20'-0"

Terminal 3 / Concourse HK Upper Level

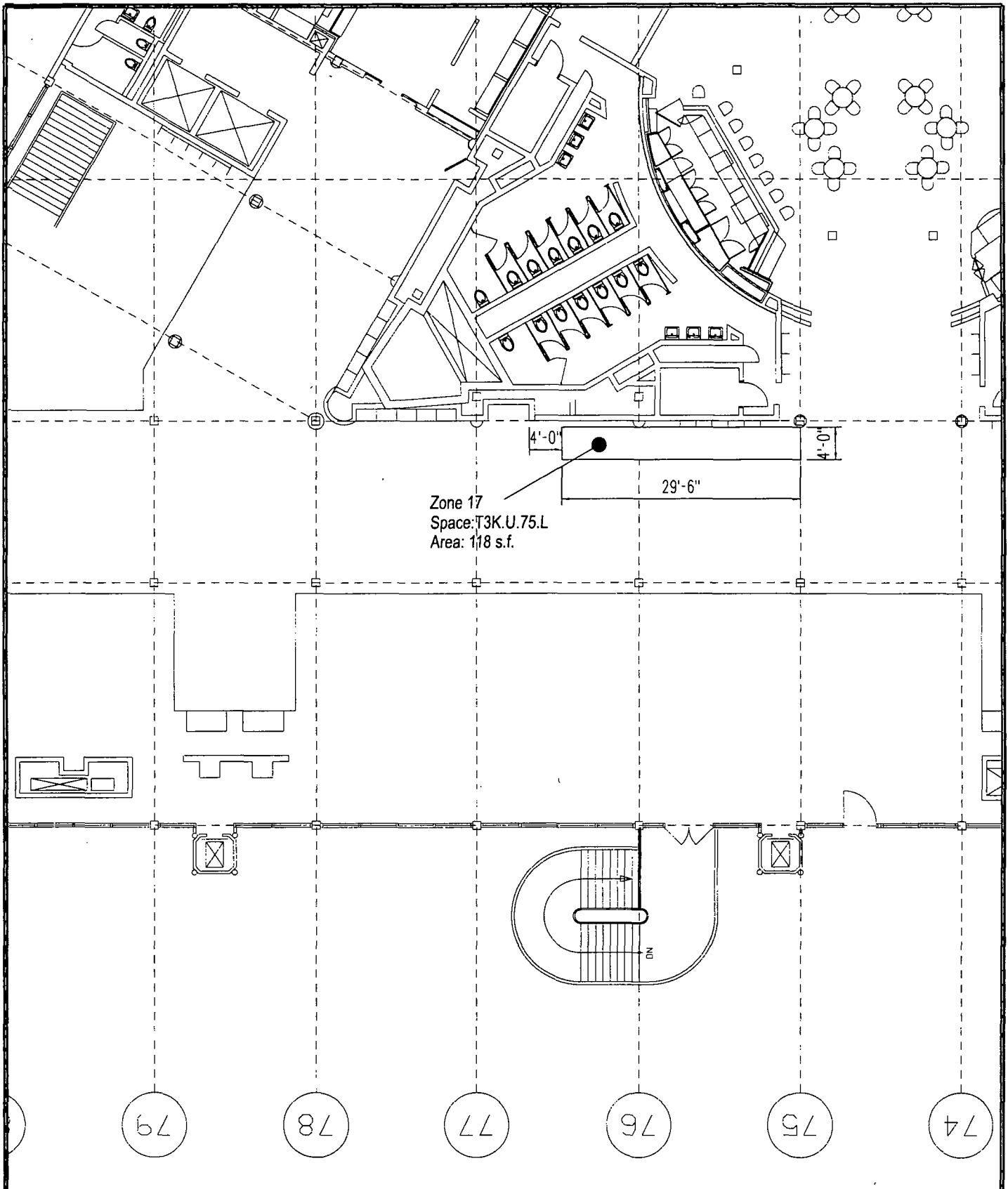
Automated Retail  
 Zone #16 (T3K.9Ma.A)



KEY PLAN

Date: May, 2021

Created by CADD Services



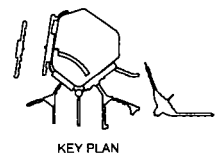
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

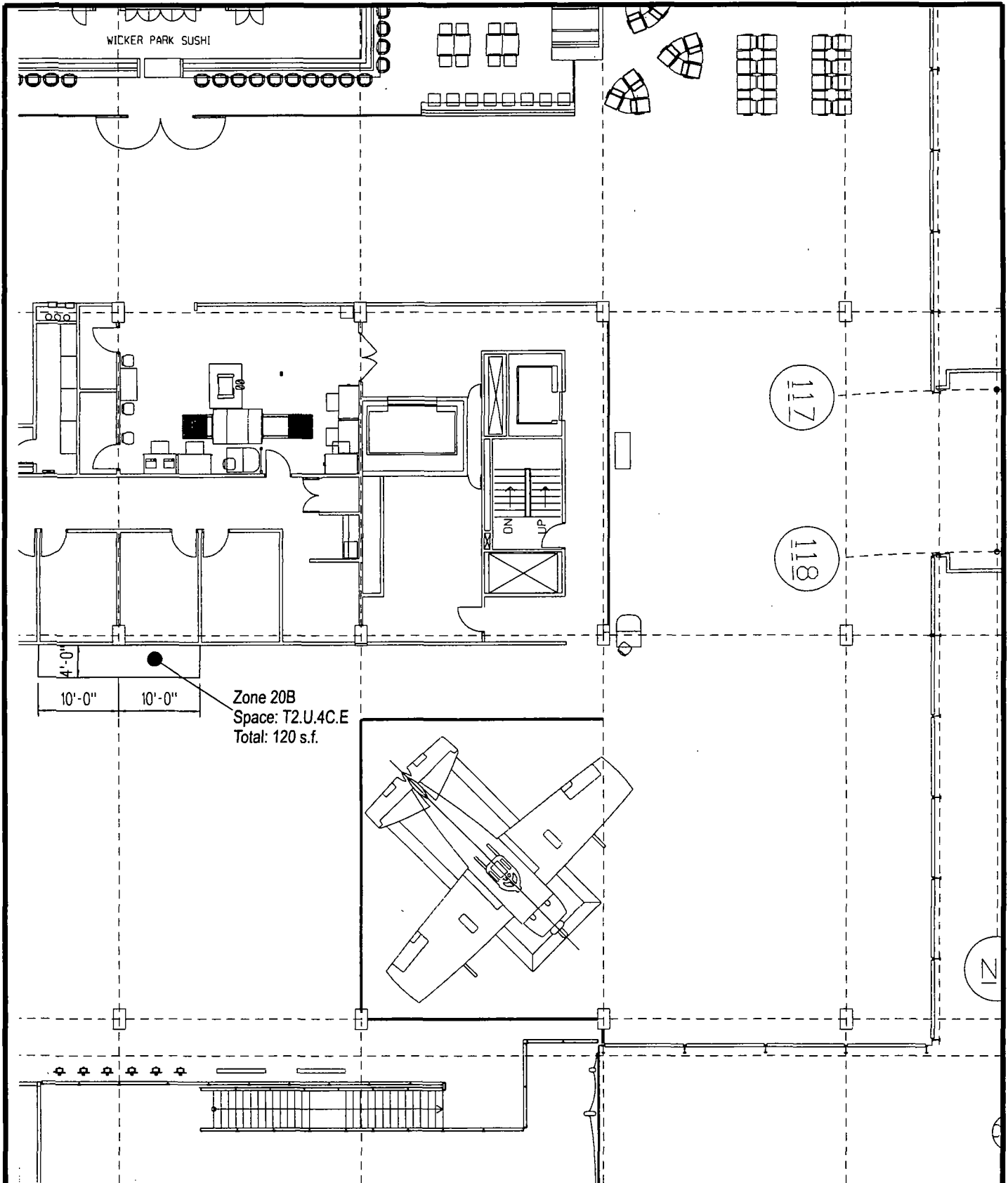
Terminal 3 / Concourse HK Upper Level

Automated Retail  
Zone #17 (T3K.U.75.L)



Date: May, 2021

Created by CAD0 Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

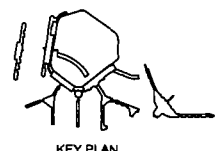
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

Automated Retail  
Zone # 20B (T2.U.4C.E)

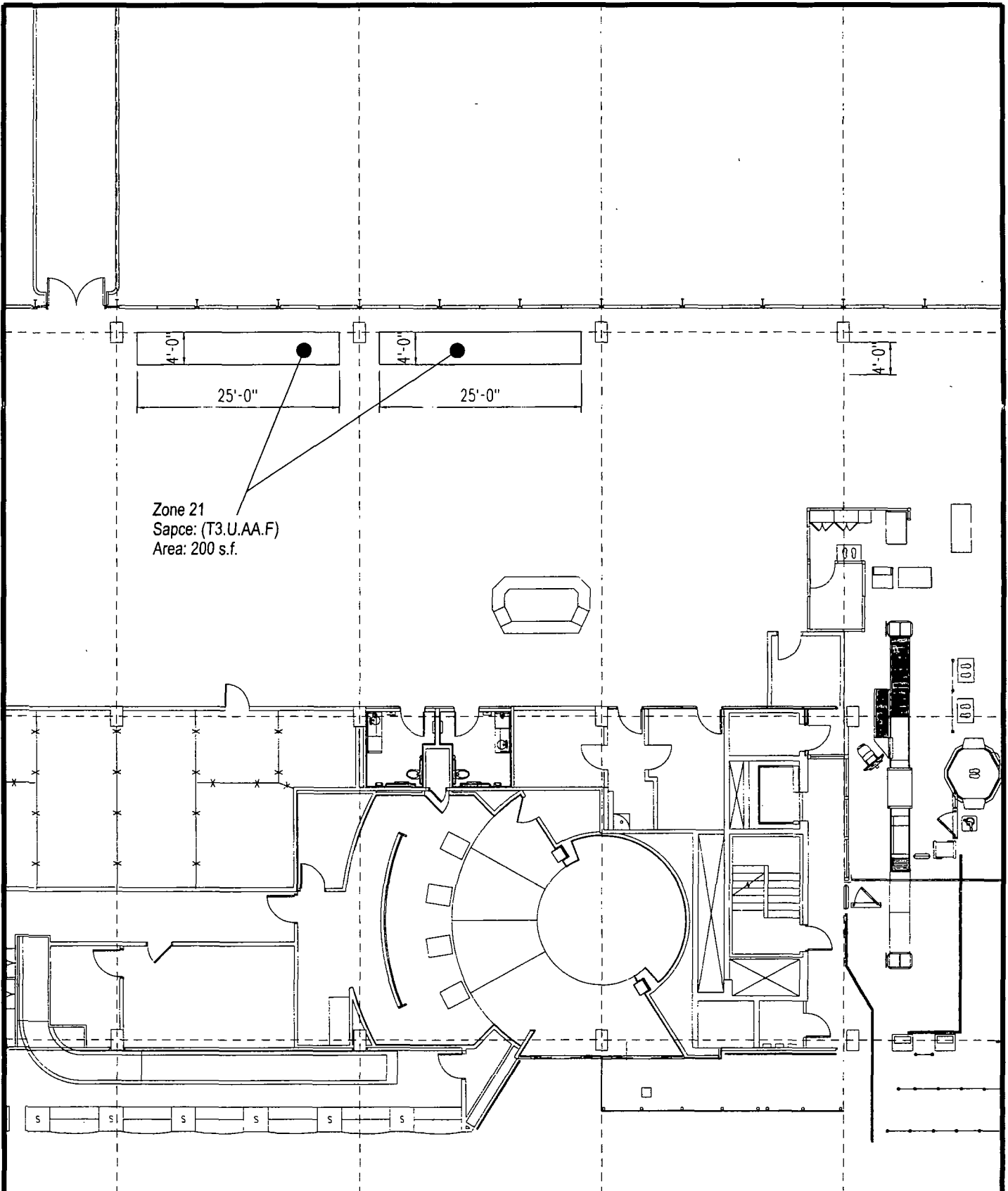
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KEY PLAN

Date: May, 2021

Created by CAD3 Services



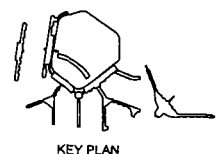
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

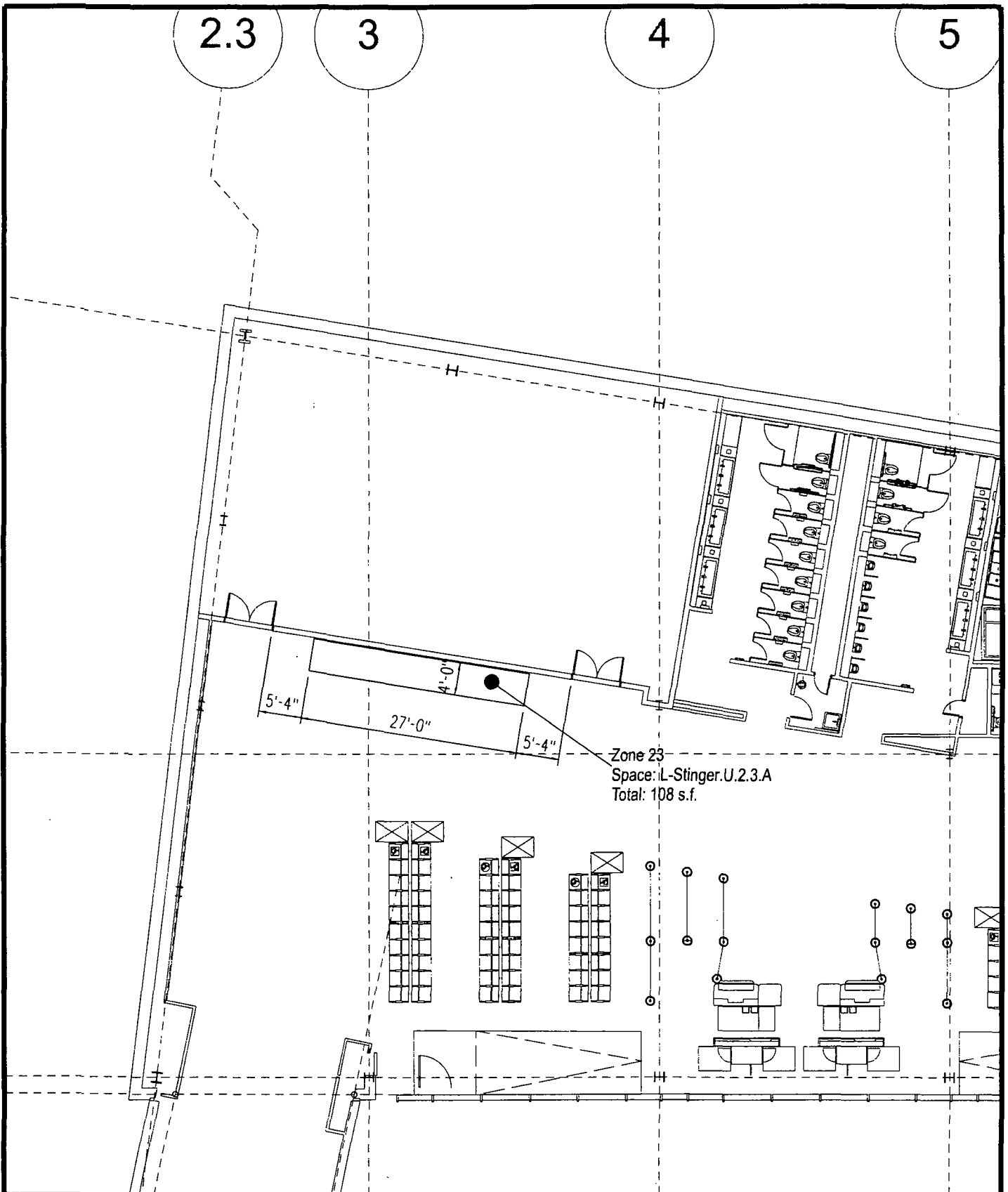
Terminal 3 Upper Level

Automated Retail  
Zone #21 (T3.U.8AA.F)



Date: May, 2021

Created by CAD Services



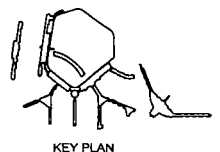
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

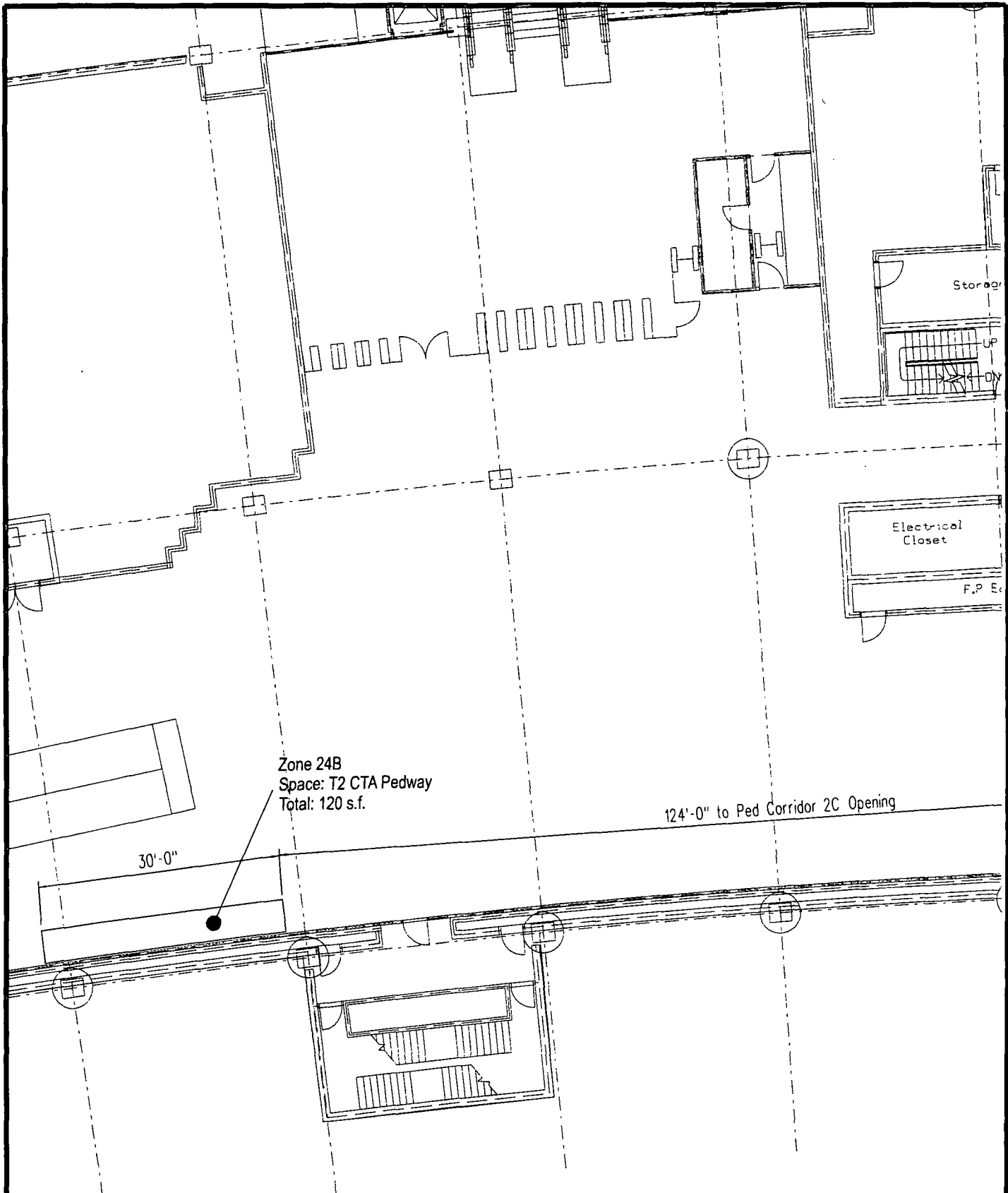
Terminal 3 / L-Stinger Upper Level

Automated Retail  
Location # 23 (L-Stinger.U.2.3.A)



Date: May, 2021

Created by CADD Services



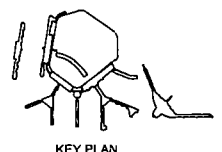
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 CTA Pedestrian Tunnel

Automated Retail  
Zone #24B T2 CTA Pedway



Date: May, 2021

Created by CAD Services

## **EXHIBIT 2**

### **FEES**

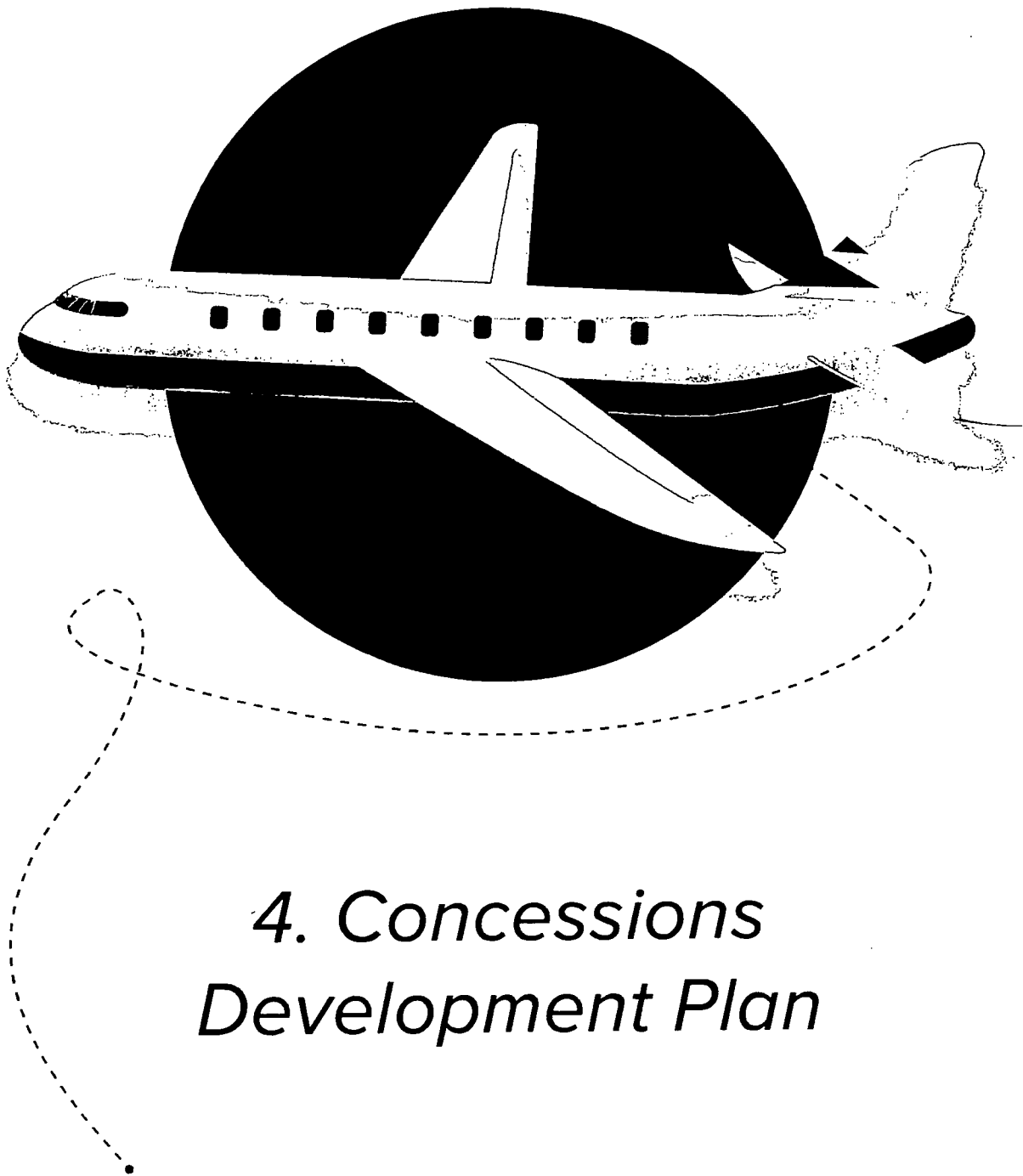


**EXHIBIT 2****FEES****1. Percentage Fee: Prepango**

Concession	Gross Revenues \$0 -\$10,000 per unit per month	Gross Revenues Over \$10,000 per unit per month
Chicago Essentials	20.0%	25.0%
ShopAll Sound	20.0%	22.0%
Vendmobility	20.0%	25.0%
ShopAll Pharmacy	20.0%	20.0%
Lego	16.0%	18.0%
Kylie Cosmetics	14.0%	16.0%
Premium Sound	15.0%	15.0%
Sprinkles Cupcakes	13.5%	15.0%
Gilly Snack & Soda (Beverages)	25.0%	28.0%
Gilly Basil St. Pizza	16.5%	16.5%
Gilly Sally Salad	19.0%	20.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

**EXHIBIT 3**  
**DEVELOPMENT PLAN**



## *4. Concessions Development Plan*



## 1. CONCEPT/SYSTEM AND THEME INCLUDING WHY EACH COMPONENT IS BEST FOR O'HARE

Here is a summary on each of the proposed concepts:

### A. ShopAll Sound

**ShopAll Sound** brings an expansive assortment of earbuds, headphones and mobility related items into the automated retail concept with half of the concept focused exclusively on earbuds/headphones (SOUND) and the other half focused exclusively on Mobility Necessities (mainly phone accessories which quickly become crucial when you are travelling). **The ideal customers** will be those typically traveling on longer flights (i.e., to the Coasts and Internationally) Although based on our experience we expect headphone sales to be the leading revenue generator, having the mobility section will strengthen overall sales and provide products and services to an even wider audience. Given our unique ability to customize the planogram, we'll be able to maximize sales on a per unit basis by bringing more assortment and items of what is needed for the space rather than the other way around (as is today).

**Why our concept and assortment works:** we have learned from our automated retail experience that customers want options. Having options and different price points enables customers to pick and choose the right product for them. This means higher sales and more satisfied customers.

Our SOUND concept is original, unique and flexible. It is comprised of major leading brands as shown in item 2, it also features a distinct opportunity to highlight major global brands to help increase sales and awareness. For O'Hare we are proposing two new Sound variants: SOUND feat BEATS and SOUND feat JBL!

BEATS and JBL are two of the most well-known brand in the headphone space, they are market leaders and while they play at different price point they evoke unrivaled coolness and value, respectively. This will ultimately allow O'Hare travelers access to different assortments and planograms depending on the ShopAll SOUND variant. It also means we'll be able to fine tune the implementation to suit O'Hare passenger mix requirements.

### B1. PREMIUM SOUND feat BEATS

ShopAll Sound featuring Beats by Dr. Dre is a concept created with the idea of offering a vast and high quality variety of earbuds, headphones, mobile accessories that are inherent to the Sound concept but also a new category of the famous premium consumer audio and headphones.

Beats by Dr. Dre are famously known for their advanced acoustic technologies, upgraded ergonomics for optimal comfort and their up to date new features that go along with the latest generation sound technology.

Beats offers both elegant aesthetic and unique sleek fashion that allows all day wear. Beats also offers high quality perfor-

mance that creates an emotive listening experience.

We are confident that Premium Sound featuring Beats will be a great addition to the O'Hare Airport, the collection to be available for passengers will consist of high-performance wireless headphones, earbuds, true wireless and the most loved in airports: Pure Adaptive Noise Cancelling, the brand's new proprietary technology that uses advanced algorithms to continuously monitor, adjust and detects ambient noise. Perfect for travelers!

### B2. PREMIUM SOUND feat JBL

Premium Sound featuring JBL by Harman is a concept created with the idea of offering a vast and high quality variety of earbuds, headphones, mobile accessories that are inherent to the Sound concept but also make available for passengers the world known portfolio of JBL's Signature Sound.

JBL is responsible for creating the amazing sound continues to shape life's most epic moments in the world. From iconic events like concerts at Madison Square Garden, to games at Yankee Stadium and weekend road trips, JBL is always elevating the listeners' experiences with award-winning audio that lets them make the most of every moment.

Our goal is to bring this Superior Sound into a grab and go solution where passengers can enjoy the JBL signature sound portfolio that consists of wireless earbuds (wired and wireless), headphones (wired, wireless and noise cancelling), true wireless and even travel speakers.

We are immensely proud to feature the brand JBL by Harman at our ShopAll Sound concept. With their professional credentials and over 70 years of delivering industry leading innovation we are positive that bringing this concept to O'Hare airport, will ensure music lovers a long-lasting comfort, impeccable sound quality and a stylish design. The perfect addition for a trip!

### C. KYLIE COSMETICS

Kylie Cosmetics by Kylie Jenner is one of the fastest growing beauty brands in the world. Having launched just a few years ago, Kylie Cosmetics was put on the makeup map, by Kylie's infamous "Lip Kit," consisting of a matching liquid lipstick and lip liner to create the perfect Kylie pout. Kylie's never-before-seen concept disrupted the market and changed the face of the beauty industry forever. Kylie has since gone on to expand the collection into a full range of color cosmetics, including eye-shadow palettes, concealers, highlighters, blushes, accessories and more, as well as becoming one of the most renowned and coveted cosmetics brands of 2020.

The Kylie Cosmetics automated retailer machine concept, developed by Prepango, enables travelers to pick up her famed Kylie Lip Kit, plus other seasonal and special edition products ranging from Lip Kits, to eye palettes and make up, in a unique buying format that stands out.

The results so far have been beyond strong and this might

just be the strongest automated retail concept worldwide. Our forecasted sales are based off our experience in Las Vegas with the concept, where it has been extremely well received and has generated a lot of buzz with the airport and city, especially every time Kylie posts pictures or includes her machine concept in her social media feeds. Kylie's first post of the Kylie Cosmetics machine has surpassed 3.4 million likes on Instagram! (See Figure 1.C.)

Prepango expects this will be extremely successful in Chicago. We are frequently contacted by future travelers who want to know where they can find the units so they can prepare in advance!

#### **D. LEGO**

The LEGO automated retail concept enables parents and kids to pick up unique toys and seasonal products, in a fun purchase format that brings the best of the brand to high traffic locations. The concept includes a wide assortment of toys for kids (and grownups) starting as young as 1.5 years and has many Lego themes and collaborations, plus a wide variety of box sizes and an ample price range starting at only \$9.99!

We believe this will be a well-suited concept for the airport and especially since we expect to be located in specific gates post security where the toy assortment is more limited than pre-security.

We have learned thru the years in our vending and retail experience that customers want options, and the more the better. Having options and different price points enables customers to pick and choose the right product for them. This means higher sales and more satisfied customers. We achieve this in LEGO by expanding the concept to an entire automated LEGO shop with a wide assortment of products and price points.

#### **E. Sprinkles**

Sprinkles opened its first bakery in Beverly Hills in 2005, drawing long lines of loyal cupcake fans and celebrity endorsements. Today, the company has grown to 36 locations from coast-to-coast.

On March 6, 2012, Sprinkles Cupcakes opened the world's first Cupcake ATM in Beverly Hills. The second opened a few months later in Chicago. The Cupcake ATMs dispense cupcakes and doggie cupcakes 24 hours a day and are continuously restocked with freshly baked cupcakes.

Sprinkles evokes the memory of European bakeries flooded with the smell of baked goods and awash in natural light. The pure material palette speaks to the quality of the ingredients while signature design elements reflect the playfulness and joy of the Sprinkles experience.

The Sprinkles automated retail machine concept, developed by Prepango, enables travelers to pick up the famous and delicious Sprinkles cupcakes. The concept has exceeded our expectations and the sales results in other locations have gener-

ated firm confidence that the project will be functional for the O'Hare Airport.

#### **F. Chicago Essentials +**

This is a unique to O'Hare concept we are proposing where we can bring those quick, impulse, most sought after buys from a vending format. Chicago Essentials is a vending concept designed to ease passenger travel anxiety, including in a COVID-19 world by providing them with everything they need to travel as safely as possible. This concept will dispense everything from a wide assortment of Personal Protection Equipment (PPE), from sanitizing gels in multiple sizes, cleaning wipes, a wide assortment of face masks, to top selling Over the Counter (pharmacy) items, to must-haves before boarding mobile accessories ranging from cables to adaptors, batteries and more!

Having this concept at a high traffic public location increases confidence on visitors. Due to COVID-19 perhaps the world will never be the same again, so going forward we expect people will be looking for products to make their travels safer, cleaner, and more convenient.

#### **G. ShopAll Pharmacy**

This unique and great looking concept will alleviate the traveler's needs and make for an overall more pleasant flying experience. The pharmacy concept offers a HUGE assortment of much-needed over-the-counter medications. While many newsstands offer some of these items, this unparalleled assortment generates a better experience and substantially higher sales because of the large quantity of options in brand, remedies, and sizes. Often, passengers will buy from the concept just in case they need it later in their trip, as well as often forgotten or left at home items.

ShopAll Pharmacy's goal is to provide a 24-hour automated pharmacy offering top-brand Over The Counter (OTC) products for travelers on the go. The units offer a variety of popular products to help relieve common aches that may come up while traveling. ShopAll Pharmacy offers a grab and go concept that satisfies personal wellness and hygiene necessities. ShopAll Pharmacy offers a fast solution with a wide assortment of products to overcome an immediate emergency. The variety of products include medication sold without prescription such as branded pain relief products, children's health products, a wide assortment of allergy remedies, digestive health, feminine care, overall wellness and more.

#### **H. VendMobility**

This proven concept is focused on a 50%/50% model of earbuds and headphones being the first half and the other half being the mobility-related items. The main focus of a VendMobility unit is to offer a wide assortment of much-needed electronic travel essentials such as earbuds, power banks, chargers and adapters in a small footprint unit that works in those spaces where the space is limited.

Our VendMobility unit features a sleek style vending machine with very bright LED lighting that merchandises product effectively. VendMobility large units have a 10-inch touch screen that displays in a simple and friendly way prices, products and images for the customer convenience. This large VendMobility unit has the capability of displaying up to 40 selections.

Thanks to its standard look it provides an easy grab and go solution for spaces where the space is also limited and a grab and go solution is needed while traveling. This concept is known for selling entry to premium brands

**I. APK –Basil Street Pizza**

Basil Street Pizza is another innovative concept, it's an autonomous pizza baking machine that cooks a thin crust brick-oven style 10" pizza in less than 3 minutes. Because of its nature, it reduces exposure and risk with touchless baking and contactless payment options! The coolness factor is off the charts! Even though it is a robotic vending machine the pizzas have a fresh out of the oven taste. The unit features a 42" digital display for ads and menu display. The unit stores the product at low temperatures in its freezer then positions each pizza pie on a three element non-microwave speed oven, the end product is guaranteed to be healthier, safer and delicious.

**J. Sally Salad**









Starting with Sally, the world's first salad robot, we're building a










more hygienic path to fresh food. Sally uses groundbreaking robotics to assemble delicious meals from ingredients that are contained and protected. It's innovative technology that enables safe fresh food for more people in more places. Fill Sally with up to 22 of your best ingredients to deliver customizable salads, grain bowls, breakfast bowls, and snacks in just 90 seconds, any time of day. Sally Enables smarter food choices by providing full nutritional information including calories, carbs, fiber, fat, and protein that update with every custom choice. Within her small footprint of 3 feet by 3 feet Sally is the most efficient and only customizable option that will provide premier options to ORD travelers and employees. No meal prep, no crazy lunch bills, no hassle. It's the start of an era where fresh food is always accessible, no matter the shoes you walk in or where they take you.

**K. Gilly Snack & Beverage**






Gilly Vending's award-winning snack & beverage concepts are inspired by the highest quality equipment manufacturers in the USA. Our energy efficient machines are fully accessorized with all cashless acceptance, digital and interactive touchscreens, guaranteed delivery system, and cutting-edge real-time routing technology. Gilly is known for its wide variety of multicultural product lines from around the world. And wellness options selected by nutritionists. Our passion for superior quality and performance will include custom graphics and enclosures.

**2. PROPOSED MENU OF SERVICES AND PRODUCTS AND THE APPROXIMATE PRICE RANGE FOR EACH CATEGORY.**  
**ShopAll SOUND** Concept covers the following categories

Category	Price Range
 Premium Brand True Wireless	\$159-\$249
 Premium Brand BT Headphones	\$199-399
 Premium Brand Noise Cancelling	\$199-\$349
 Earbuds Wired	\$20-\$40
 Earbuds Wireless	\$30-\$50
 Headphones Wired	\$30-\$80
 Headphones Wireless	\$50-\$150
 Noise Cancelling Earbuds	\$110

Category	Price Range
 Noise Cancelling Headphones	\$110-\$130
 True Wireless earbuds	\$40-\$160
 Sport True Wireless	\$30-\$160
 Sport Earbuds	\$20-\$50
 Kids Headphones	\$20-\$30
 Travel Necessities	\$15-\$40
 Cables and Adapters	\$15-\$30
 Communication	\$20
 Power & Charging	\$20-\$60

**KYLIE COSMETICS** Proposed menu of products and the approximate price range for each category.

Category	Product	Price Range
	Lips Lip Kits	\$29
	Eyes Palettes	\$42 - \$48
	Face Illuminating/Blush	\$18 -\$26
	Bundles & Sets Try it Kit	\$49
	Accessories Makeup Bag	\$32

**SPRINKLES** Proposed menu of products and the approximate price range for each category





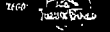




CATEGORY	PRICE RANGE
	Red Velvet \$4.99
	Dark Chocolate \$4.99
	Sprinkle \$4.99
	Vanilla \$4.99
	Black and White \$4.99
	Strawberry \$4.99

**SNACK & SODA** Proposed menu of products and the approximate price range for each category.









Category	Product	Price Range
	Snacks Small Serve Chips	\$1.50-\$1.75
	Snacks Large Serve Chips	\$2.00-\$2.25
	Snacks Crackers & Cereal Bars	\$2.00-\$2.25
	Snacks Chocolates and Candies	\$2.50-\$3.00
	Snacks Premium Cookies & Pastries	\$2.50-\$3.00
	Snacks Gums & Mints	\$2.50-\$5.00
	Snacks Premium All Natural Organic Chips	\$3.00-\$4.00
	Snacks Premium All Natural Organic Cookies	\$4.00-\$5.00
	Snacks Chocolates and Candies (Family Size)	\$5.00-\$6.00
	Snacks Premium Bars (Protein, Gluten Free, Vegan, Kosher, Non GMO)	\$4.00-\$6.00

Category	Product	Price Range
	Beverages Soft Drinks 12oz Cans	\$1.50-\$2.00
	Beverages Water and Soft Drinks 20oz Bottles	\$1.50-\$2.00
	Beverages 15oz Juices and 20oz Bottles	\$3.00-\$3.50
	Beverages 20oz Vitamin Waters and Specialty Teas	\$3.00-\$4.00
	Beverages All Natural & Organic Healthy Juices and Other Drinks	\$4.00-\$5.00
	Beverages Energy Drinks, Premium and Alternative Drinks	\$4.00-\$5.00

**LEGO** Proposed menu of products and the approximate price range for each category

	Category	Product	Price Range
	Architecture	Paris, Trafalgar Square, London, San Francisco,	\$39.99 - \$79.99
	Disney	Anna's Canoe Expedition, Storybook Adventures (Belle's, Ariel's, Mulan's, Anna And Elsa's) Moana's Island Home, Mulan's Training Grounds...	\$19.99- \$29.99
	Duplo	Plane, Police Bike	\$9.99
	Harry Potter	The Rise of Voldemort ..	\$19.99
	Jurassic Park	Dilophosaurus on the Loose ..	\$19.99
	Speed Champions	Ferrari F40 Competizione, Chevrolet Camaro ZL1 Race Car, McLaren Senna, 1974 Porsche 911 Turbo 3.0 ..	\$14.99 - \$29.99
	Star Wars	Obi-Wan's Hut, Luke Skywalker's Landspeeder, Mandalorian Battle Pack, Black Ace TIE Interceptor, ..	\$14.99 - \$49.99
	Super Heroes	Batmobile: Pursuit of The Joker, Captain America:	\$19.99 - \$29.99
	Ninjago	Gamer's Market, ..	\$29.99

**ShopAll Pharmacy** Proposed menu of products and the approximate price range for each category

	Category	Product	Price Range
	Feel Better	Tylenol, Advil, Mucinex, Robitussin, Dayquil, Nyquil, ...	\$8 - \$13
	Essentials	Desinfecting Wipes, Hand Sanitizer, Sunscreen, ..	\$4.50- \$8
	Stomach Aid	Pepto Bismol, Gas X, Ex-Lax, Tums ..	\$7 -\$10
	Children	Huggies Wipes, Tylenol Infants, Advil Junior, Dramamine Children, Robitussin Children,...	\$3 -\$12
	First Aid	Neosporin, Band Aid, Cortizone 10, Alka Seltzer	\$6 - \$10
	Personal Care	Deodorant, Toothpaste, Toothbrush, Hair Spray, ..	\$4 - \$9
	Travel Basics	Airborne, EmergenC, Clear Eyes, ZZZquil, Lip Balm, ..	\$5 - \$13
	Intimate	Tampax, Always, Midol, Trojan Condom	\$5 - \$9



**SALLY SALADS** Proposed menu of products and the approximate price range for each category

Category	Product	Price Range
Chef Inspired Dishes	• Vegetarian Fiesta Taco Bowl	\$11.99
	• Mediterranean Grain Bowl	
	• Sally's Chicken Caesar Salad	
	• Casey's Chopped Salad	
	• Casey's Chef Salad	
	• Sally's Spinach	
Custom Made	Basic green salad with up to 2 toppings, 6 ingredients	\$8.99-\$11.99

### 3. SOURCES OF MERCHANDISE, PRODUCTS, AND SUPPLIES

Prepango sources its products directly from the associated brand and/or authorized brand distributors. We have developed a strong network of partners in all our categories that has allowed us to bring a wide variety of products.

We are in constant communication with Brand managers and distributors for updates and information on top new merchandise so that our catalogue stays current. Our team also keeps up to date on new technology on the market with the focus on fulfilling the customer needs and providing a great and full experience. For brand specific concepts, such as BEATS, JBL, KYLIE COSMETICS, KYLIE SKIN, and LEGO: we directly pick up the inventory at the manufacturer's factory or warehouse.

For Sprinkles, Sprinkles Chicago bakery is located at 50 East Walton Street, Chicago, IL, 60611, just 18 miles away from the O'Hare Airport. On daily basis our operator will pick up fresh baked cupcakes to stock our machines. The proximity to the Sprinkles bakery allows us to react quickly to any need that arises, including inventory, packaging, or promotional materials.

#### For Gilly Vending Concepts:

Casey Creations, LLC will source, produce and deliver all items locally from their Ghost Kitchen partner+ near ORD for Sally Salads. They will also be responsible for maintenance, cleaning and supplies for the units. To maintain low costs and support the local businesses in Chicago, Basil Street Pizza will make use of a local commissary kitchen and distribution center. For the Snack and Beverage concept, Gilly Vending has partnered with world-known brands that customers know and trust. This makes possible to have a secure and strong distribution capability. Some Gilly Vending strongest partners are Vistar, PFG, Unifi, US Foods, EA Sween.

### 4. NARRATIVE DESCRIPTION OF THE PROPOSED CAPITAL IMPROVEMENTS.

All the equipment to be deployed at Chicago O'Hare, including the units provided by Gilly Vending ACDBE, will be new equipment. The purchase and deployment of our equipment will be our primary capital investment. For some locations, if awarded,

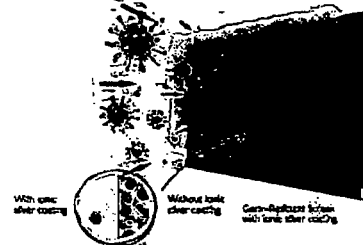
**BASIL STREET PIZZA** Proposed menu of products and the approximate price range for each category.

Category	Product	Price Range
Pizza	Cheese Pepperoni Meat Lovers	\$12.00-\$14.00

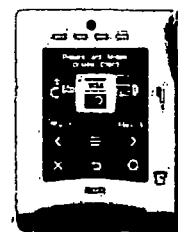
we may be required to bring electricity and from experience we know that will also be a significant capital improvement. For selected location, a major capital improvement will be bringing electrical to locations that need it. We have budgeted \$80,000 for this improvement alone. In the case of BASIL STREET Pizza, that unit will require a 220V connection which will require electrical upgrade which we are budgeting at \$5000-\$10,000.

Each unit is custom wrapped with a header to cover and enhance the look of the exterior. This Vinyl wrap is strong, durable, abrasion and moisture resistant; withstands rust and corrosion; is electrically non-conductive and has excellent fire performance properties. It is high quality and eye-catching thanks to the bright colors. The frontal side of ShopAll Retail (large units) have a 22" Monitor touch screen with 1920x1080 pixels resolution where customers can navigate through the categories, review product descriptions, pictures and even watch videos of the perfect product they are looking for.

We are fully committed to do all we can to keep our customers safe and healthy. As such, we will invest and place antibacterial film on the touch screen to reduce and prevent the formation of bacteria and germs. This protective film is made of silver ions that are highly reactive and affect multiple sites in bacterial cells, guaranteeing their destruction. This film protects 24h a day, 7 days a week. It inhibits the development of 99.99% of the germs tested and prevents the formation of biofilm.



To ensure a safe experience while using our units, we have invested in intelligent point of sale terminals that work with regular credit and debit cards, but also NFC Contactless payment options. The contactless terminal also accepts mobile payment apps including Google Pay, Apple Pay, Samsung Pay, MobilePay, Paytm, Swish and many more!



## 5. NARRATIVE DESCRIPTION OF THE RESPONDENT'S SUSTAINABILITY INITIATIVES INCORPORATED IN THE DESIGN AND CONSTRUCTION OF THE PROPOSED TENANT IMPROVEMENTS.

- We will use a hybrid vehicle as a way of transportation between terminals and inventory pickups. In this way, we will reduce the emission of polluting gases and contribute to caring for the environment and the people's health.
- We consider a priority to do business with those brands who follow sustainable practices.
- For example, JBL by Harman is continuously working efforts to reduce carbon emissions, conserve and protect water supplies, curb energy usage and lower the amount of waste. They also encourage recycling practices and are continuously providing information on environmental protection.
- Our ShopAll units are nicely illuminated by LED lights that are extremely energy efficient and long-lasting. LED lights contain no toxic elements and are 100% recyclable. The use of LED lighting will allow us to consume less energy. The LED lights contain no toxic materials, are 100% recyclable and will help to reduce the emission of carbon footprint
- The antibacterial film being used to protect our monitor touchscreens are biological and do not contaminate the

environment. They are long lasting (up to 5 years) and are recyclable.

- Our partner brands, Kylie Cosmetics does not test on animals and that they work closely with their suppliers to ensure their ingredients are not tested on animals. They do offer some vegan options and all their products are gluten and paraben free
- Our ACDBE Subtenant, Gilly Vending, uses state-of-the-art equipment and technology that is energy efficient and environmentally sustainable resulting in lower energy costs.
- For the Snack and Beverage concept Gilly Vending is predominantly partnering with many snack foods companies that have succeeded in reducing the amount of packaging by reducing its size and thickness. Sally Salads and Basil Street are a great example of a Sustainable Food Practices that deliver excellent quality in a cost-effective manufacturing environment. Some other sustainable initiative includes supporting their local producers and distributors, reducing food waste (comparing to man-operated businesses) and constantly looking for sustainable packaging solutions.

## 6. FOR AUTOMATED RETAIL, SERVICES AND FOOD MACHINES AND/OR KIOSKS, A DESCRIPTION OF THE KIOSK, ITS SPECIFICATIONS AND BRANDED PRODUCT OFFERINGS.

### A. Description of the kiosk

#### a. Prepango "Big Store" Automated Retailer

- The Big Store is equipped with a Robotic Product Carrier system that transports the product from the kiosk display cabinet to the dispensing door
- Patented interlocking partitions to separate products that are next to one another. Complete control of specific lanes so you may dispense more than one size. 14 lanes at 3" per lane per Floor
- Maximum dispensing reliability thanks to the Magex sensors system on the Carrier which recognizes the product entering and exiting the kiosk display cabinet floor and the dispensing door.
- Maximum capacity of up to 2240 products (minimum package dimensions) with its maximum floor configuration – 8 Floors
- Changing package sizes and planograms are easily done through software controls, no need to physically remove and replace lanes, minimizing operational expenses.
- Operations management enables complete control of real time status and performance of the machines.

#### b. Prepango "Easy Series" 9 and 14 Automated Retailer

**Zero Drop** – From Shelf (floor) to Gate: Elegant Delivery

with out a drop.

- Patented interlocking partitions to separate products that are next to one another. Complete control of specific lanes so you may dispense more than one size.
- Maximum dispensing reliability thanks to the sensors system on the Carrier which recognizes the product entering and exiting the kiosk display cabinet floor and the dispensing door.
- Maximum capacity of up to 1296 products (minimum package dimensions) with its maximum floor configuration – 8 Floors
- Changing package sizes and planograms are easily done through software controls, no need to physically remove and replace lanes, minimizing operational expenses.
- Operations management enables complete control of real time status and performance of the machines.

#### c. Evoke 5

Our Evoke 5 unit has an industry-leading style and design that maximizes visual merchandising. Customer experience is enhanced thanks to the engaging 10" touch screen that when idle displays advertising and video content. Customers can browse product menu and product descriptions to make the best purchase based on their needs.

With its Double showcase lighting it enhances product presentation promoting more sales. This unit is energy-efficient and eco-friendly. It features the iVend® Guaranteed Delivery System, a sensor system that keeps customers satisfied and reduces service calls for misloaded products. On top of that, unit is ADA Compliant with ergonomic controls, payment systems and delivery conform to ADA guidelines.

**d. Sally the Salad Robot**

Starting with Sally, the world's first salad robot, we're building a more hygienic path to fresh food. Sally uses groundbreaking robotics to assemble delicious meals from ingredients that are contained and protected. It's innovative technology that enables safe fresh food for more people in more places.

**e. APK - Automated Pizza Kitchen**

The Basil Street Automated Pizza Kitchen (APK) is a robotic, self-serve pizza kiosk that lets consumers use a touch-screen interface to order a full-size pizza that is cooked fresh and delivered within minutes. The APK is an easy way to participate in the \$45 billion U.S. market for pizza through an innovative kiosk solution offering 24/7, high-quality, delicious pizza with a wood-fired oven taste! Having an APK at your site creates a number of opportunities and benefits:

→ It gratifies! Provides immediate gratification with great

tasting pizza.

- It communicates! The 40-plus inch, engagement APK screen can display announcements, share information, or promote activities.
- It's always open! Hot, delicious food available 24/7.
- It's cool! Getting fresh baked pizza in 3 minutes or less from a self-serve, robotic kiosk gets people's attention.

**f. Gilly vending**

Gilly vending Snack&Beverage utilizes different machine models depending on the needs and requirements of each location. Models available for Snack and Beverage concept are:

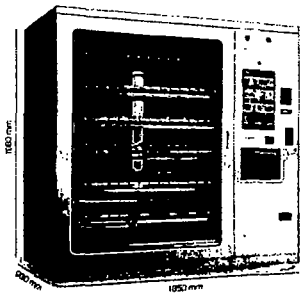
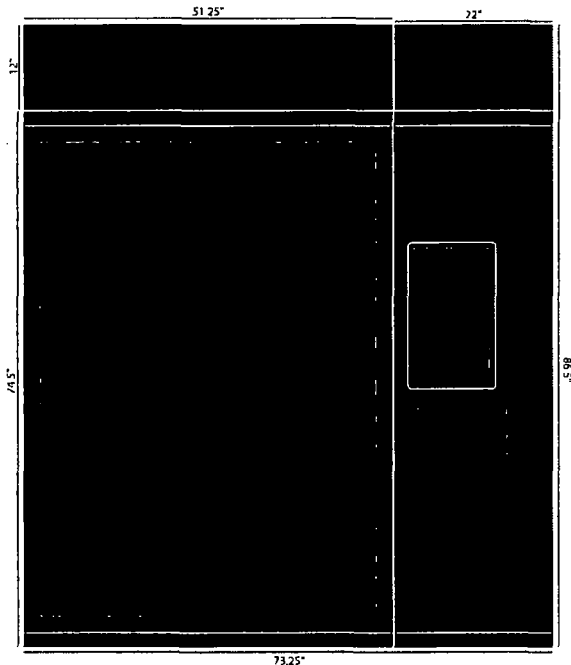
The Merchant Combo Media by Crane: Enhanced with color displays that have a stunning user interface shopping cart and even easy to read nutritional information. Unit has the capability of displaying digital advertising and interactive promotions. Machine has multiple temperature settings that include ambient, refrigerated, non-perishable and chilled.

The VE Connect by Vendors Exchange: This unit has an interactive amazing 46" HD touchscreen that draws attention to every passerby. It can use multiple vending apps and can change screens on demand or schedule. It is capable of running HD video or scrolling images to display announcements, promotions and products. This unit also has guaranteed product delivery

**B. Machine Specifications**

**"BIG STORE"**

The following machine specification applies for these concepts: **ShopAll SOUND, Kylie Cosmetics, Sprinkles**



**Dimensions and Other Information (+/-)**

	inches	feet
Length	72.83	6'0"
Depth	38.5	3'2"
Height	77.95	6'5"
Voltage	110-240v	50/60 Hz
Power Consumption	75W	

The following machine specification applies for these concepts: **LEGO**

51 INCHES

19.625 INCHES

12

3.5

6

1.75

5.25

3.5

18.625

2.37

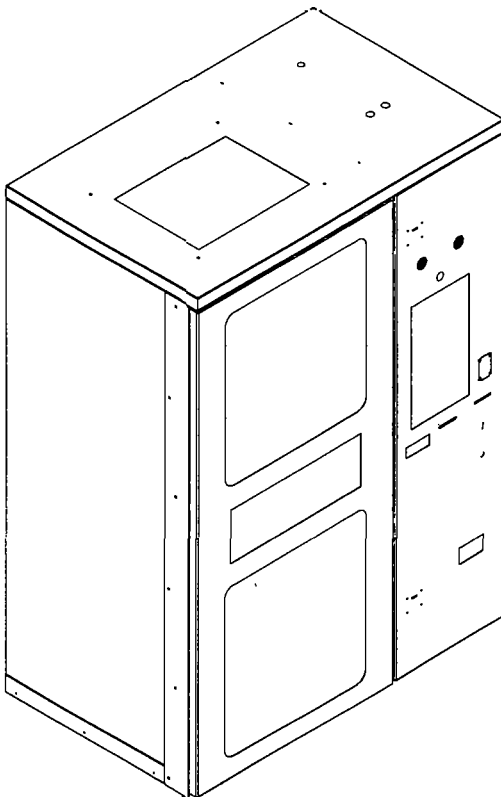
7

38

75.5 INCHES

## FRONT PANELS

The following machine specification applies for these concepts **Sprinkles Small, Sound and Premium Sound Small**

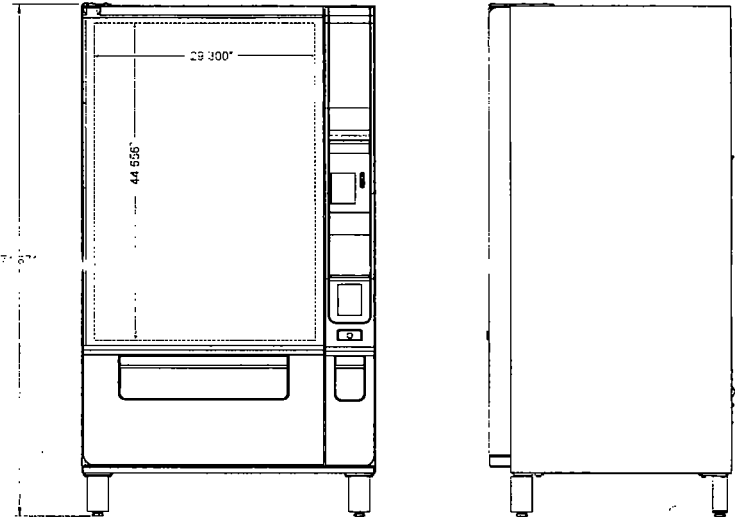


Dimensions and Other Information (+/-)			
	mm	cm	inches
Length	1420	142	55
Depth	884	88.4	34.8
Height	1980	198	79
Weight (with 6 floors)	990lbs		450kg
Standard number of floors	6		
Max lanes per floor	9		
Voltage	110-240v - 50/60Hz		
Power Consumption	75W		

# "Evoke 5"

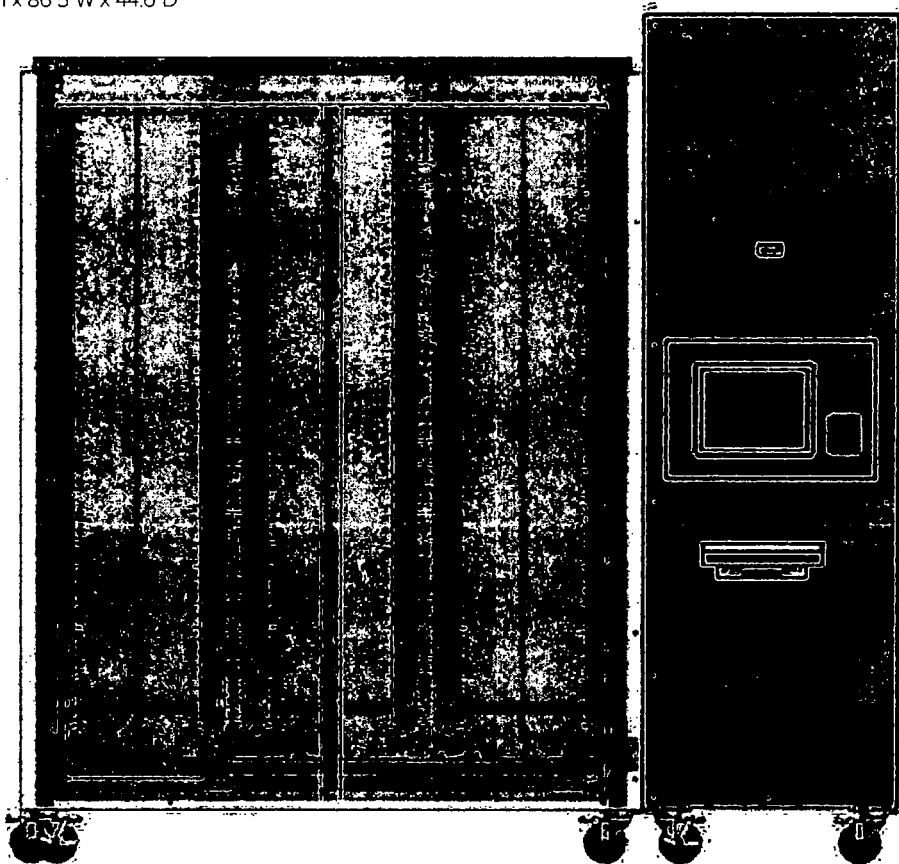
The following machine specification applies for these concepts: **CHICAGO ESSENTIALS (Single and Dual), Vendmobility, ShopAll Pharmacy**

Dimensions and Other Information (+/-)		
	inches	cm
Length	72	183
Depth	41	104
Height	35.2	89.4
Weight	524 lbs. - 238kg	
Selections	Up to 65 items	
Electrical Requirements	115 VAC/60Hz	

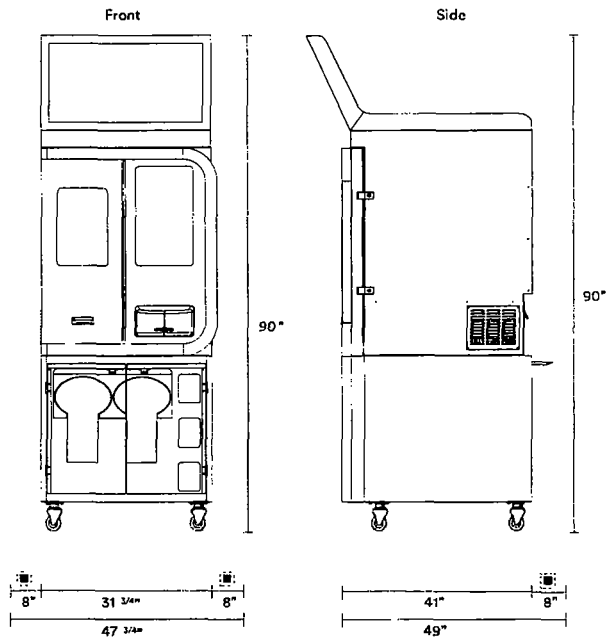


# APK Basil Street Pizza

BETA Kiosk Drawing 83"H x 86.5"W x 44.6"D

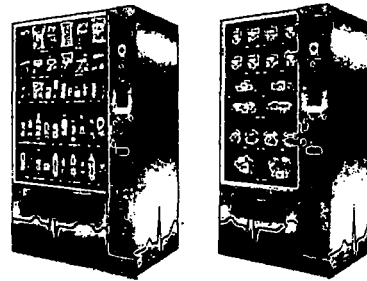


## Sally the Salad Robot



- 8" min clearance on all sides | Maximum height measurements
- We recommend an outlet cover to prevent your Sally from being unplugged

## Gilly Snack & Beverage



### CUSTOM GRAPHICS AVAILABLE

#### Specifications

	Model 471	Model 472
Height:	72"	72"
Width:	33"	46"
Depth:	33"	33"
Weight:	629 lbs.	729 lbs.
Electrical:	115 VAC	115 VAC
	60Hz, 8A	60Hz, 8A

Certifications: UL, cUL, CE, FCC, NEMA  
 Refrigeration: R-134a CFC-Free Gas  
 Operating Environment: Indoor Use

#### Key Features

- Guaranteed Product Delivery with SureVend Technology
- Standard Cabinet LED Lighting
- Touchscreen and Sensor Control
- Multiple Temperature Settings (including ambient, refrigerated, non-perishable, and chilled)
- Multiple Product Configurations (including all food, combo, and chilled snacks)
- Refrigeration Zone Barrier
- 7" Touchscreen with Color Display or 3.5" Keypad
- Surround & Integrated Payment LED Option
- Heated Door Option
- Custom Graphics
- Internal Tactile Keypad & Speaker Option (for visually impaired operators)

#### Spiral Configuration Options

##### Merchant Combo 4-Wide

- Standard - 38 Selections
- Maximum - 48 Selections
- Shelf Options
  - 4 dual-spiral stock/pottery shelf
  - 8 single-spiral stock/pottery shelf
  - 7 single-spiral bulk shelf

##### Merchant Combo 6-Wide

- Standard - 58 Selections
- Maximum - 72 Selections
- Shelf Options
  - 8 dual-spiral stock/pottery shelf
  - 12 single-spiral stock/pottery shelf
  - 10 single-spiral bulk shelf

#### Payment Options

- Integrated Credit Card Swipe
- Integrated Coin & Bill Validator
- Integrated NFC with Apple Pay and Android Pay
- Standard Payment Opening 1
- Standard Payment Opening 2
- Other: CPI and Crane Cashless Options

#### Built-In Telemetry Options

- GSM (AT&T 3G and T-Mobile)
- CDMA (Sprint or Verizon)
- Local Modem Network

#### Color Displays

Pick from two stunning user interfaces to grab consumer's attention.



#### Largest Variety

Increase sales and consumer satisfaction with the largest number of selections in the industry.



#### Nutritional Information

Supports FDA nutritional requirements with easy-to-read facts for making better choices.



#### Digital Advertising

Display advertisements and interactive promotions that encourage multi-stop sales, while building brand loyalty.

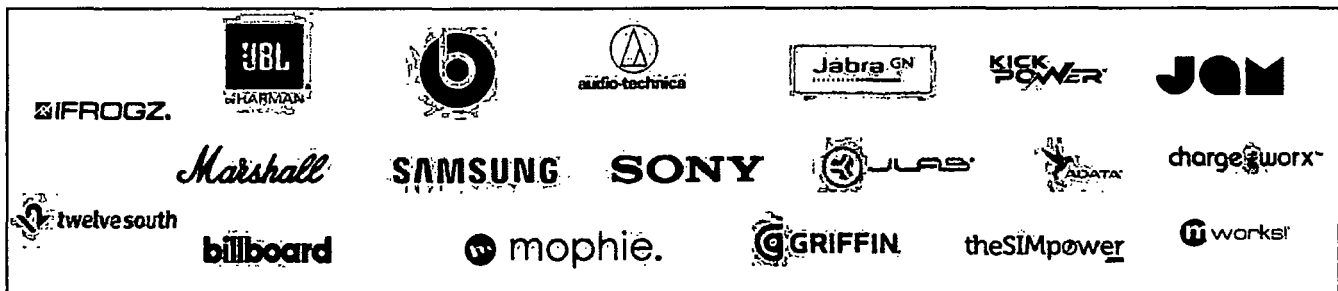


#### Intelligent Store

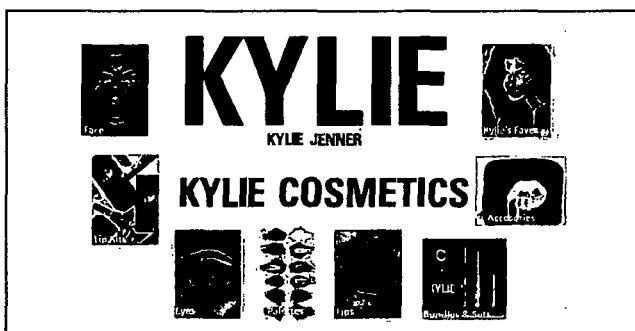
MEDIA offers over-the-air delivery of software updates, new menu introductions, promotions and price changes, as well as performance monitoring with intelligent Store.

## C. Branded product offerings

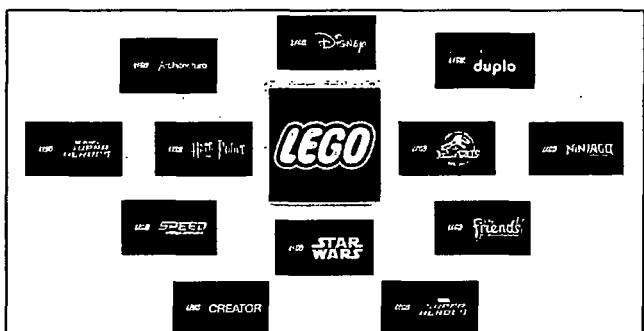
### ShopAll SOUND / PREMIUM SOUND



## KYLIE COSMETICS



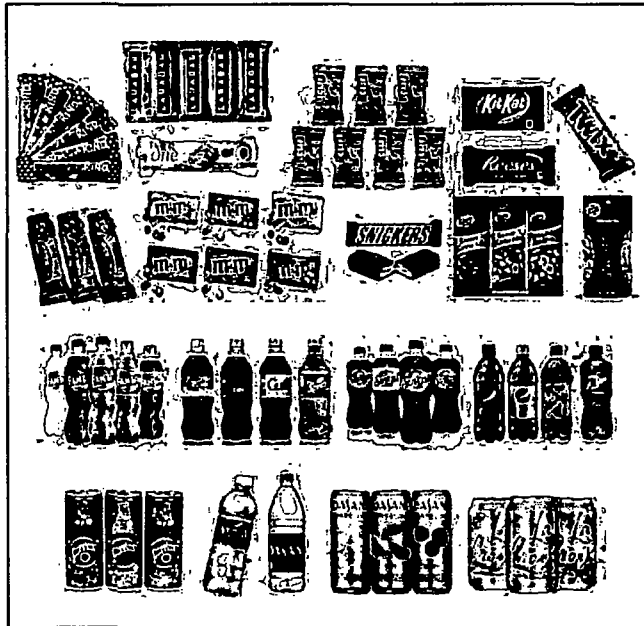
## LEGO



CHICAGO Essentials

Communication	Mobile Accessories	Earbuds/True Wireless	Pharmacy	PPE
theSIMpower.com	GRIFFIN	JBL	Pepto Bismol	BIOMSK
ultrap mobile	KICK POWER	JAM	Advil	BRITTO
	chargeworx	SONY	TYLENOL	Wish
		billboard	Imodium	VirusKit
			Emergen-C	

Snacks & Beverage



ShopAll Pharmacy



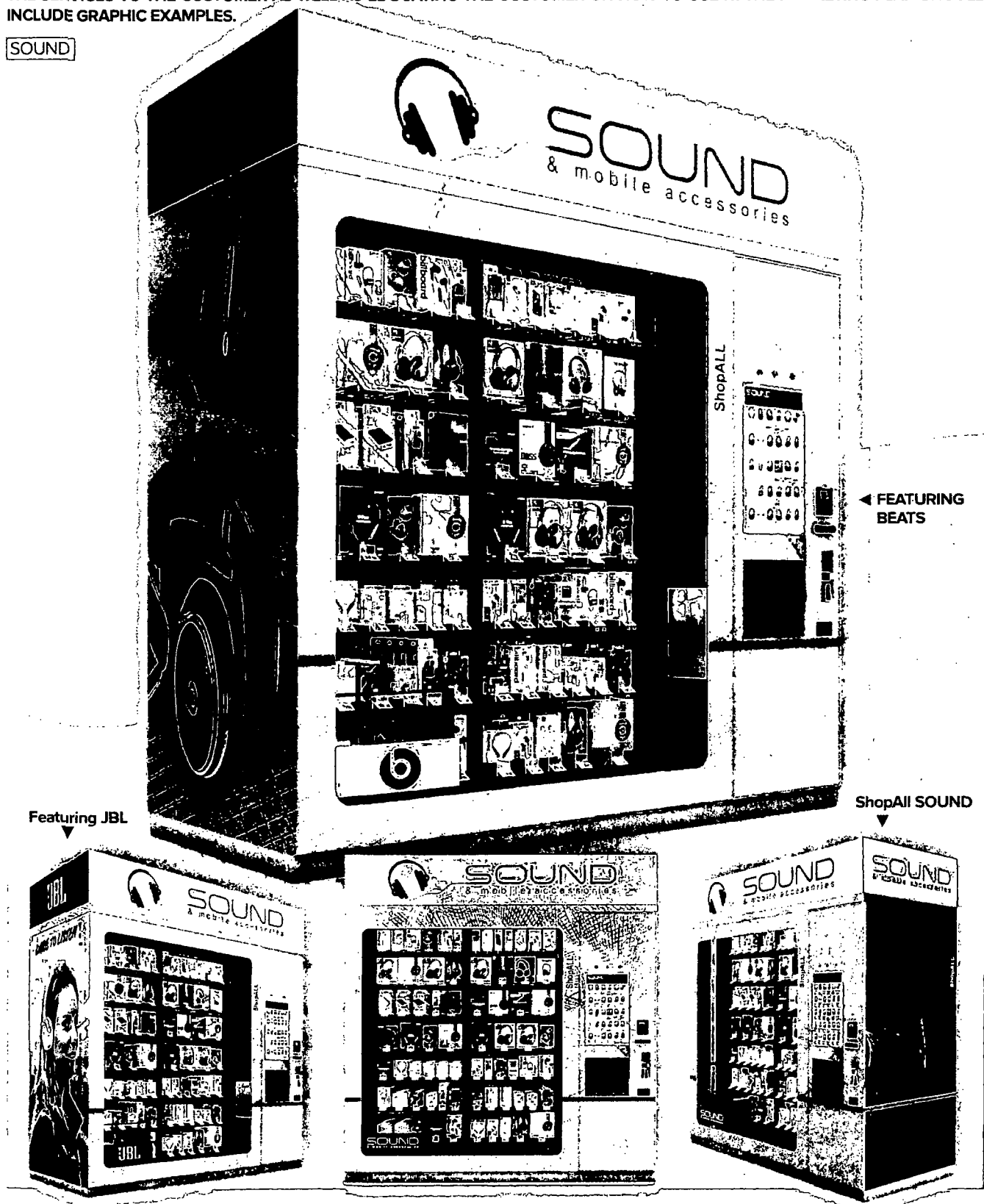
Gilly Vending ACDBE Concepts:

Basil Street Pizza and Sally The Robot



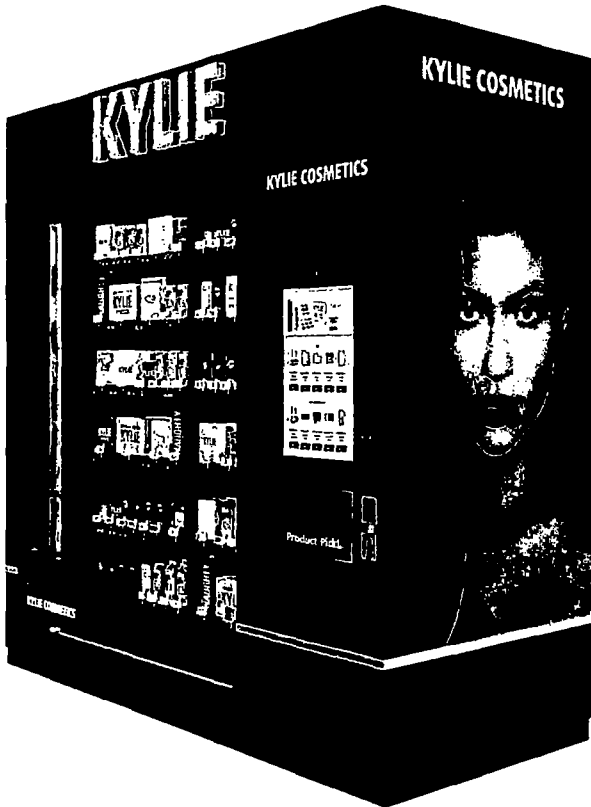
6B. MARKETING PLANS AND CONCEPTUAL DESIGNS. THESE PLANS SHOULD HOW THE CONCESSION IS PLANNING TO MARKET THE SERVICES TO THE CUSTOMER AS WELL AS EDUCATING THE CUSTOMER ON HOW TO USE IT. THE MARKETING PLAN SHOULD INCLUDE GRAPHIC EXAMPLES.

SOUND

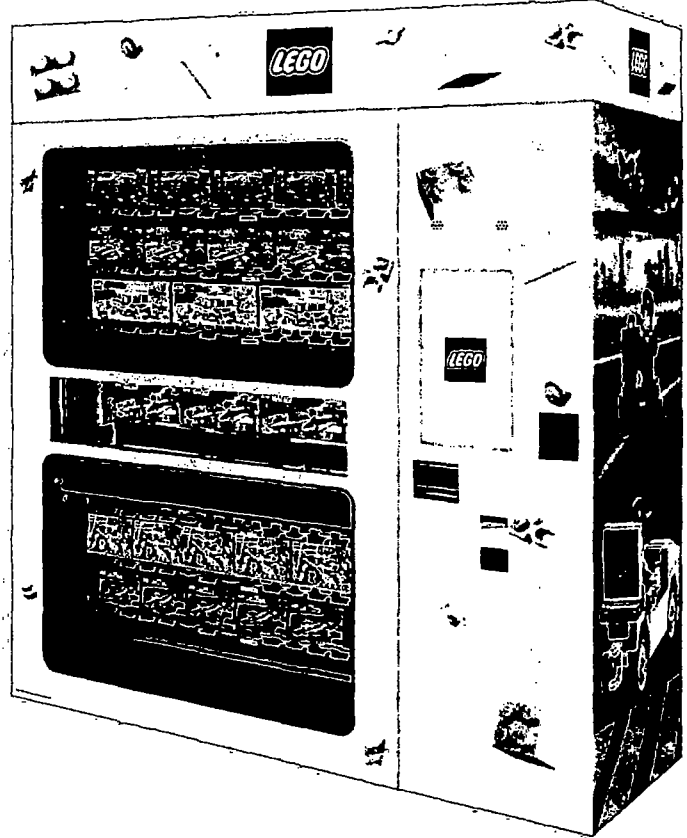




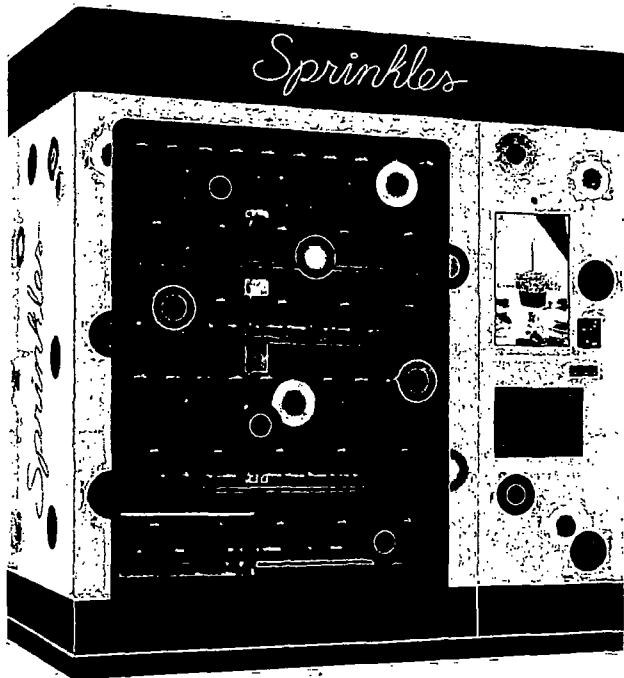
KYLIE COSMETICS



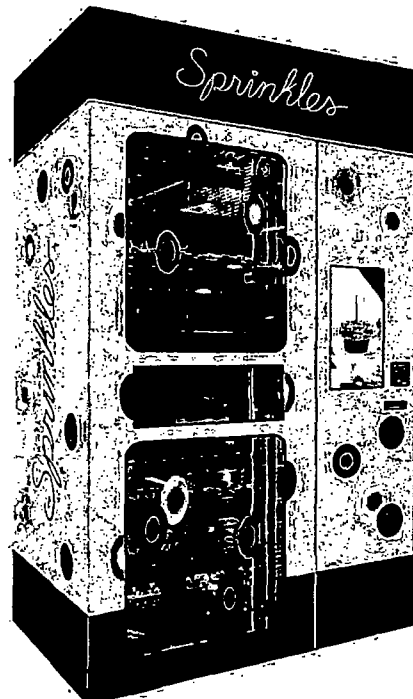
LEGO



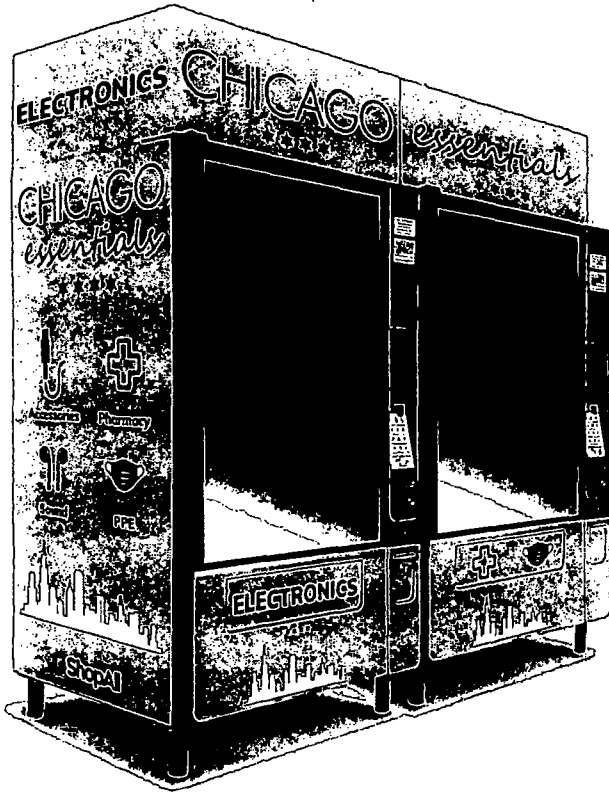
SPRINKLES



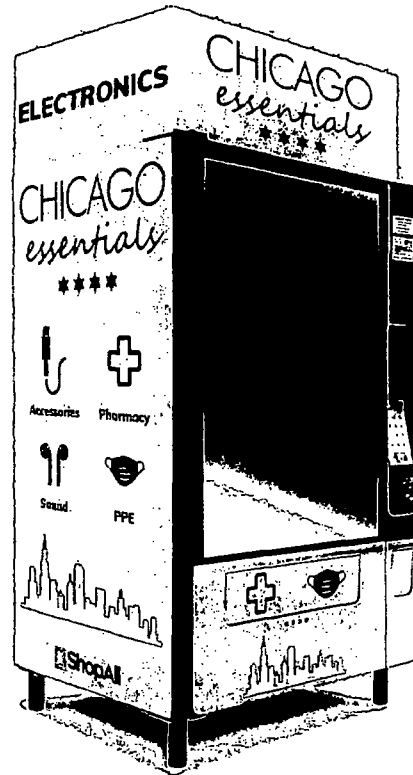
SPRINKLES (Small)



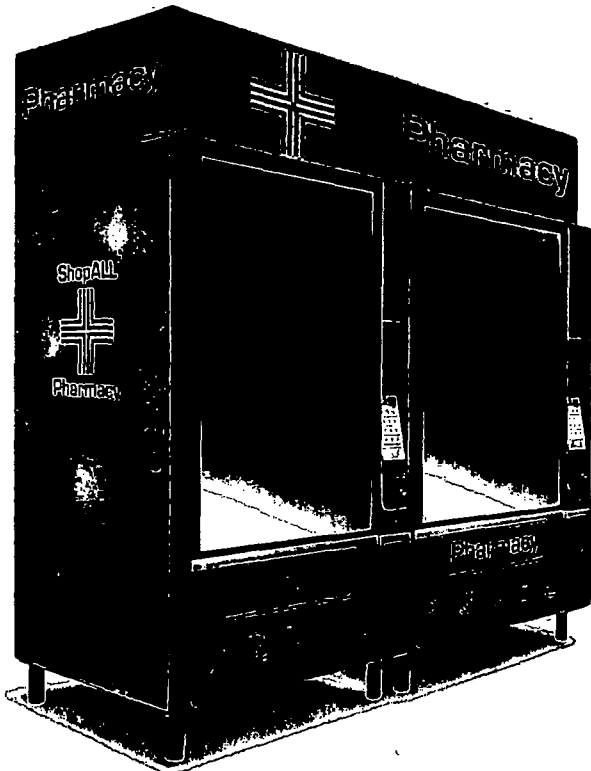
CHICAGO ESSENTIALS+



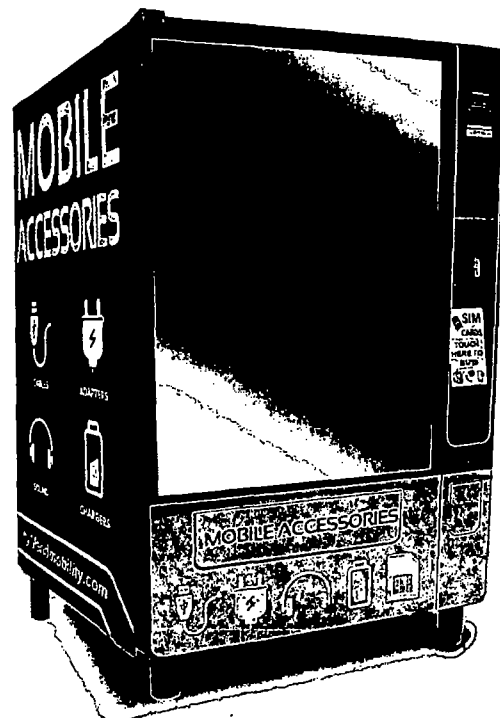
CHICAGO ESSENTIALS



SHOPALL PHARMACY



VENDMOBILITY

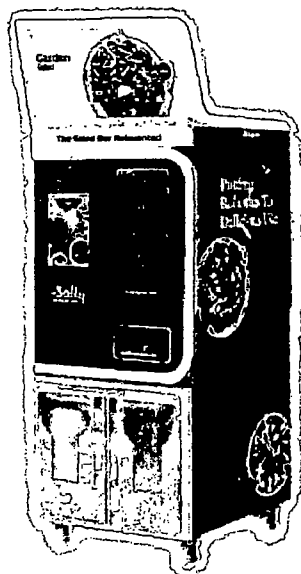


# GILLY VENDING ~ ACD&E CONCEPTS

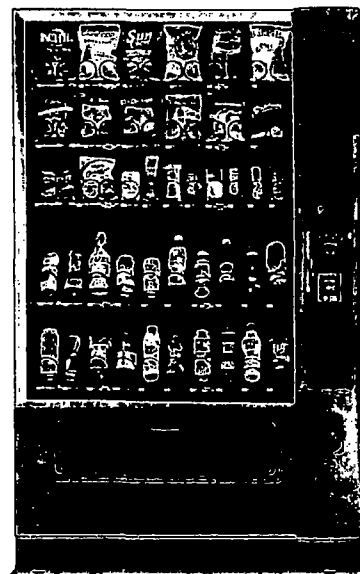
Basil Street Pizza



Sally Salad



Snack & Beverage



Our units are complemented with a Top Header that increases the visibility of the concept from far away and invites you to approach and take a glance.

## TOP HEADER

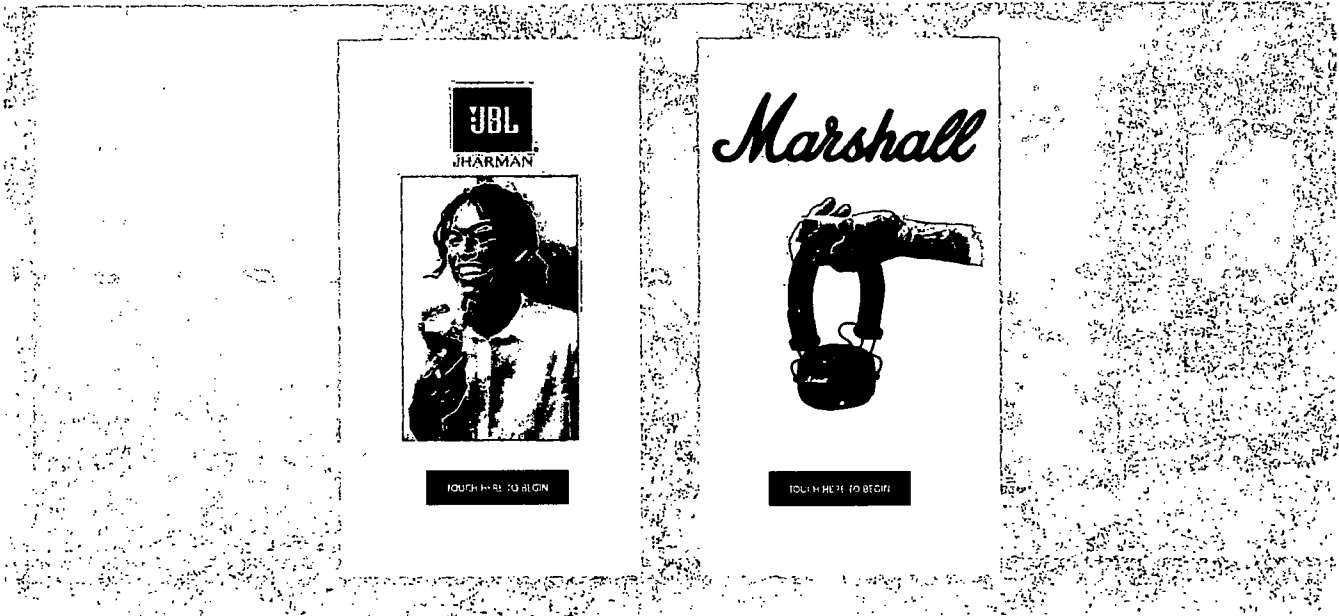


## TOP HEADER



**Machine Idle Screen Mode**

While the machine is on idle mode (no one is using the user interface), the screen will continuously show promotional images and play official promotional videos related to the concept products. The idea is to attract the consumer's attention when they pass near the machine. **Promotional images examples for ShopAll SOUND**



**Idle Screen example for Kylie Cosmetics**



For our ShopAll Vending line which includes ShopAll Pharmacy, Chicago Essentials, and VendMobility, our units will also be equipped with LED display that showcases brands and product offering when the machine sits on idle



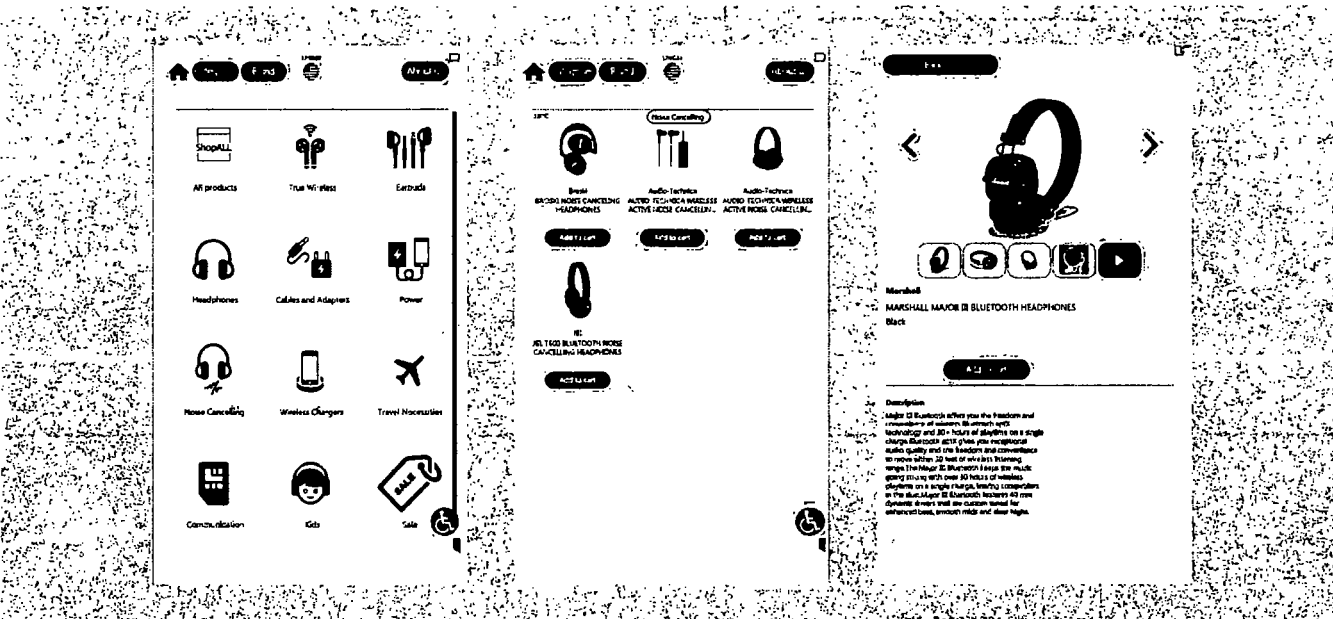
## Machine Home Screen

When the touch screen in idle mode is activated by a touch it will go the main Home Screen. There, the customer will be able to find all the categories of products being offered in the machine.

## Categories





Once a category is selected, customer will be able to see all products under that segment.

Example, displaying all Noise Cancelling





## Instructions placed near paying devices

### INSTRUCTIONS

- 1 Add to Cart the Products you Wish to Purchase 
- 2 Select Checkout 
- 3 Read and Accept Terms and Conditions 
- 4 Select Cash or Credit 
- 5 

**CASH**  
Insert Exact Cash in the  
Lighted Purple Receipts

**CARD**  
Insert Card into Chip Reader


- 6 Retrieve Products 

PLEASE INSERT EXACT CASH - MACHINE DOES NOT GIVE CHANGE

Machine ID:

**ATTENTION DEBIT CARD USERS:**  
You can use this machine to purchase items from the KYLIE cosmetics store. It is a debit card machine. It will place a HOLD on your account greater than the amount to purchase one item in a single vend transaction. This HOLD amount will be updated to reflect the actual transaction amount within 24-72 hours depending on the policy of your bank. Your final charge amount will be only for items vend. Any questions regarding your bank's policy on "account holds" should be directed to your bank.


Customer Service: 1-855-969-8678  
 or go to [www.vendingcustomerservice.com](http://www.vendingcustomerservice.com)

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### INSTRUCTIONS

1. Insert Cash or Swipe/Tap Your Card
2. Select the Product
3. Retrieve Product

**(MACHINE DOES NOT GIVE CHANGE)**



**THE CONTENTS OF THIS MACHINE SHOULD NOT BE USED IN ANY SURGICAL SETTING. ALL PRODUCTS SOLD HERE ARE FOR PERSONAL & PREVENTIVE USE ONLY.**

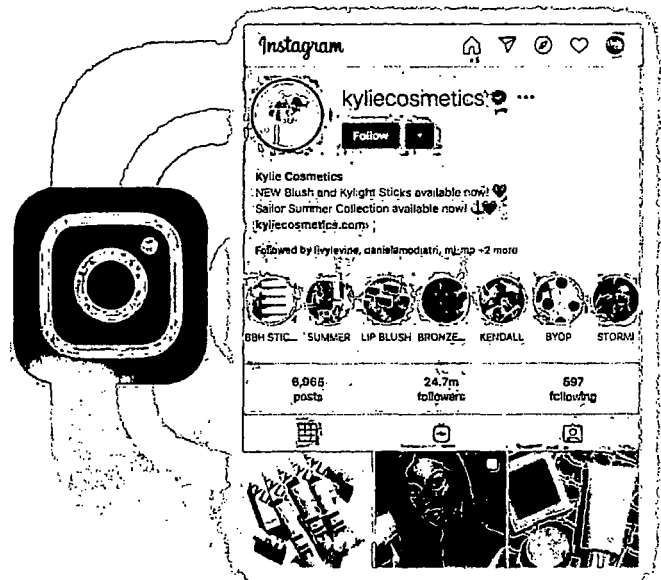
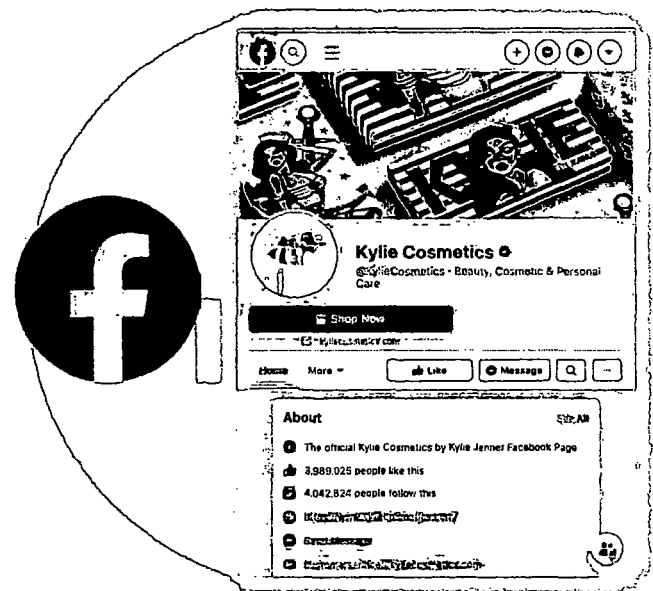
**ATTENTION DEBIT-CARD USERS:**  
Your bank will place a HOLD on your account greater than the amount to purchase one item in a single vend transaction. This HOLD amount will be updated to reflect the actual transaction amount within 24-72 hours depending on the policy of your bank. Your final charge amount will be only for items vend. Any questions regarding your bank's policy on "account holds" should be directed to your bank.

Customer Service: 1-855-969-8678  
 or go to [www.vendingcustomerservice.com](http://www.vendingcustomerservice.com)

MACHINE ID:

## Online Marketing plans

We will use diverse platforms as part of the marketing strategy to communicate the products and services of the concept. KYLIE Social media. Kylie's success is no secret, her hundreds of millions of followers in Instagram and Facebook follow her closely. Kylie Cosmetics and Kylie SKIN posts will communicate to the consumer the opening and operation of new locations and help bring major awareness.



### GILLY VENDING

Gilly Vending utilizes all resources available at the machine to communicate specials and other important relevant information to incentivize sales. Some of these resources are the digital displays and Interactive panels. Along with their cashless service partner, they offer innovative loyalty reward programs that are revolutionizing vending services wherever our customers go. Using these tools Gilly vending can guarantee product promotions and daily guaranteed winners.

### Sally Salads

A campaign will be started to raise awareness of the project

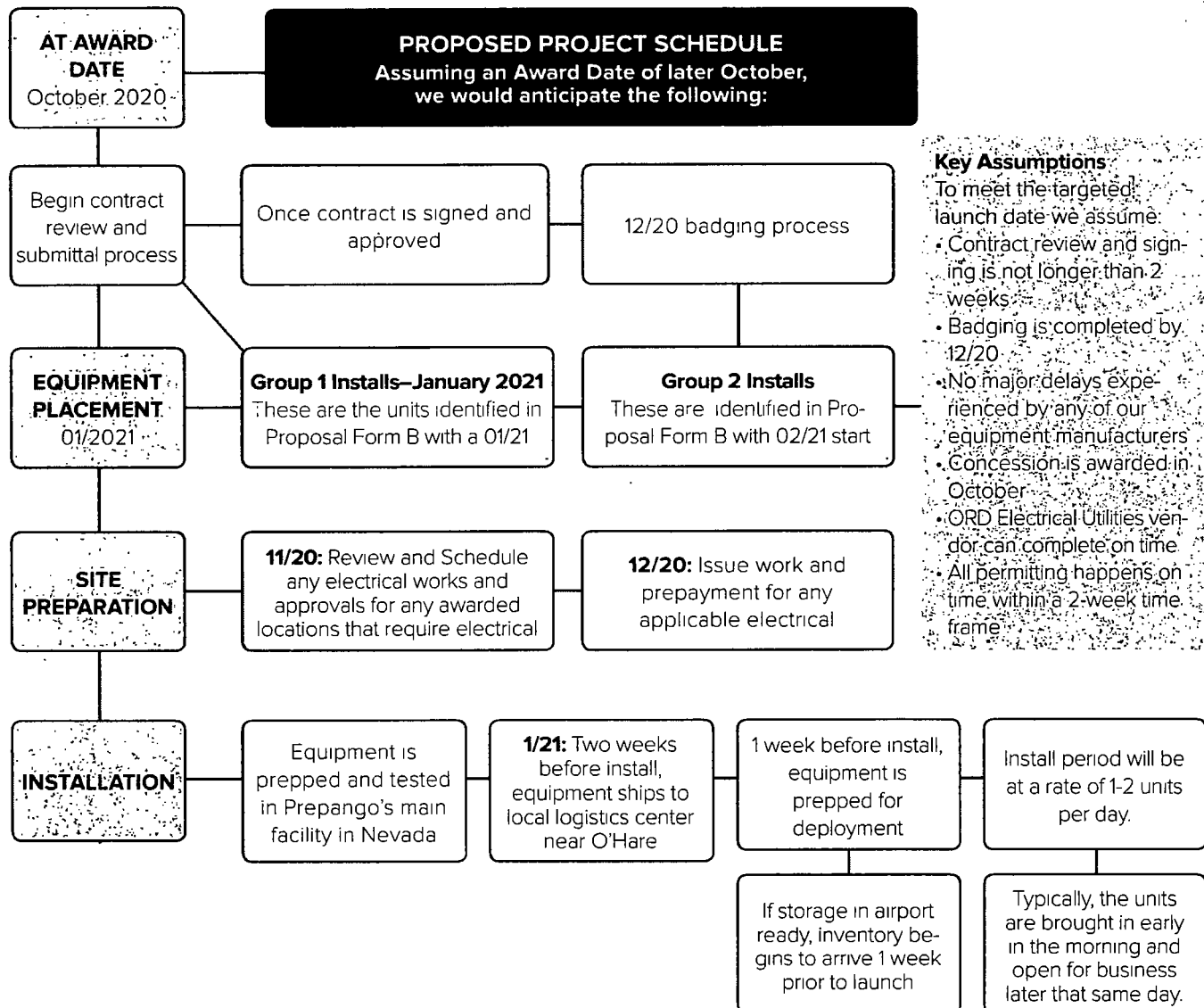
and its rationale through a wide variety of means. If approved, banners would be placed adjacent to the machine to draw attention. Also touch screen tablet and CHOWTV would be displaying menu selections, food pictures and specials.

### BASIL Street

Via the 42-inch digital display, customers are lead through a continuous ticker- tape style slide show at eye level, with directional and informational panels showing various features of the pizza and the kiosk. Above the slide show, a looping video features the interior robotics of the kiosk, TV news mentions, happy people eating the pizza, and various beauty shots of the delicious pizza, the box it comes in, and how it is dispensed.

## 7. PROPOSED PROJECT SCHEDULE

Expected live dates for each concept are provided on Proposal Form B. Here is the overall project schedule with key milestones



**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**



## Exhibit 4

### Products and Price List

Our VendMobility unit features a sleek style vending machine with very bright LED lighting that merchandises product effectively. VendMobility large units have a 10-inch touch screen that displays in a simple and friendly way prices, products and images for the customer convenience. This large VendMobility unit has the capability of displaying up to 40 selections.

Thanks to its standard look it provides an easy grab and go solution for spaces where the space is also limited and a grab and go solution is needed while traveling. This concept is known for selling entry to premium brands

#### I. APK –Basil Street Pizza

Basil Street Pizza is another innovative concept, it's an autonomous pizza baking machine that cooks a thin crust brick-oven style 10" pizza in less than 3 minutes. Because of its nature, it reduces exposure and risk with touchless baking and contactless payment options! The coolness factor is off the charts! Even though it is a robotic vending machine the pizzas have a fresh out of the oven taste. The unit features a 42" digital display for ads and menu display. The unit stores the product at low temperatures in its freezer then positions each pizza pie on a three element non-microwave speed oven, the end product is guaranteed to be healthier, safer and delicious.

#### J. Sally Salad

Starting with Sally, the world's first salad robot, we're building a









more hygienic path to fresh food. Sally uses groundbreaking robotics to assemble delicious meals from ingredients that are contained and protected. It's innovative technology that enables safe fresh food for more people in more places. Fill Sally with up to 22 of your best ingredients to deliver customizable salads, grain bowls, breakfast bowls, and snacks in just 90 seconds, any time of day. Sally Enables smarter food choices by providing full nutritional information including calories, carbs, fiber, fat, and protein that update with every custom choice. Within her small footprint of 3 feet by 3 feet Sally is the most efficient and only customizable option that will provide premier options to ORD travelers and employees. No meal prep, no crazy lunch bills, no hassle. It's the start of an era where fresh food is always accessible, no matter the shoes you walk in or where they take you.










#### K. Gilly Snack & Beverage

Gilly Vending's award-winning snack & beverage concepts are inspired by the highest quality equipment manufacturers in the USA. Our energy efficient machines are fully accessorized with all cashless acceptance, digital and interactive touchscreens, guaranteed delivery system, and cutting-edge real-time routing technology. Gilly is known for its wide variety of multicultural product lines from around the world. And wellness options selected by nutritionists. Our passion for superior quality and performance will include custom graphics and enclosures.






## 2. PROPOSED MENU OF SERVICES AND PRODUCTS AND THE APPROXIMATE PRICE RANGE FOR EACH CATEGORY.

ShopAll SOUND Concept covers the following categories





Category	Price Range
 Premium Brand True Wireless	\$159-\$249
 Premium Brand BT Headphones	\$199-399
 Premium Brand Noise Cancelling	\$199-\$349
 Earbuds Wired	\$20-\$40
 Earbuds Wireless	\$30-\$50
 Headphones Wired	\$30-\$80
 Headphones Wireless	\$50-\$150
 Noise Cancelling Earbuds	\$110

Category	Price Range
 Noise Cancelling Headphones	\$110-\$130
 True Wireless earbuds	\$40-\$160
 Sport True Wireless	\$30-\$160
 Sport Earbuds	\$20-\$50
 Kids Headphones	\$20-\$30
 Travel Necessities	\$15-\$40
 Cables and Adapters	\$15-\$30
 Communication	\$20
 Power & Charging	\$20-\$60

**KYLIE COSMETICS** Proposed menu of products and the approximate price range for each category







Category	Product	Price Range
	Lips Lip Kits	\$29
	Eyes Palettes	\$42 - \$48
	Face Illuminating/Blush	\$18 - \$26
	Bundles & Sets Try it Kit	\$49
	Accessories Makeup Bag	\$32

**SPRINKLES** Proposed menu of products and the approximate price range for each category.




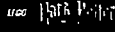





CATEGORY	PRICE RANGE
	Red Velvet \$4.99
	Dark Chocolate \$4.99
	Sprinkle \$4.99
	Vanilla \$4.99
	Black and White \$4.99
	Strawberry \$4.99

**SNACK & SODA** Proposed menu of products and the approximate price range for each category.









Category	Product	Price Range
	Snacks Small Serve Chips	\$1.50-\$1.75
	Snacks Large Serve Chips	\$2.00-\$2.25
	Snacks Crackers & Cereal Bars	\$2.00-\$2.25
	Snacks Chocolates and Candies	\$2.50-\$3.00
	Snacks Premium Cookies & Pastries	\$2.50-\$3.00
	Snacks Gums & Mints	\$2.50-\$5.00
	Snacks Premium All Natural Organic Chips	\$3.00-\$4.00
	Snacks Premium All Natural Organic Cookies	\$4.00-\$5.00
	Snacks Chocolates and Candies (Family Size)	\$5.00-\$6.00
	Snacks Premium Bars (Protein, Gluten Free, Vegan, Kosher, Non GMO)	\$4.00-\$6.00

Category	Product	Price Range
	Beverages Soft Drinks 12oz Cans	\$1.50-\$2.00
	Beverages Water and Soft Drinks 20oz Bottles	\$1.50-\$2.00
	Beverages 15oz Juices and 20oz Bottles	\$3.00-\$3.50
	Beverages 20oz Vitamin Waters and Specialty Teas	\$3.00-\$4.00
	Beverages All Natural & Organic Healthy Juices and Other Drinks	\$4.00-\$5.00
	Beverages Energy Drinks, Premium and Alternative Drinks	\$4.00-\$5.00

**LEGO** Proposed menu of products and the approximate price range for each category

	Category	Product	Price Range
	Architecture	Paris, Trafalgar Square, London, San Francisco,	\$39.99 - \$79.99
	Disney	Anna's Canoe Expedition, Storybook Adventures (Belle's, Ariel's, Mulan's, Anna And Elsa's) Moana's Island Home, Mulan's Training Grounds.	\$19.99- \$29.99
	Duplo	Plane, Police Bike	\$9.99
	Harry Potter	The Rise of Voldemort ...	\$19.99
	Jurassic Park	Dilophosaurus on the Loose ...	\$19.99
	Speed Champions	Ferrari F40 Competizione, Chevrolet Camaro ZL1 Race Car, McLaren Senna, 1974 Porsche 911 Turbo 3.0 ...	\$14.99 - \$29.99
	Star Wars	Obi-Wan's Hut, Luke Skywalker's Landspeeder, Mandalorian Battle Pack, Black Ace TIE Interceptor, .	\$14.99 - \$49.99
	Super Heroes	Batmobile: Pursuit of The Joker, Captain America:	\$19.99 - \$29.99
	Ninjago	Gamer's Market, .	\$29.99

**ShopAll Pharmacy** Proposed menu of products and the approximate price range for each category

	Category	Product	Price Range
	Feel Better	Tylenol, Advil, Mucinex, Robitussin, Dayquil, Nyquil, ...	\$8 - \$13
	Essentials	Desinfecting Wipes, Hand Sanitizer, Sunscreen, ...	\$4.50- \$8
	Stomach Aid	Pepto Bismol, Gas X, Ex-Lax, Tums ...	\$7 -\$10
	Children	Huggies Wipes, Tylenol Infants, Advil Junior, Dramamine Children, Robitussin Children,...	\$3 -\$12
	First Aid	Neosporin, Band Aid, Cortizone 10, Alka Seltzer	\$6 - \$10
	Personal Care	Deodorant, Toothpaste, Toothbrush, Hair Spray,...	\$4 - \$9
	Travel Basics	Airborne, EmergenC, Clear Eyes, ZZZquil, Lip Balm, ...	\$5 - \$13
	Intimate	Tampax, Always, Midol, Trojan Condom	\$5 - \$9

**SALLY SALADS** Proposed menu of products and the approximate price range for each category.

Category	Product	Price Range
Chef Inspired Dishes	• Vegetarian Fiesta Taco Bowl	\$11.99
	• Mediterranean Grain Bowl	
	• Sally's Chicken Caesar Salad	
	• Casey's Chopped Salad	
	• Casey's Chef Salad	
Custom Made	• Sally's Spinach	\$8.99-\$11.99
	Basic green salad with up to 2 toppings, 6 ingredients	

**BASIL STREET PIZZA** Proposed menu of products and the approximate price range for each category.

Category	Product	Price Range
Pizza	Cheese Pepperoni Meat Lovers	\$12.00-\$14.00

### 3. SOURCES OF MERCHANDISE, PRODUCTS, AND SUPPLIES

Prepango sources its products directly from the associated brand and or authorized brand distributors. We have developed a strong network of partners in all our categories that has allowed us to bring a wide variety of products.

We are in constant communication with Brand managers and distributors for updates and information on top new merchandise so that our catalogue stays current. Our team also keeps up to date on new technology on the market with the focus on fulfilling the customer needs and providing a great and full experience. For brand specific concepts, such as BEATS, JBL, KYLIE COSTMETICS, KYLIE SKIN, and LEGO: we directly pick up the inventory at the manufacturer's factory or warehouse.

For Sprinkles, Sprinkles Chicago bakery is located at 50 East Walton Street, Chicago, IL, 60611, just 18 miles away from the O'Hare Airport. On daily basis our operator will pick up fresh baked cupcakes to stock our machines. The proximity to the Sprinkles bakery allows us to react quickly to any need that arises, including inventory, packaging, or promotional materials.

#### For Gilly Vending Concepts:

Casey Creations, LLC will source, produce and delivery all items locally from their Ghost Kitchen partner+ near ORD for Sally Salads. They will also be responsible for maintenance, cleaning and supplies for the units. To maintain low costs and support the local businesses in Chicago, Basil Street Pizza will make use of a local commissary kitchen and distribution center. For the Snack and Beverage concept, Gilly Vending has partnered with world-known brands that customers know and trust. This makes possible to have a secure and strong distribution capability. Some Gilly Vending strongest partners are Vistar, PFG, Unifi, US Foods, EA Sween

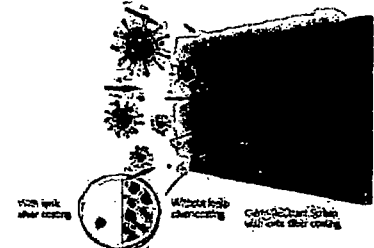
### 4. NARRATIVE DESCRIPTION OF THE PROPOSED CAPITAL IMPROVEMENTS.

All the equipment to be deployed at Chicago O'Hare, including the units provided by Gilly Vending ACDBE, will be new equipment. The purchase and deployment of our equipment will be our primary capital investment. For some locations, if awarded,

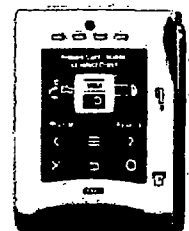
we may be required to bring electricity and from experience we know that will also be a significant capital improvement. For selected location, a major capital improvement will be bringing electrical to locations that need it. We have budgeted \$80,000 for this improvement alone. In the case of BASIL STREET Pizza, that unit will require a 220V connection which will require electrical upgrade which we are budgeting at \$5000-\$10,000.

Each unit is custom wrapped with a header to cover and enhance the look of the exterior. This Vinyl wrap is strong, durable, abrasion and moisture resistant; withstands rust and corrosion, is electrically non-conductive and has excellent fire performance properties. It is high quality and eye-catching thanks to the bright colors. The frontal side of ShopAll Retail (large units) have a 22" Monitor touch screen with 1920x1080 pixels resolution where customers can navigate through the categories, review product descriptions, pictures and even watch videos of the perfect product they are looking for.

We are fully committed to do all we can to keep our customers safe and healthy. As such, we will invest and place antibacterial film on the touch screen to reduce and prevent the formation of bacteria and germs. This protective film is made of silver ions that are highly reactive and affect multiple sites in bacterial cells, guaranteeing their destruction. This film protects 24h a day, 7 days a week. It inhibits the development of 99.99% of the germs tested and prevents the formation of biofilm.



To ensure a safe experience while using our units, we have invested in intelligent point of sale terminals that work with regular credit and debit cards, but also NFC Contactless payment options. The contactless terminal also accepts mobile payment apps including Google Pay, Apple Pay, Samsung Pay, MobilePay, Paytm, Swish and many more!



**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

Exhibit 5  
Form of Letter of Credit

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*  
(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20

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

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

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

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CERTIFICATE FOR DRAWING

BY: \_\_\_\_\_  
Its: Commissioner of Aviation



**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**

## EXHIBIT 6

### **INSURANCE REQUIREMENTS** **Chicago Department of Aviation**

#### **Automated Retail License Agreement** **Food, beverage, retail products gifts and vending merchandise at O'Hare** **(Vending Machines)**

#### **A. INSURANCE REQUIRED**

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

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

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

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

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

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

3) Automobile Liability (Primary and Umbrella)

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

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

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

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

5) Property

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

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) **Builders Risk**

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

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

**B. Additional Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

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

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

**Exhibit 7**  
**ACDBE Special Conditions and Related Forms**

City of Chicago Department of Aviation

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

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

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

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

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

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

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

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

### B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")



was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

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

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

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

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

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

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

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBES**

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

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

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

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

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

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

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

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

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

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

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

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

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

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

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

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

### **B. RECORDKEEPING**

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

representatives.

## **C. REPORTING**

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

## **D. MONITORING**

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

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

## **VI. GOOD FAITH EFFORTS**

### **A. EXAMPLES**

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

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

#### B. DOCUMENTATION

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

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

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders/proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making



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

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

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

with copies to:

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

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

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

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

## **VII. NON-COMPLIANCE AND DAMAGES**

A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

B. NON-COMPLIANCE WITH ACDBE AGREEMENT

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

**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

Exhibit 8  
MBE/WBE Special Conditions and Related Forms

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

**I. Policy and Terms**

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

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

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

**Contract Specific Goals and Bids**

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

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

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

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

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

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

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

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

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

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

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

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

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

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

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

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

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

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

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

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

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

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

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

### **III. Joint Ventures**

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

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

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

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

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

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

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

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

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

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

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

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

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

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

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.



1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

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

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

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

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

V. **Procedure to Determine Bid Compliance**

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

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

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

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

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

original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

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

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

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

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

D. Letters of Certification

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

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

E. Schedule F: Report of Subcontractor Solicitations

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

F. Schedule H: Documentation of Good Faith Efforts

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

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

## **VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
  - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  - 2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  - 3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - 4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  - 5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  - 6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  - 7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  - 8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification).
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

## **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740



of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

**X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

**XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

**EXHIBIT 9**

**ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Prepango LLC

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: 806 Starboard St  
Chula Vista CA 91914

C. Telephone: 619 710 1680 Fax: \_\_\_\_\_ Email: marcos@prepango.com

D. Name of contact person: Marcos Modiano

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Retail, Food and Service Vending RFP

G. Which City agency or department is requesting this EDS? Dept of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☒ Yes ☐ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name:	Title
<u>Marcos Modiano</u>	<u>LLC Manager</u>

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Marcos Mediano	806 Starboard St. Chula Vista CA 91914	98%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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Gilly Vending Inc. (retained as AG-DBE A/L)

900 NW 166 Street Miami FL 33169

Subconcessionaire, Fee earned at 35% of net revenues

(Add sheets if necessary)

☐ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes ☒ No ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such



contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

NONE

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

nil

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☒ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

NONE

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee.

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## **B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

# CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Prepango LLC  
(Print or type exact legal name of Disclosing Party)

By: [Signature]  
(Sign here)

Marcelo Modiano  
(Print or type name of person signing)

Manager  
(Print or type title of person signing)

Signed and sworn to before me on (date) 6/2/2021,

at \_\_\_\_\_ County, \_\_\_\_\_ (state).

\_\_\_\_\_  
Notary Public

Commission expires: \_\_\_\_\_

Please see Attached California Seal

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- ☒ See Attached Document (Notary to cross out lines 1-6 below)  
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 Signature of Document Signer No. 1 \_\_\_\_\_ Signature of Document Signer No. 2 (if any) \_\_\_\_\_

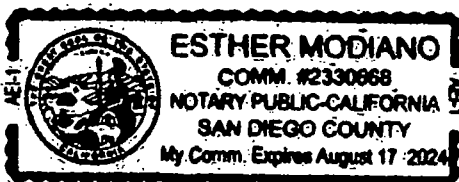
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of San Diego

Subscribed and sworn to (or affirmed) before me  
 on this 2<sup>nd</sup> day of June, 2021  
 by \_\_\_\_\_  
 Date Month Year

(1) Marcos Modiano

(and (2) \_\_\_\_\_),  
 Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence  
 to be the person(s) who appeared before me.

Signature Esther J. de Modiano  
 Signature of Notary Public

Seal  
 Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Certification / City of Chicago Economic Disclosure Statement and Affidavit Document Date: 6/2/2021

Number of Pages: 12 of 15 Signer(s) Other Than Named Above: \_\_\_\_\_

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section.2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes ☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes ☐ No ☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☒ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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## Exhibit 10

### Airport Concessions Program Handbook

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*

Exhibit 10  
Airport Concessions Program Handbook

# AIRPORT CONCESSION PROGRAM HANDBOOK



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### **CDA UNIT FUNCTIONS**

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.



### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

**CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS**

## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?



### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Monthly F&B**

### **Dishwashing Area**

- Is Dishwashing Area Dry and Clean?
- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Handlers' Certificate Log on-site?
- Is the Food Temp Log on-site?
- Food Temps have not been taken/Temps okay
- Is the Health Department Inspection Report Posted?
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair
- Are Soda and Condiment Stations Clean and Maintained?
- Needs detail cleaning
- Is Cash Register Clean and Maintained?
- Is Grill/Cook Line Equipment Clean?
- Equipment needs detail cleaning
- Is Ice Machine Clean and in Good Repair?
- Leaking/needs repair
- Mold

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?
- Is the Exterior in Good Condition?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Bar Area Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## **APPENDIX 3**

### **FINANCIAL AUDIT STANDARDS:**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."



Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### **General Airport Guidelines**

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### **Laws and Ordinances**

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### **Default Notices**

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

**APPENDIX 6****KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905 
Yolanda Woodruff Director of Retail Operations	(773) 894-5463 
Dorine Litman Property Manager / ORD	(773) 894-3908 
Patricia Grzyb Property Manager / MDW	(773) 838-0733 
Sungjin Choi Construction and Design Manager	(773) 686-7606 

## **APPENDIX 7**

### **RULES AND REGULATIONS:**

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.



**EXHIBIT 11**

**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<b>Infraction</b>	<b>1<sup>st</sup> Violation</b>	<b>2<sup>nd</sup> Violation</b>	<b>3<sup>rd</sup> Violation</b>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

\_\_\_\_ (Initial Here)

**EXHIBIT 12**

**UTILITY USAGE FEE**

**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## **EXHIBIT B-3**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**PepsiCo, Inc.**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT  
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

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

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]

## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

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

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

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

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

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

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

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE\WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

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

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

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

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

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

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

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

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

“Date of Beneficial Occupancy” or “DBO” means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

The DBO shall be confirmed in writing by the parties, and such written “Confirmation of DBO” shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement.

“Default Rate” means 12% per annum.

“Delivery Date” means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

“Department” means the Chicago Department of Aviation, also known as CDA. “Development Plan” means Licensee’s conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee’s schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

“Distribution Fee” means the amount, if any, payable pursuant to Section 4.07(f) for Licensee’s use of a centralized distribution and storage facility.

“Environmental Laws” means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.

§6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

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

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the



Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

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

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

4.1 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

4.2 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43     Products.

(a)     General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)     Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written a written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)     Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44     Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first- class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix I of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail



vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

#### 4.7 Operation of Concession.

##### (a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

##### (b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

**No Obligation to Provide Additional Space.** Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

5.5 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

(i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.

(ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

## 6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending



Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

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

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

#### 6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

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

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

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$ \_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

(b) Losses. "**Losses**" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Licensee, its employees, agents, subtenants, and Subcontractors.

(c) Defense of Suits. At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Agreement. Licensee must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involves the Airport.

(d) Wavier of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

(b) Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately vacate some or all of the Licensed Spaces until the Letter of Credit is in place and effective.

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

(d) Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

## ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION

9.1 Events of Default. Each of the following (a) through (n) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed thirty (30) days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within forty-five (45) days from delivery of the notice, Licensee will have the additional time, not in any event to exceed forty-five (45) days, to cure the failure.

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by



the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## **ARTICLE 10. SPECIAL CONDITIONS**

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

(a) Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

(b) Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

(i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or

(ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

(d) There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.

(e) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

(f) No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

(g) Licensee has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

(i) Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

(j) Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

(a) Authorization to do Business. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

(b) Economic Disclosure Statement. Licensee has provided the Commissioner with an EDS for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within thirty (30) days of any event or change in circumstance that

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

103 City's Right to Assign. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

a. City Council, in its sole discretion, if the Change in Ownership involves

a 100% Change in Ownership of Licensee, or

- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the

Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgment.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days



of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

(b) It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2- 55 of the Municipal Code, respectively. Licensee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractors as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

(c) Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must surrender the Licensed Space to the City free from the presence and contamination of any hazardous substances.

(d) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

7-28-390 Dumping on public way—Violation—Penalty; 7-  
28-440 Dumping on real estate without permit;  
11-4-1410 Disposal in waters prohibited;  
11-4-1420 Ballast tank, bilge tank or other discharge; 11-  
4-1450 Gas manufacturing residue;  
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-  
1530 Compliance with rules and regulations required; 11-4-  
1550 Operational requirements;  
11-4-1560 Screening requirements; and  
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Licensee's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect Licensee's eligibility for future City agreements.

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

- (f) Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):
- (i) Licensee agrees that Licensee, any person or entity who directly or indirectly has an ownership or beneficial interest in Licensee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Licensee's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Licensee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this bid, proposal or Agreement by Licensee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Licensee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.
- (ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

- (iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

(g) Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A “contractual or other private business dealing” will not include any employment relationship of an official’s spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

- (i) Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "**Artwork**") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 et seq.) (the "**Copyright Act**"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and sublicensees, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

106 Airport Security.

(a) This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Licensee is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Licensee must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Licensee must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum-security enhancement. Any drawings, plans, and specifications provided by Licensee under this Agreement must comply with those guidelines for airport security developed by the City, the

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

(c) Gates and doors located on the Licensed Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Licensee until the malfunction is remedied.

(d) In connection with the implementation of its security program, Licensee may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Licensee acknowledges that all such knowledge and information is of a highly confidential nature. Licensee covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Licensee further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

(e) Licensee understands that fines and/or penalties may be assessed by the TSA or FAA for Licensee's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Licensee's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Licensee, or any party for which Licensee is liable under this Agreement, is responsible for all or part of the fine or penalty, Licensee shall pay said amount of the fine or penalty as Additional Fees.

#### 10.7 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the furnishing of services in the Licensed Spaces, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the License in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

(b) It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the License, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS



10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(f) Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Licensee of Licensee's obligations under this Agreement relative to nondiscrimination.

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

(h) Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

109 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

10.10 Avigation Easement. There is reserved to the City, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Licensed Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Licensee by accepting this License agrees for itself, its successors, and assigns that it will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Licensed Space and cause the abatement of the interference at the expense of Licensee.

10.11 National Emergency. This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.12 2014 Hiring Prohibitions.

(a) The City is subject to the June 16, 2014, "City of Chicago Hiring Plan" (the "**2014 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a sublicensee, and from directing Licensee to hire an individual as an employee or as a sublicensee. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Licensee in connection with this License are employees or sublicensees of Licensee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer- employee relationship of any kind between the City and any personnel of Licensee.

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Licensee by a City employee or City official in violation of this Section, or advocating a violation of this Section above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

## ARTICLE 11. GENERAL CONDITIONS

11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the grant and use of the License and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

11.2 Counterparts. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be

interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Chicago Department of Aviation  
City of Chicago  
O'Hare International Airport  
10510 W. Zemke Rd Chicago,  
Illinois 60666

and with a copy to:  
Deputy Commissioner of Concessions at the same address.

If the notice or communication relates to payment of Fees or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller  
City of Chicago  
City Hall - Room 501 121  
N. LaSalle Street  
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section 2  
North LaSalle Street, Suite 540  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

118 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

119 Subordination.

(a) This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

(c) To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs (a) and (b) above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs (a) and (b).

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee. Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 Estoppel Certificate. From time to time upon not less than fifteen (15) days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 No Personal Liability. Licensee, or any sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 Joint and Several Liability. If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Licensee is the joint and several obligations or undertaking of each such individual or other legal entity.

11.18 Non-Recordation. Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure event*"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within twenty (20) days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than sixty (60) days due to a *force majeure* event, without the express written consent of the Commissioner.



**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**



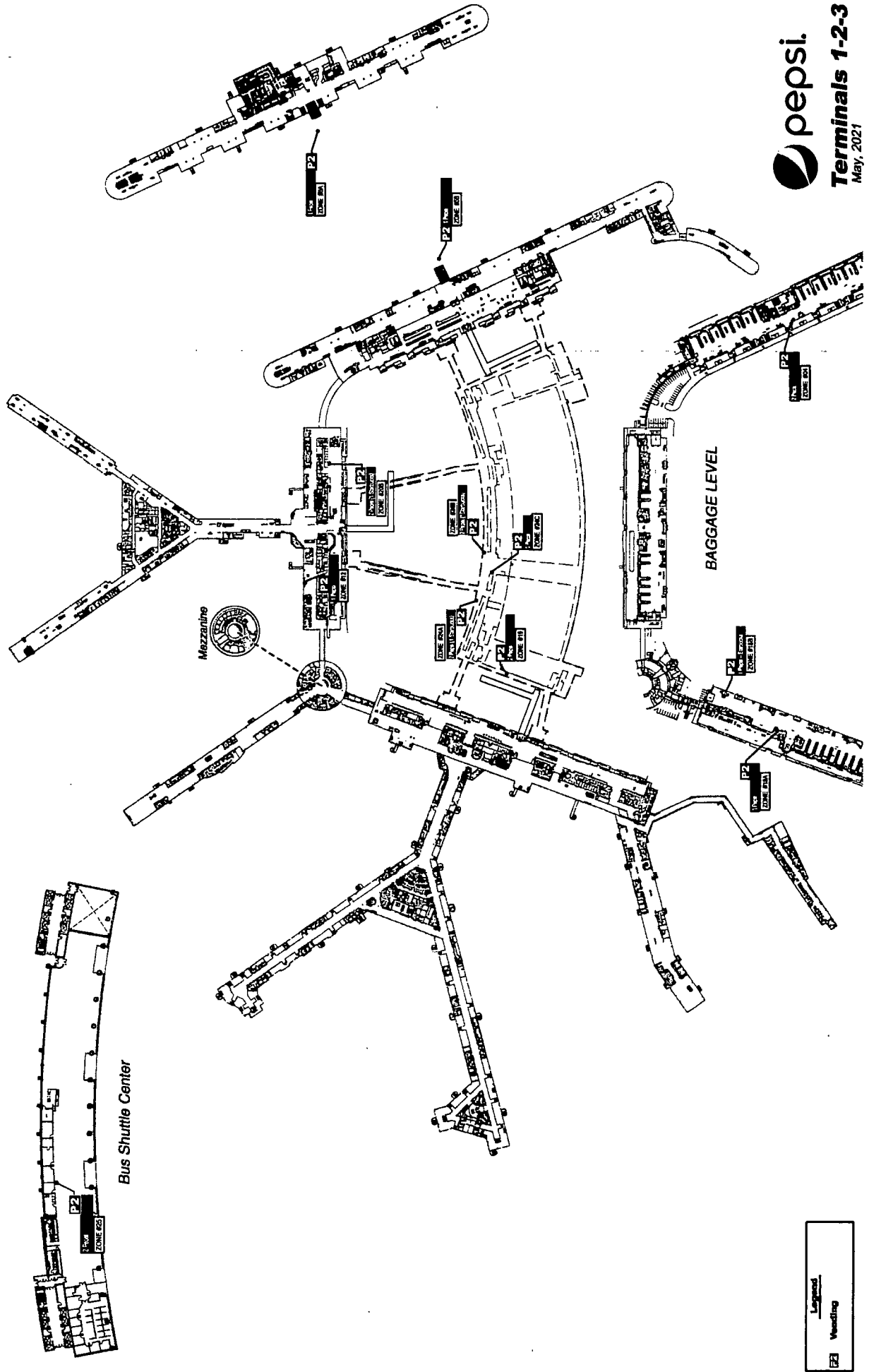
EXHIBIT 1  
LICENSED SPACE  
(INCLUDING CONFIRMATION OF DBO)

The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

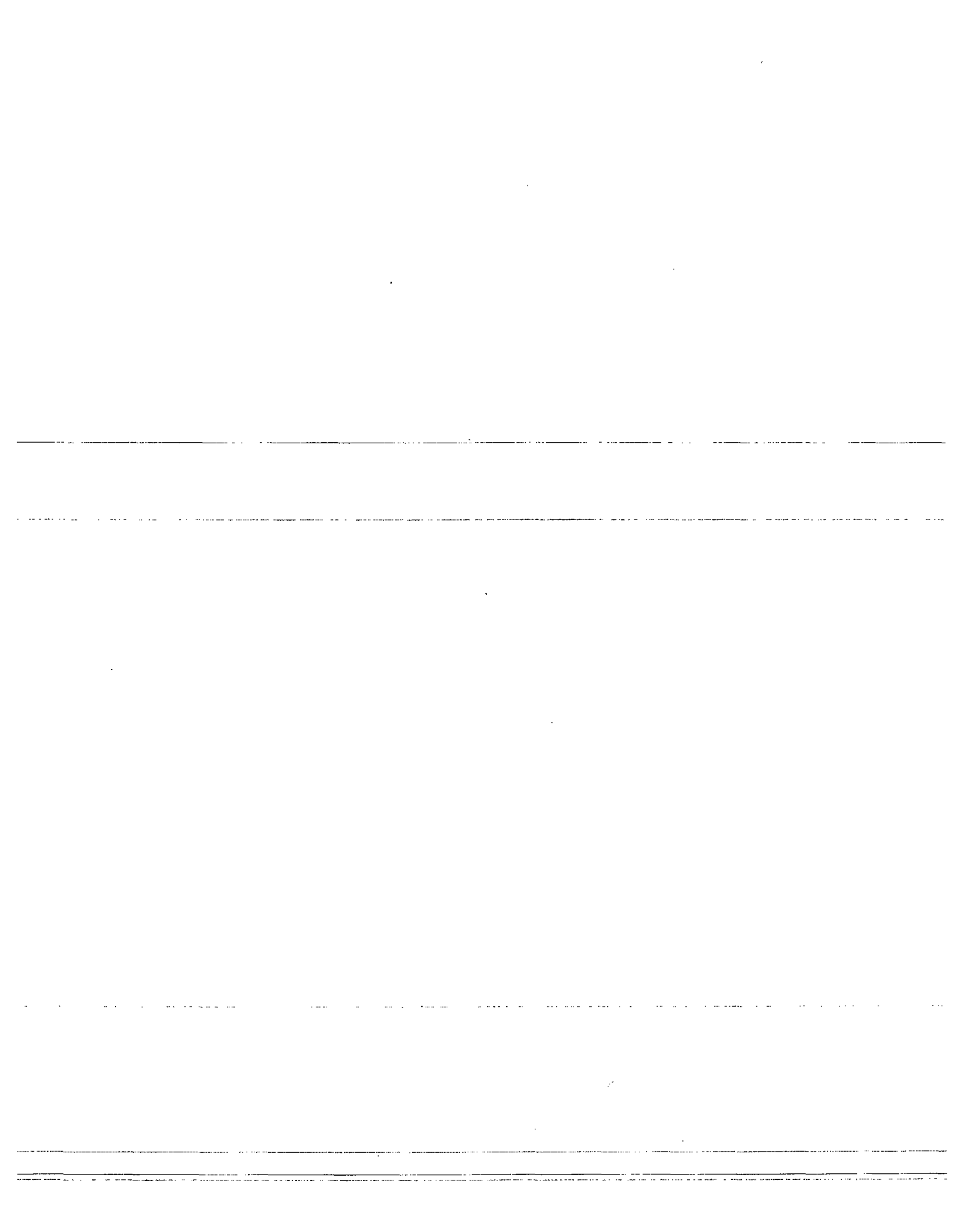
Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	n/a	T1B.U.107.B
2	n/a	T1B.U.12.B
3	n/a	T1B.U.73.M
4	Pepsi (2)	T1B.L.94.O
5A	Pepsi (1)	T1C.T.G.C
5B	Pepsi (1)	T1B.THH.V
6	n/a	T2E.U.39.A
7	n/a	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	n/a	T2E.U.48.A
10	n/a	T2.L.40.6
11	n/a	T2EF.U.16.D
12	Pepsi (Starbucks 1)	T2.U.45.J
13	n/a	T3.U.8C.D
14	n/a	T3G.U.33.C
15	n/a	T3H.U.30.E
16	n/a	T3K.9Ma.A

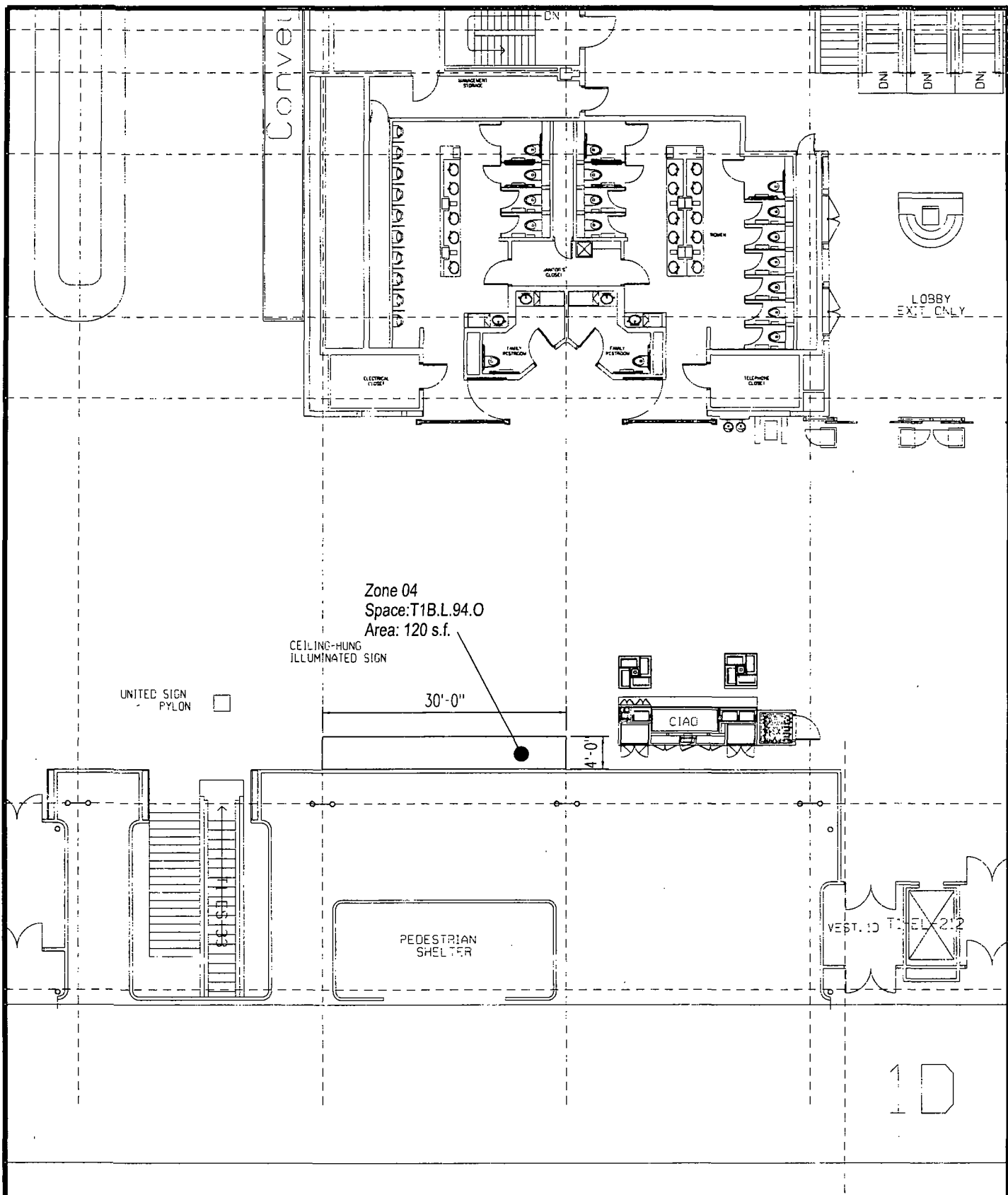
17	n/a	T3K.U.75.L
18A	Pepsi (1)	T3.L.8Y.C
18B	Pepsi (Starbucks 1)	T3.L.8Y.C
19	Pepsi (2)	CTA Pedway
20A	Pepsi (2)	T2.U.4A.D
20B	n/a	T2.U.4C.E
21	n/a	T3.U.8AA.F
22	n/a	T3HK.U.9R.E
23	n/a	L Stinger.U.2.3.A
24A	Pepsi (1) Pepsi (Starbucks 1)	T2 CTA Pedway
24B	Pepsi (1) Pepsi (Starbucks 1)	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	Pepsi (2)	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD



Legend  
 [P2] Waiting





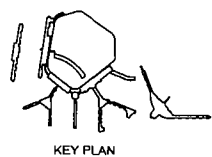
Chicago O'Hare International Airport  
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Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 1 Lower Level

Automated Retail  
Zone #04 (T1B.L.94.O)



Date: May, 2021

Created by CADU Services

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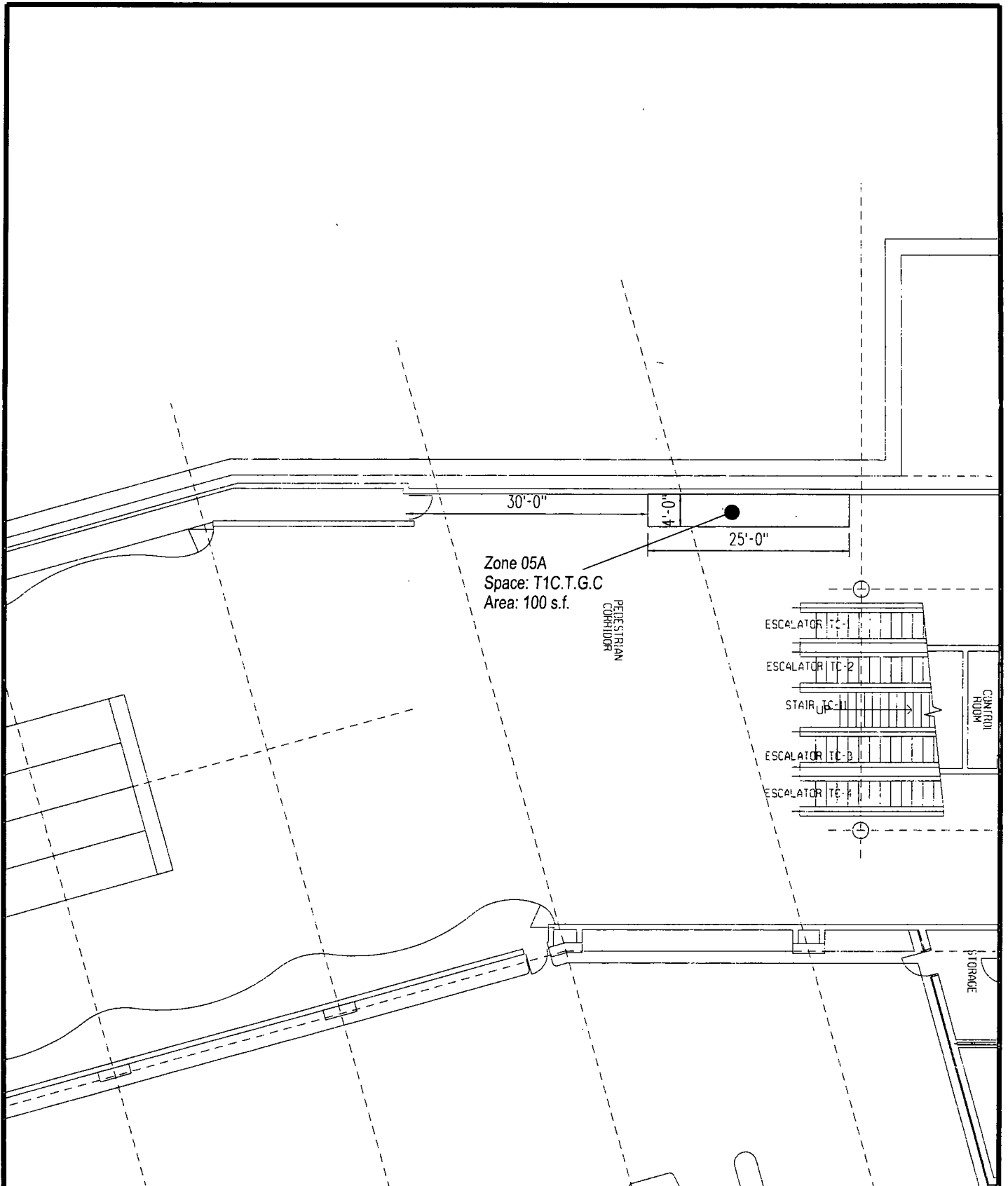
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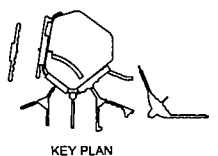
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 1 / Concourse C Pedestrian Tunnel

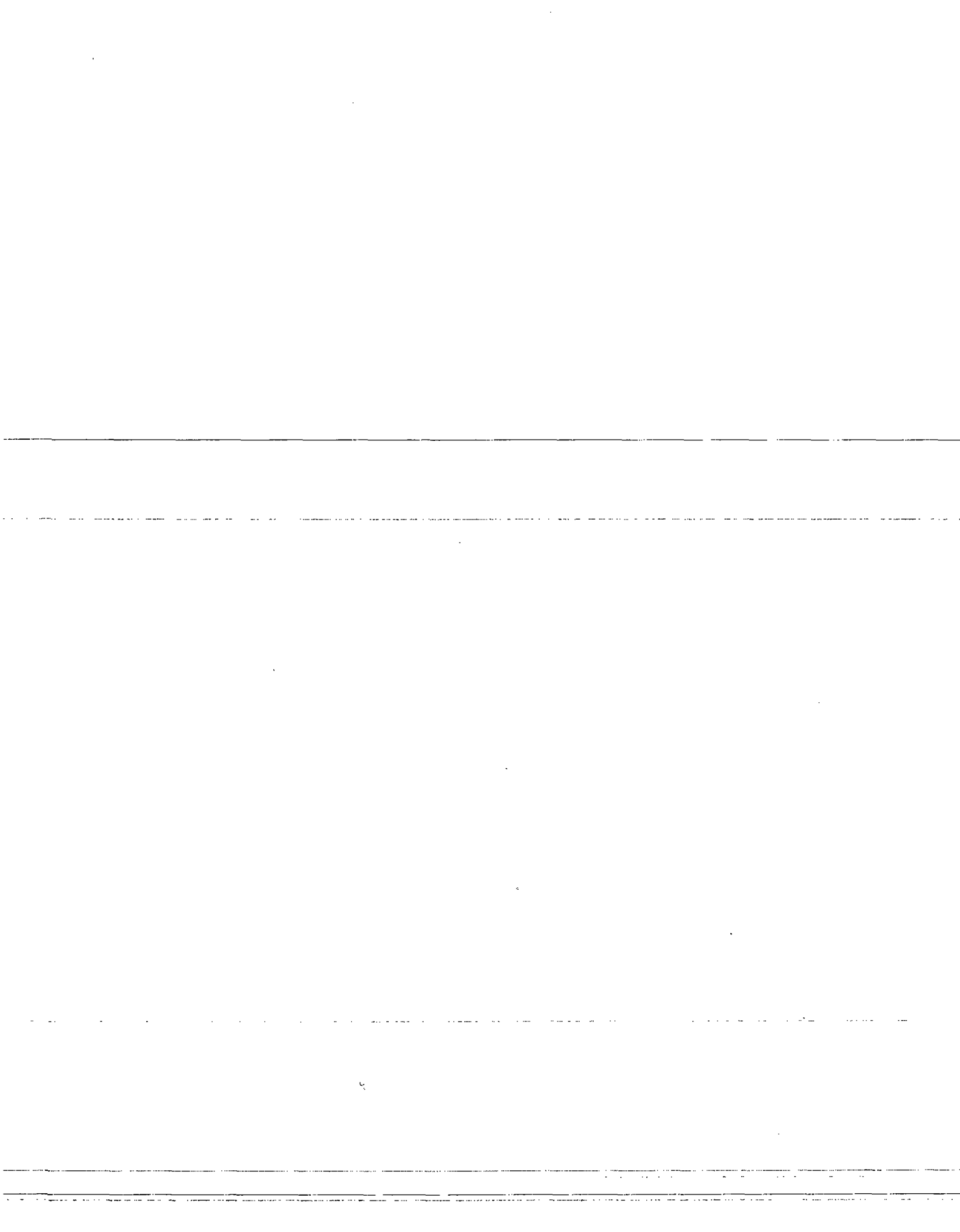
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Zone #05A (T1C.T.G.C)

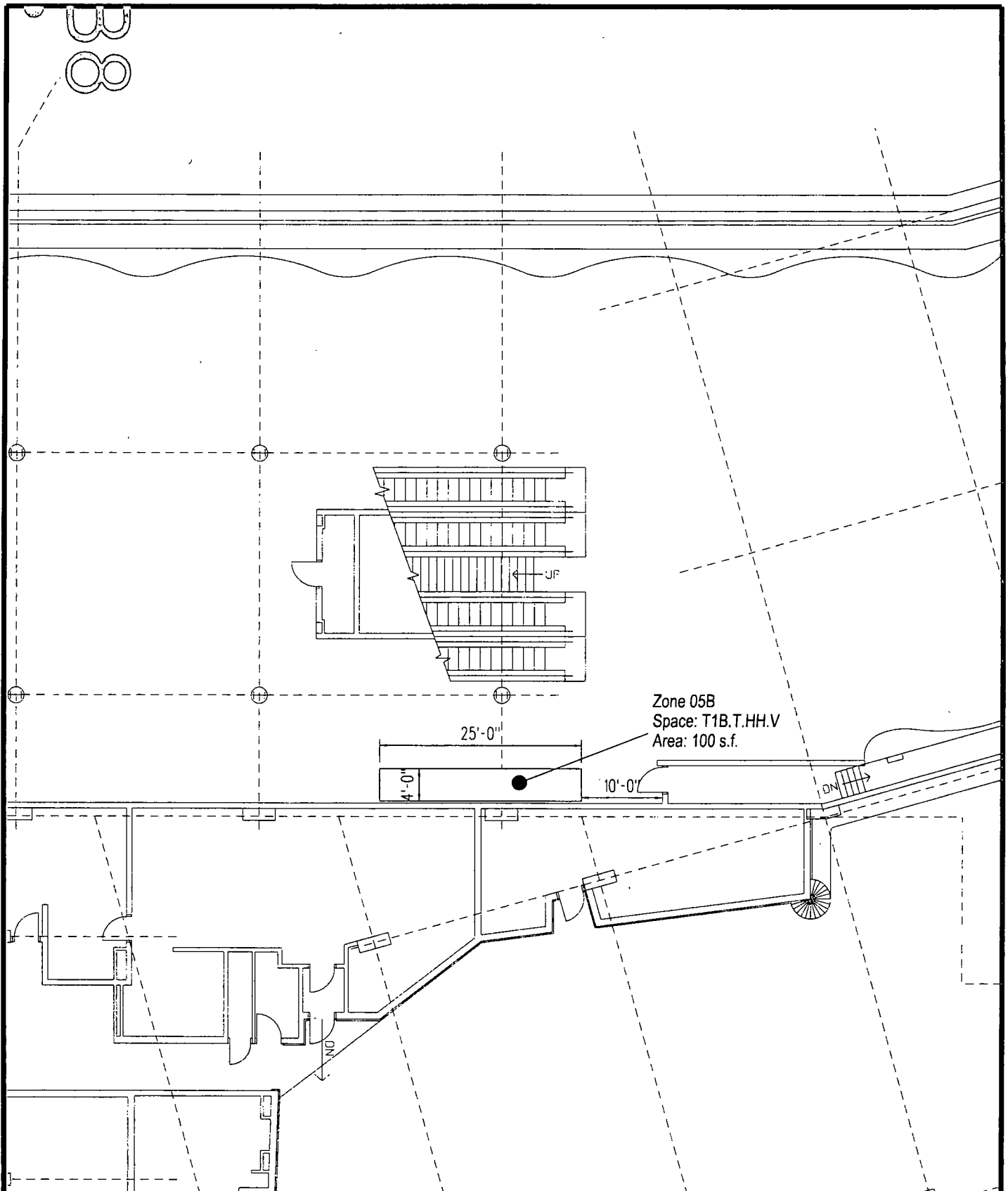
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Date: May, 2021

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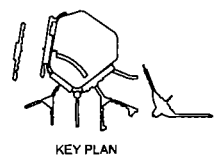
Chicago Department of Aviation  
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UNISON RETAIL MANAGEMENT

Terminal 1 / Concourse B Pedestrian Tunnel

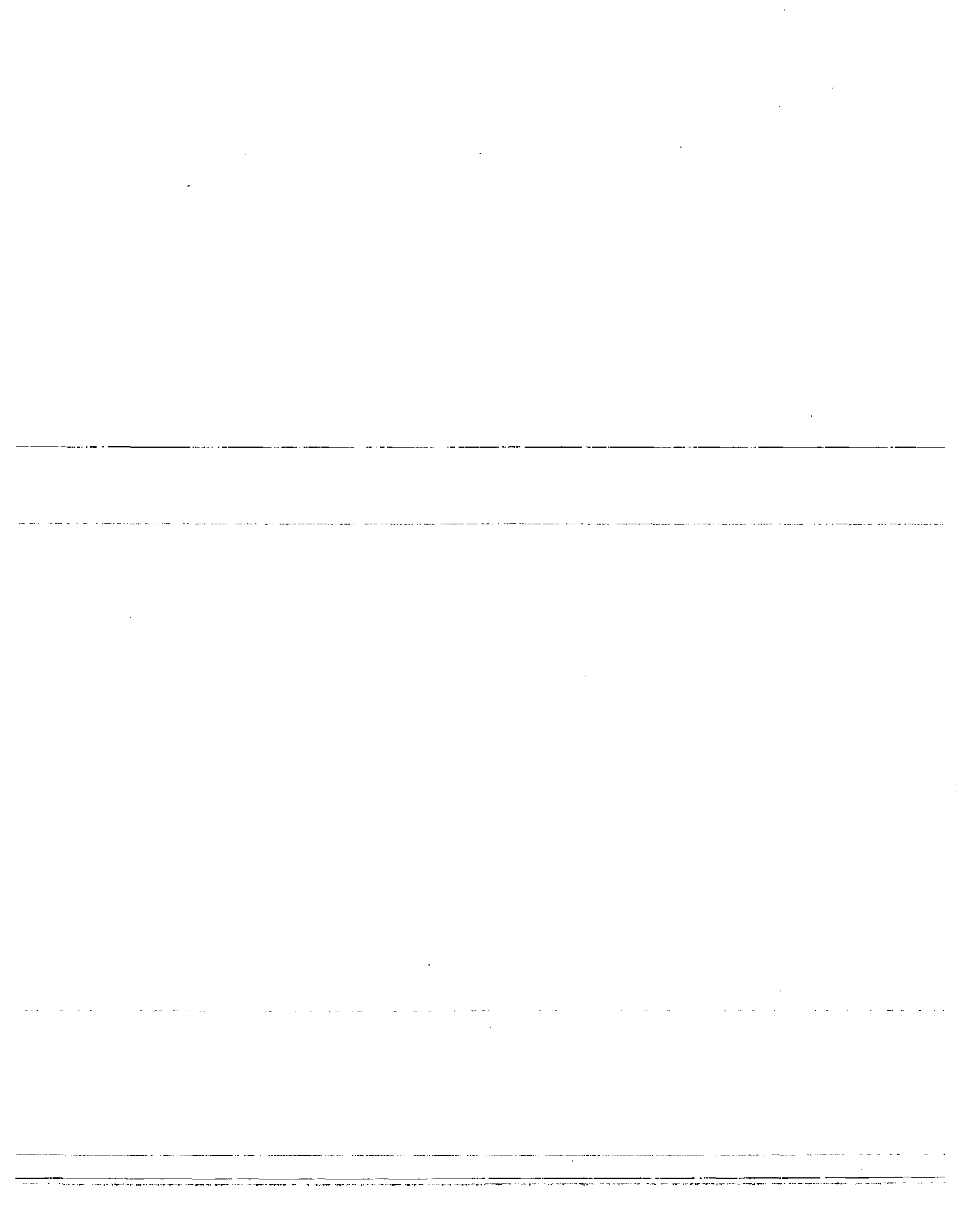
Automated Retail  
Zone # 05B (T1B.THH.V)

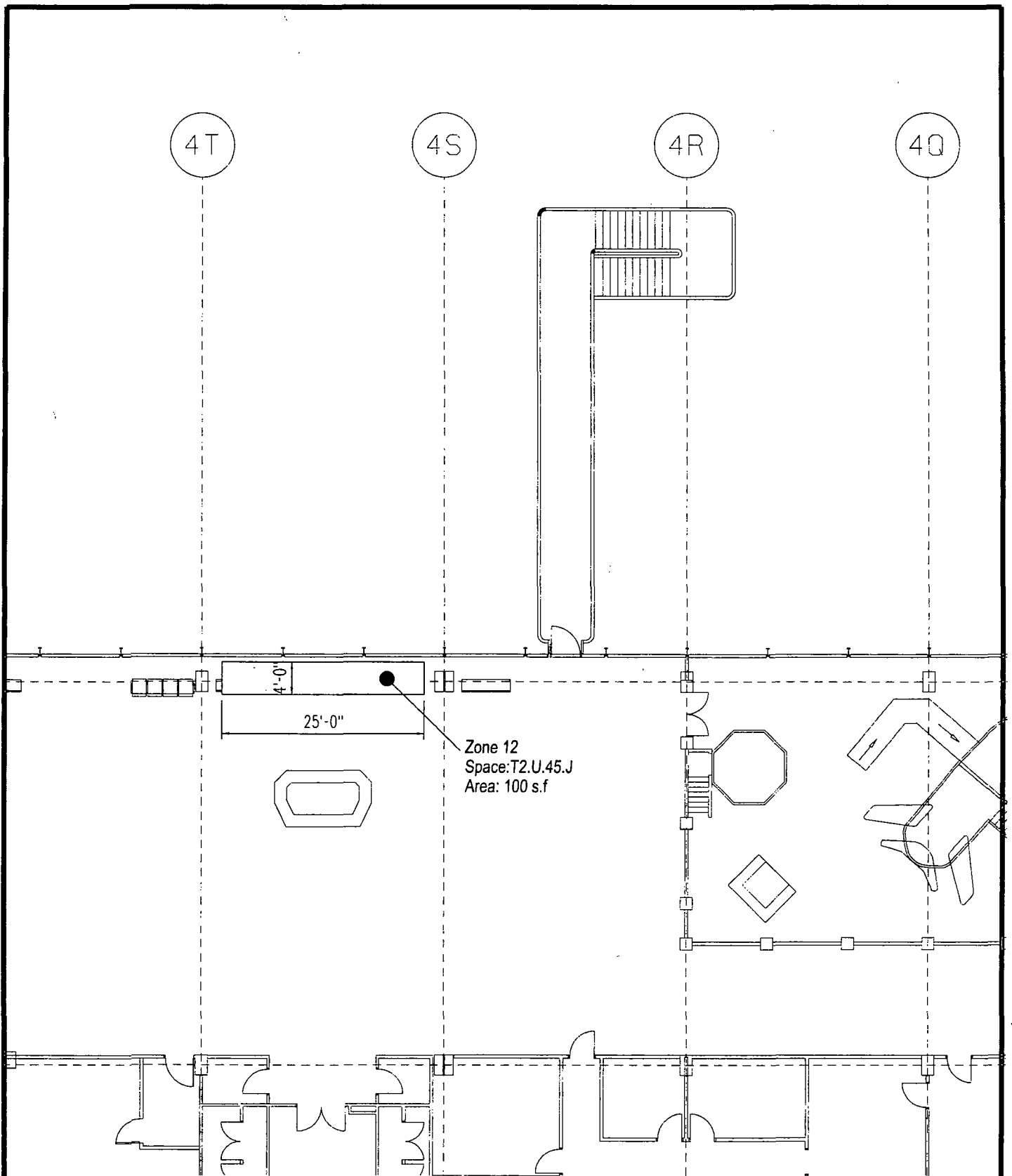
Scale: 1/16" = 1'- 0"



Date: May, 2021

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Terminal 2 Upper Level

Automated Retail  
Zone #12 (T2.U.45.J)

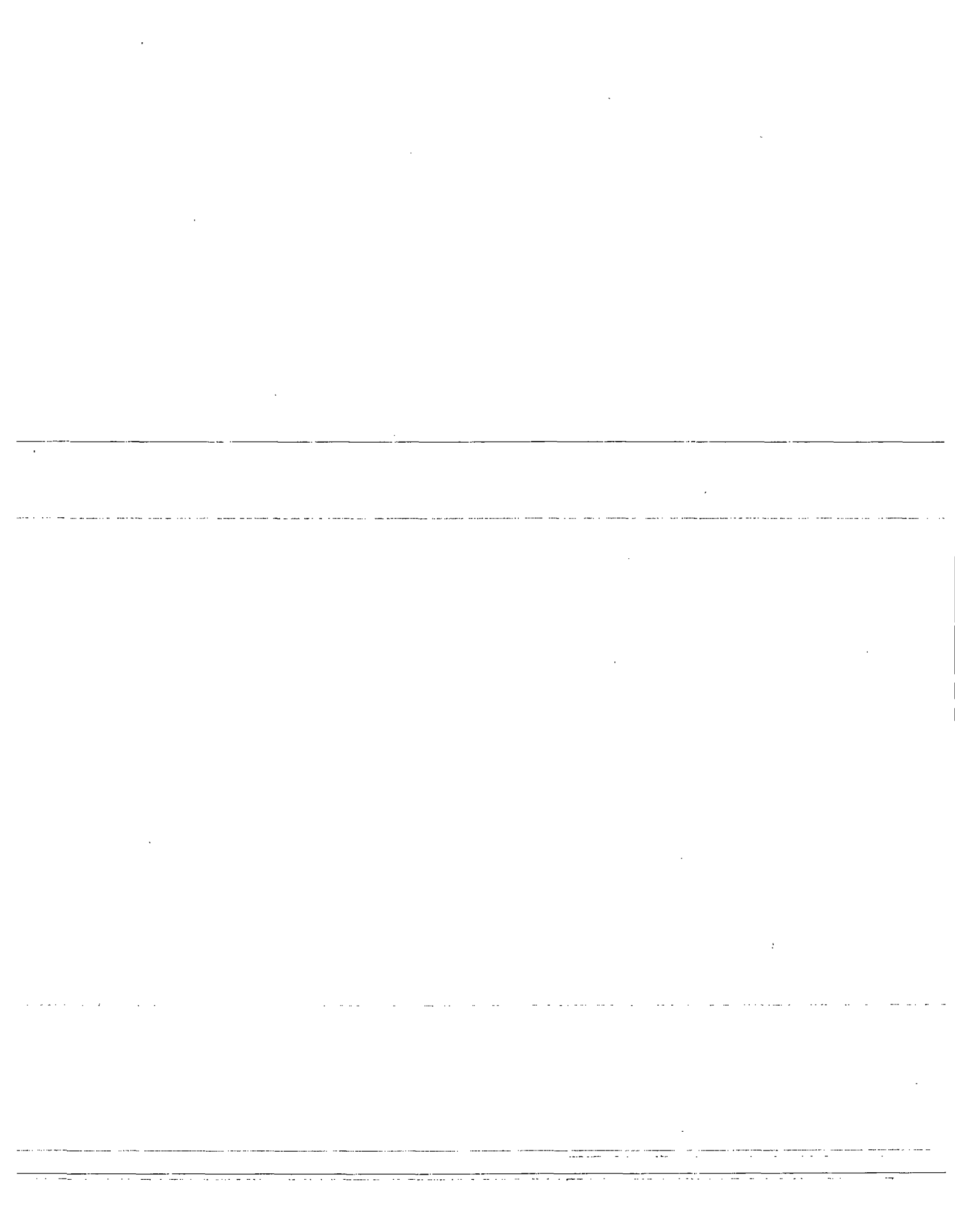
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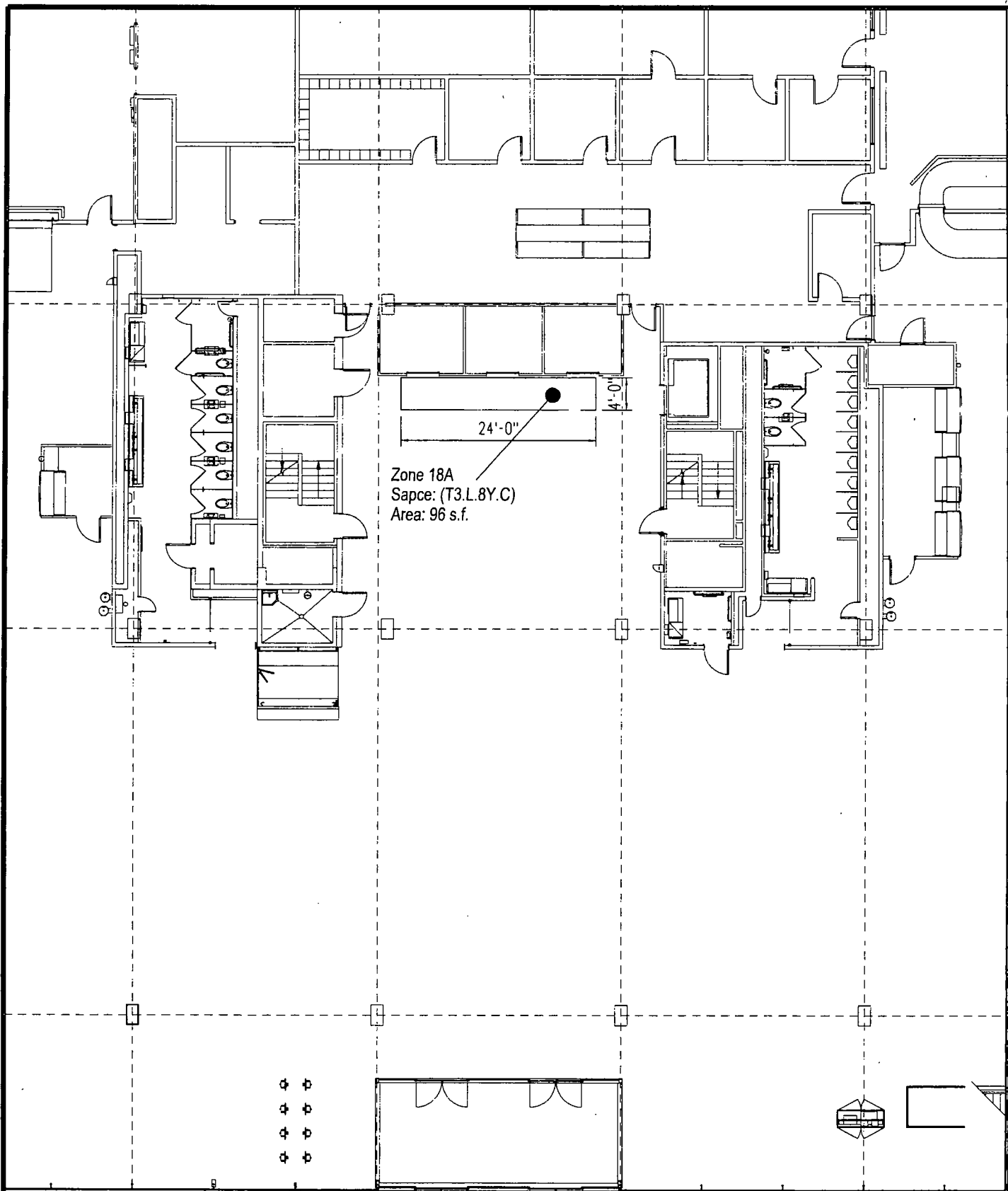


KEY PLAN

Date: May, 2021

Created by CADDO Services





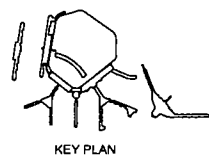
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UNISON RETAIL MANAGEMENT

Terminal 3 Lower Level

Automated Retail  
Zone #18A (T3.L.8Y.C)



Date: May, 2021

Created by CAD Services

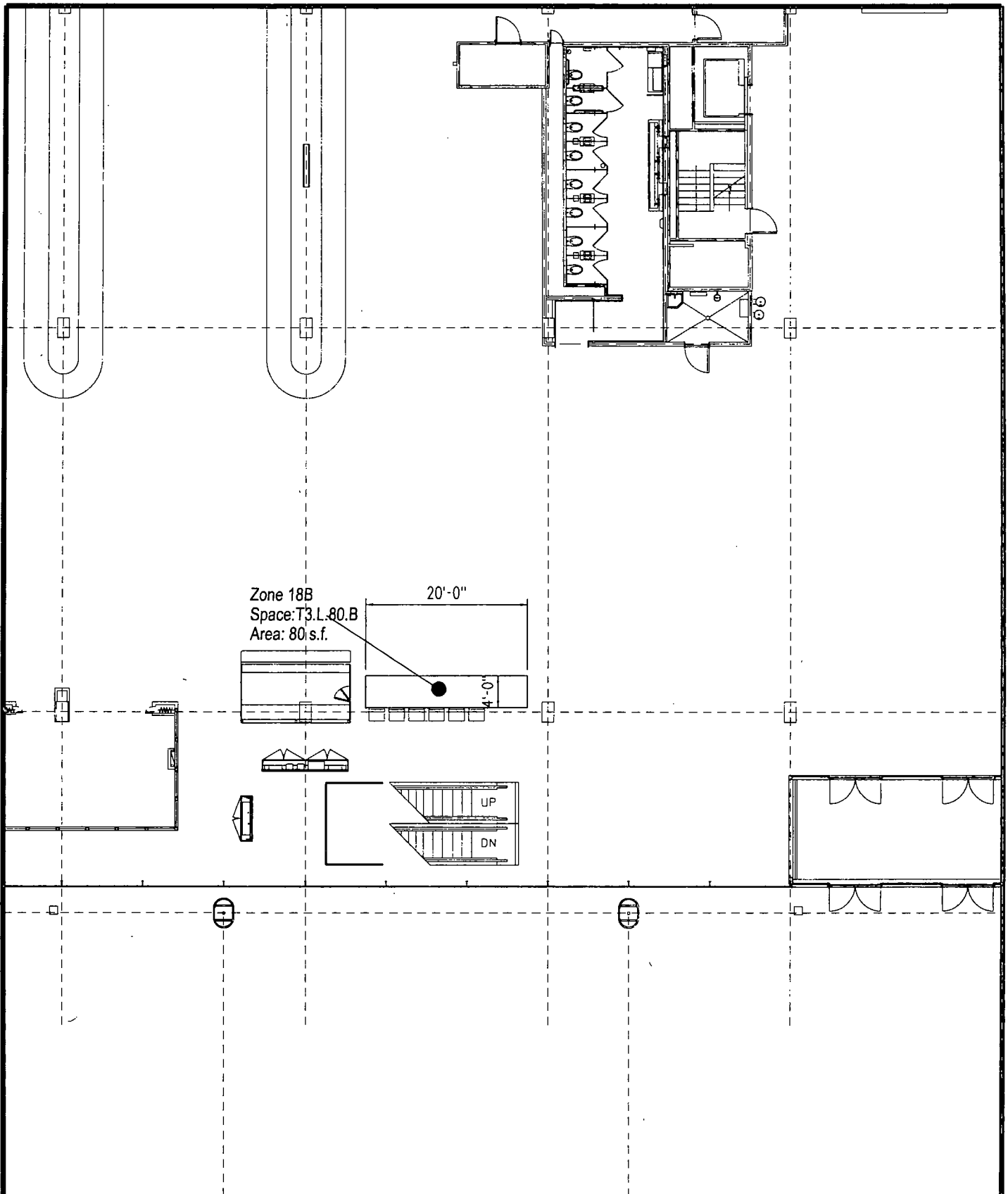
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Zone 18B  
Space: T3.L.80.B  
Area: 80 s.f.

20'-0"

4'-0"

UP

DN

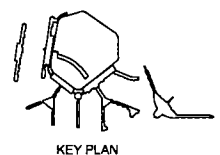
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H N I S S G D S R T E R A I L A M A N A G E M E N T

Terminal 3 Lower Level

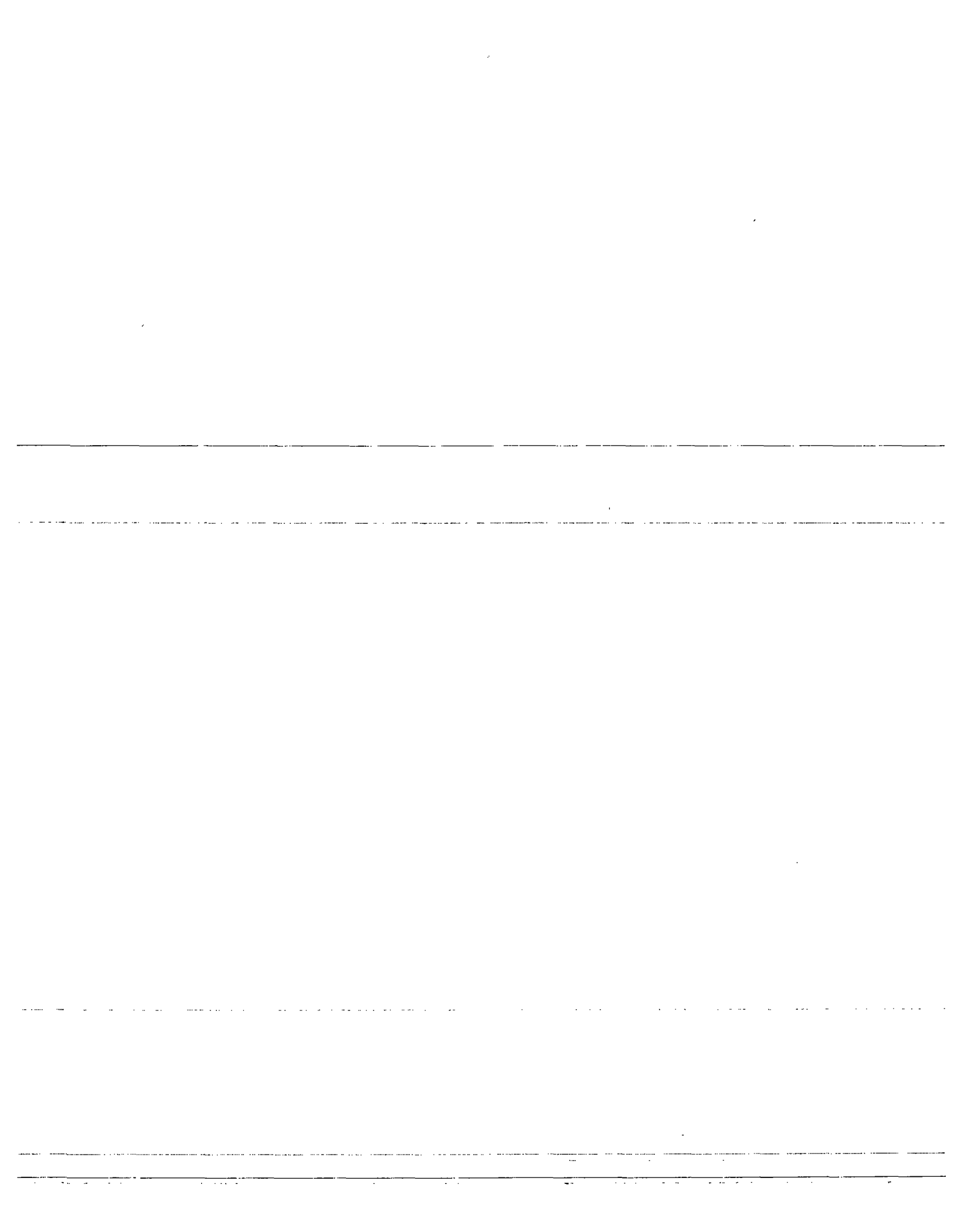
Automated Retail  
Zone #18B (T3.L.8Y.C)

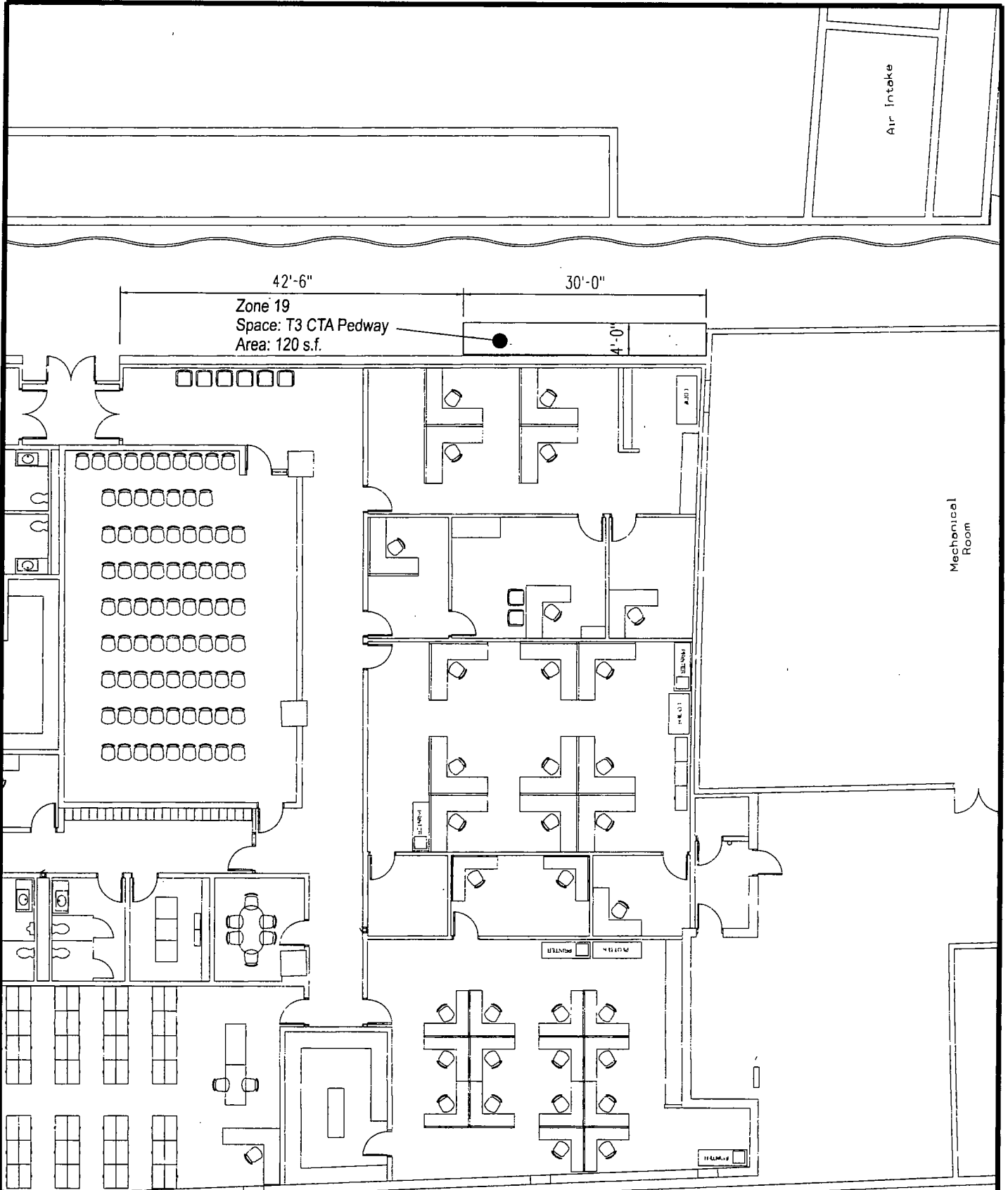


KEY PLAN

Date: May, 2021

Created by CADDO Services





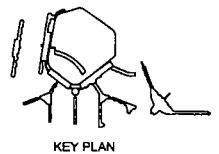
Chicago O'Hare International Airport  
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UNISON RETAIL MANAGEMENT

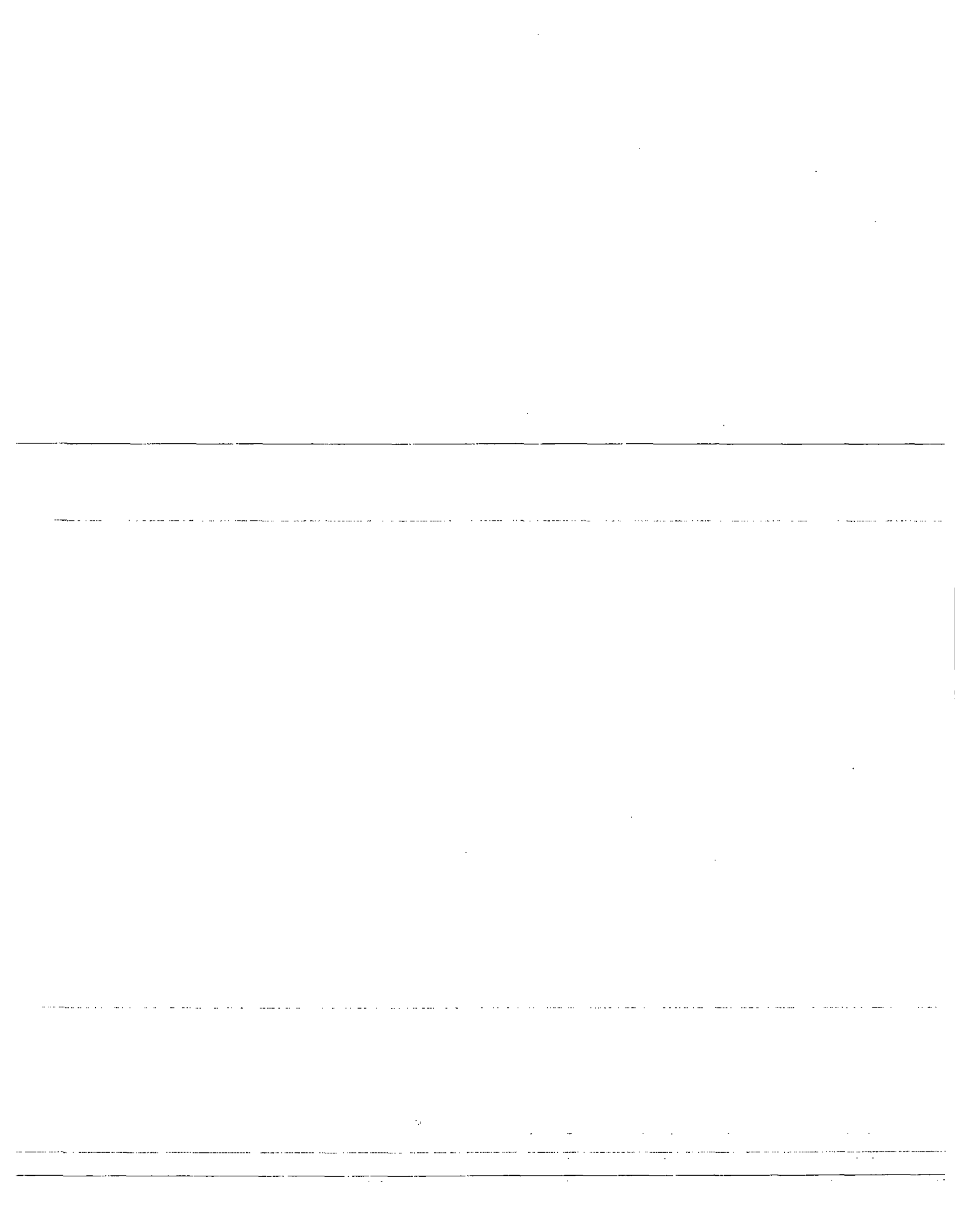
Terminal 3 CTA Pedestrian Tunnel

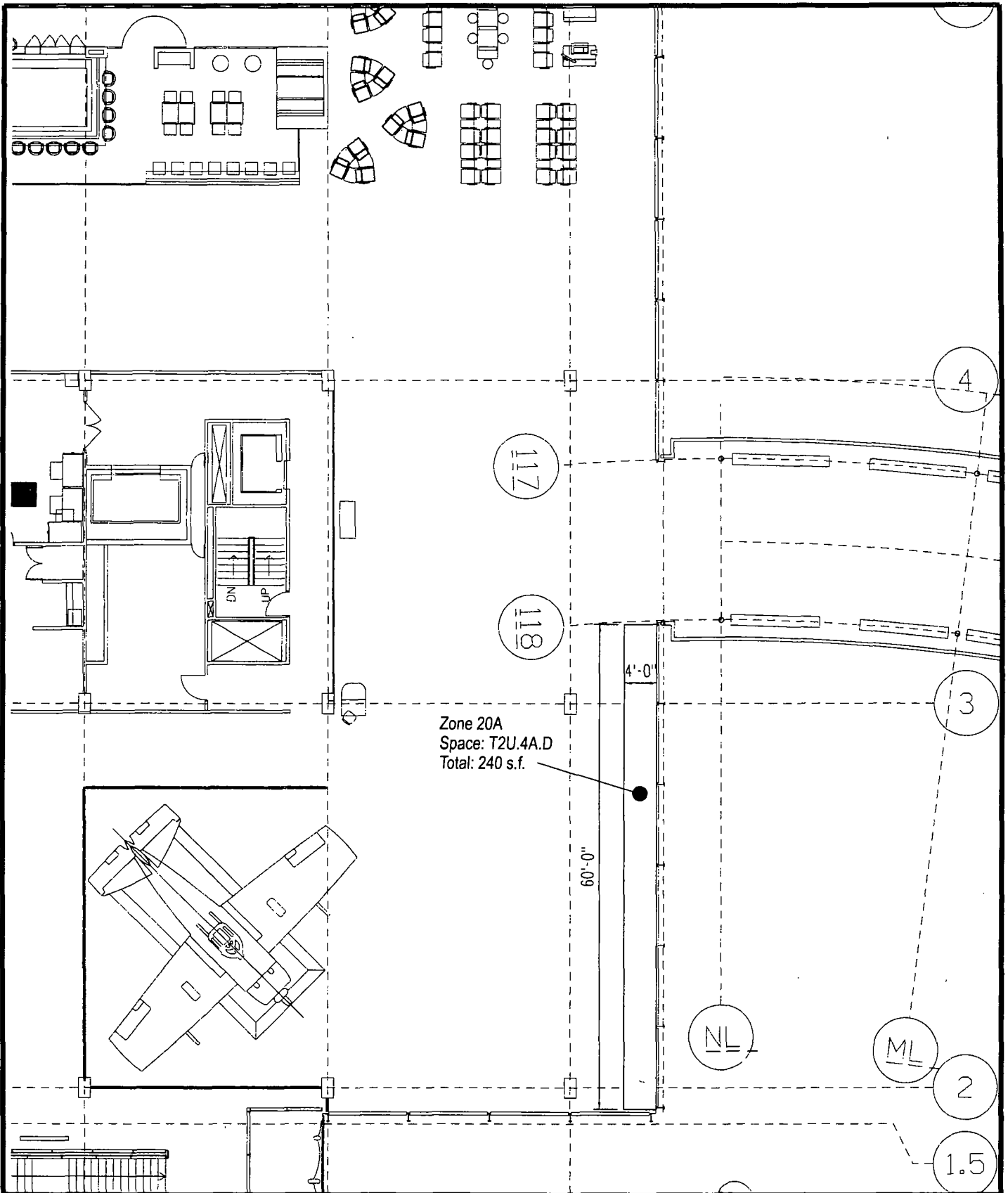
Automated Retail  
Zone #19



Date: May, 2021

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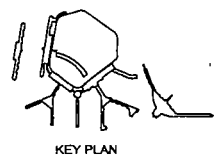
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

Automated Retail  
Zone #20A (T2.U.4A.D)

Scale: 1/16" = 1'-0"



Date: May, 2021

Created by CADDO Services

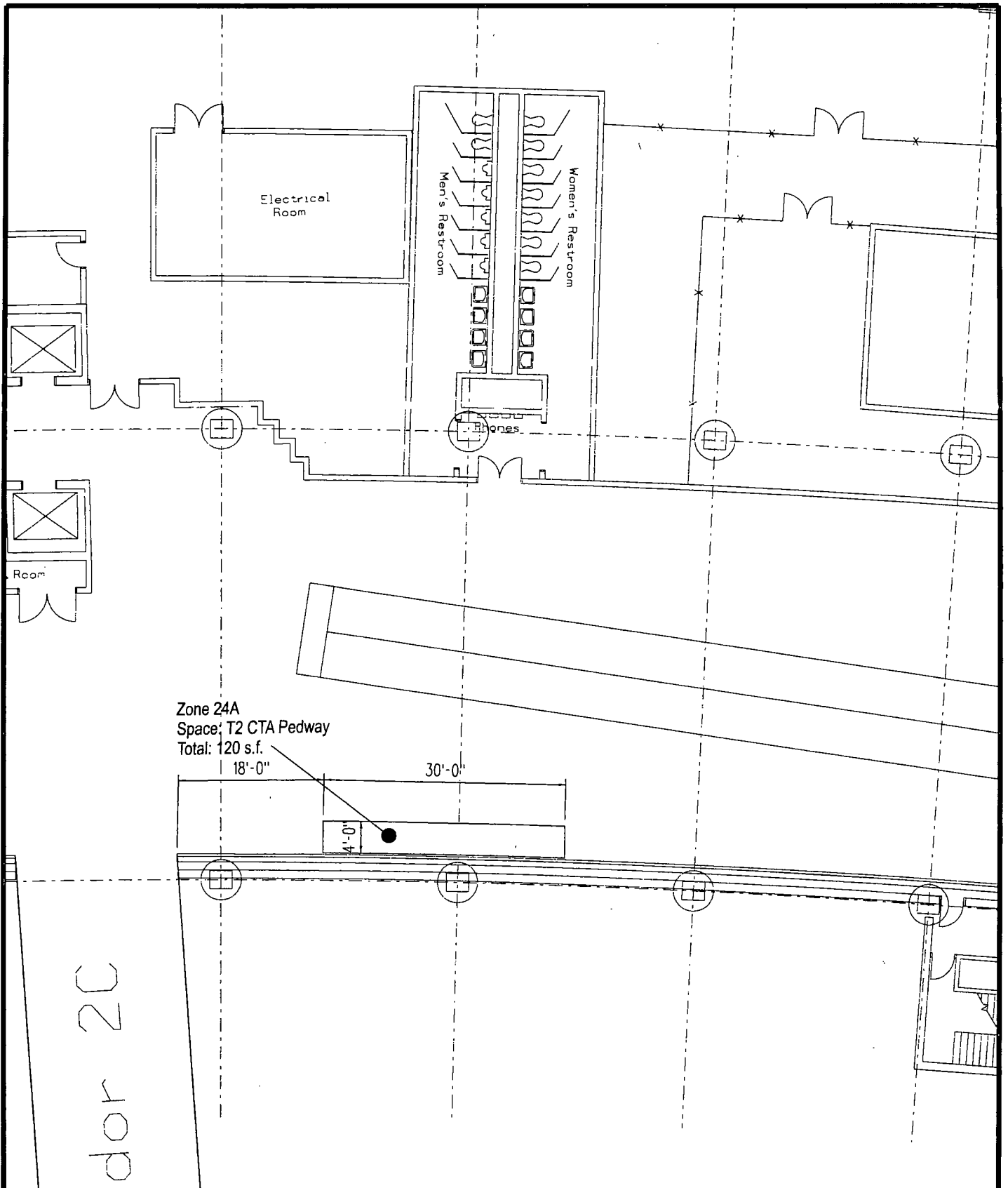
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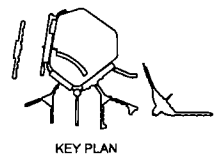
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UNISON RETAIL MANAGEMENT

Terminal 2 CTA Pedestrian Tunnel

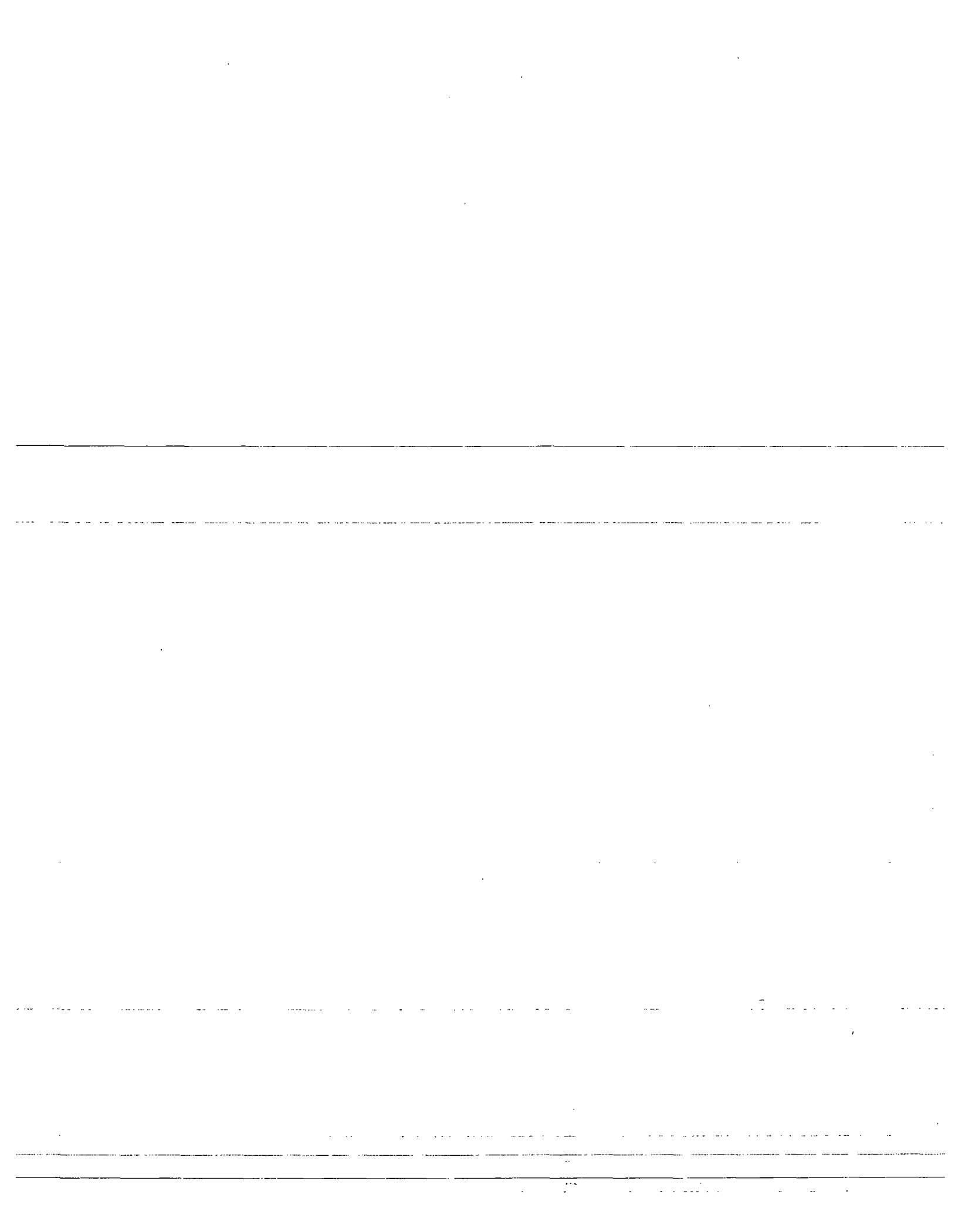
Automated Retail  
Zone #24A T2 CTA Pedway



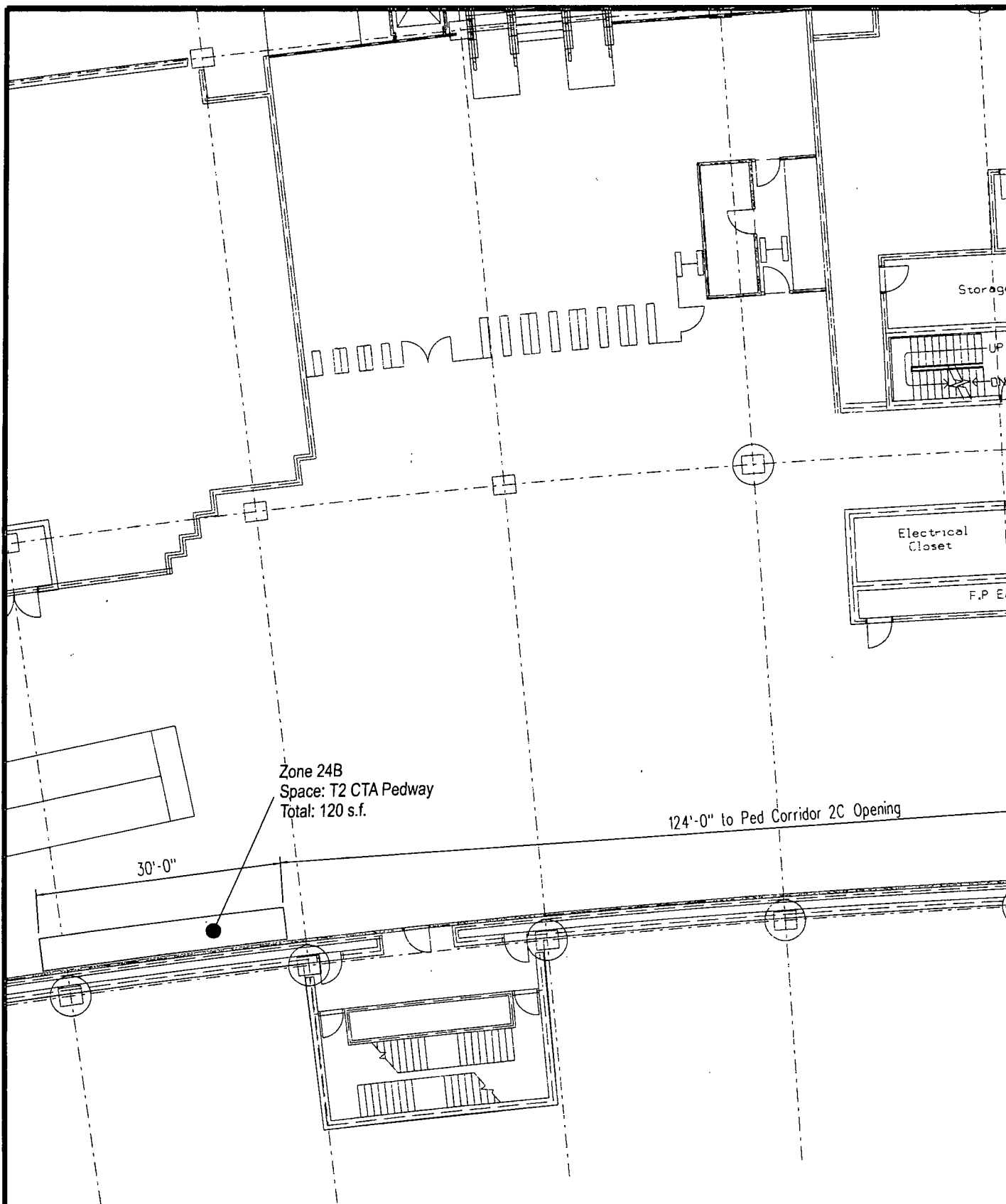
KEY PLAN

Date: May, 2021

Created by CADDO Services







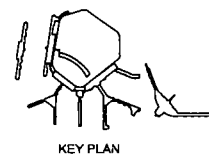
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UNISON RETAIL MANAGEMENT

Terminal 2 CTA Pedestrian Tunnel

Automated Retail  
Zone #24B T2 CTA Pedway



KEY PLAN

Date: May, 2021

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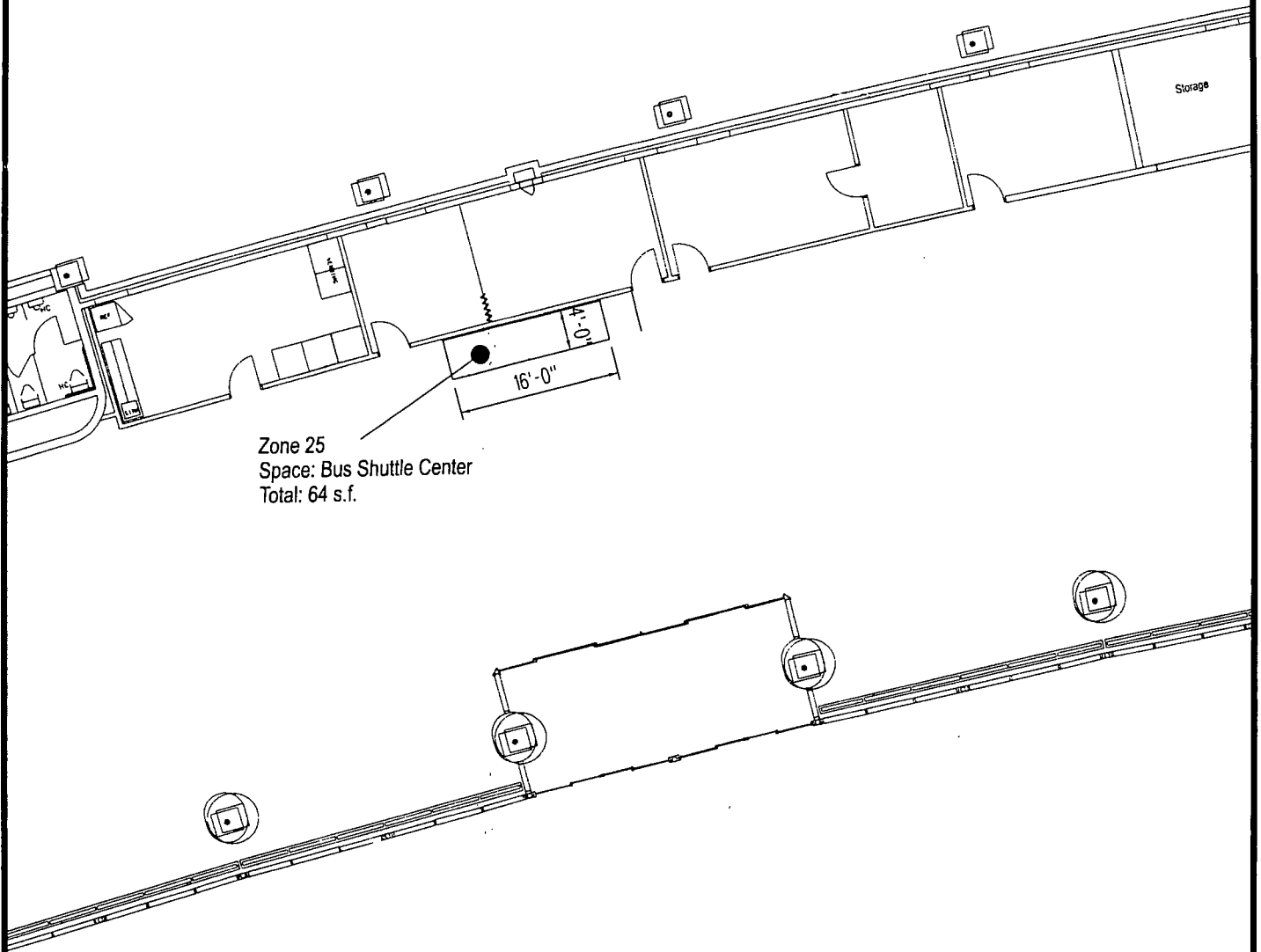
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Zone 25  
Space: Bus Shuttle Center  
Total: 64 s.f.

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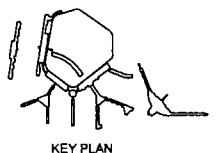
Chicago Department of Aviation  
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UNISON RETAIL MANAGEMENT

Elevated Parking Structure

Automated Retail  
Zone #25 Bus Shuttle Center

Scale: 1/16" = 1'-0"



Date: May, 2021

Created by CADD Services



## **EXHIBIT 2**

### **FEES**



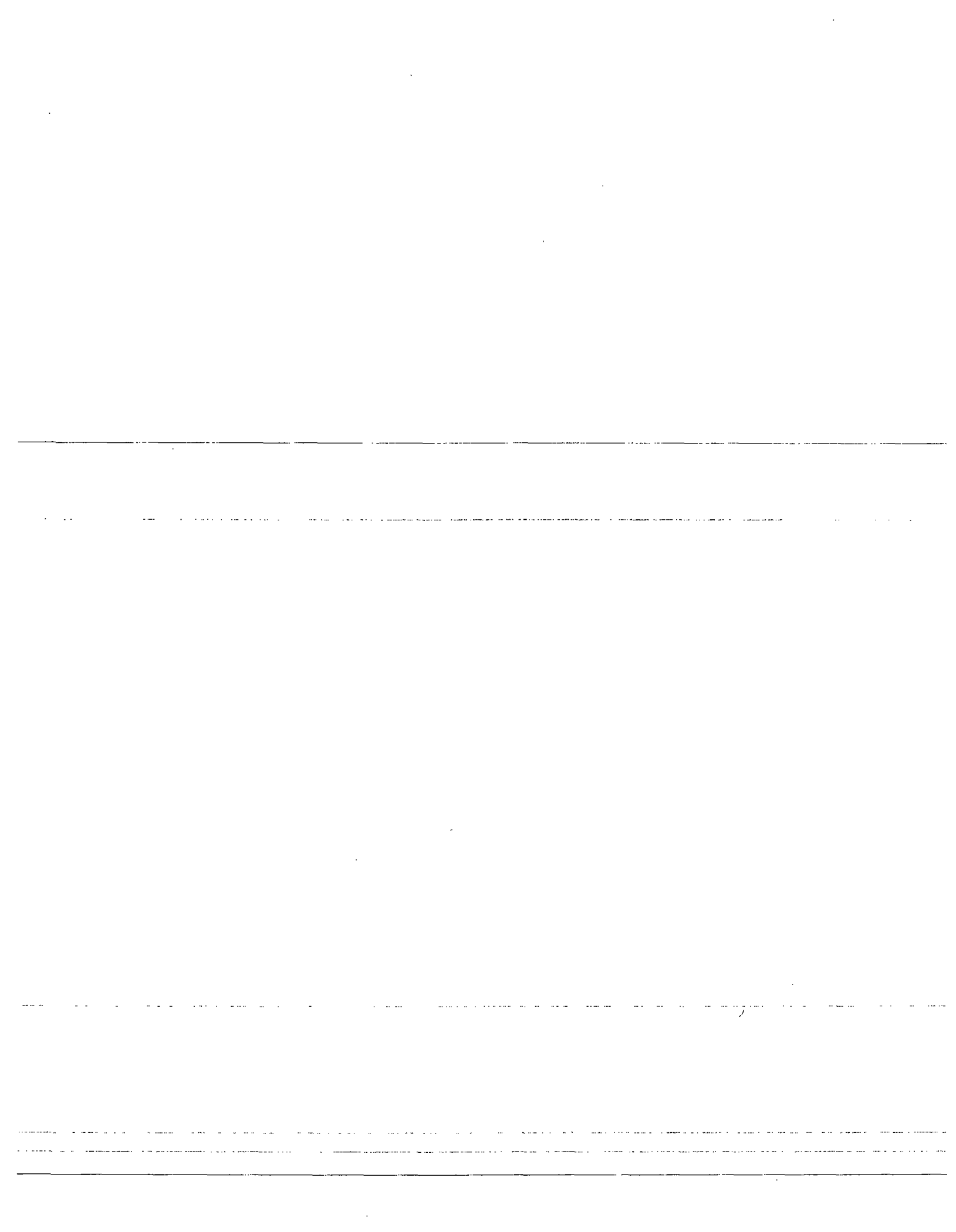
## **EXHIBIT 2**

### **FEES**

1. Percentage Fee: Pepsi

Gross Revenues	Tier	Percentage Fee
Non-Exclusive Products	\$0 - \$450,000	25.0%
	Over \$450,000	28.0%
Exclusive Products	\$0 - \$450,000	30.0%
	Over \$450,000	33.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.





**EXHIBIT 3**  
**DEVELOPMENT PLAN**

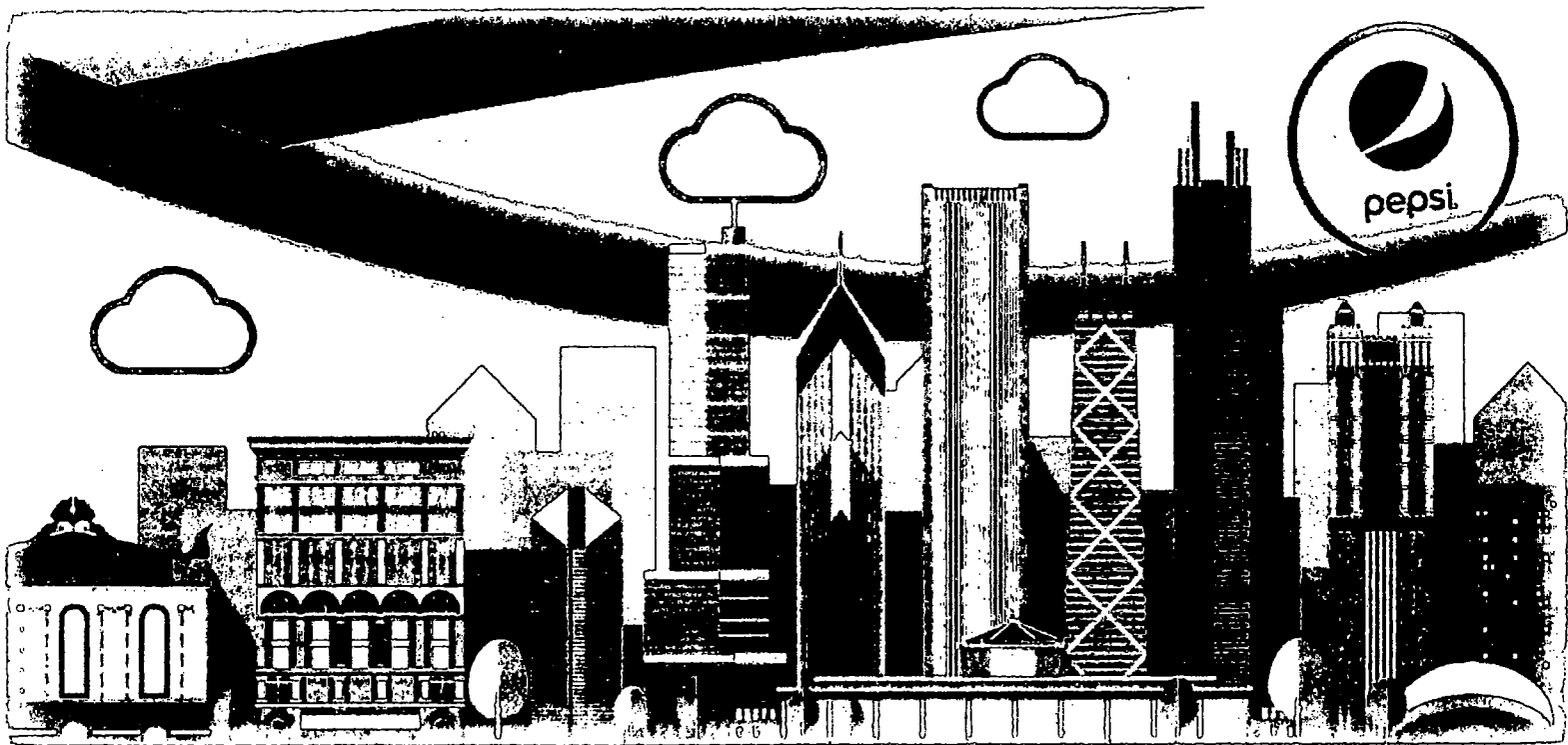
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Exhibit 3  
Development Plan

# TAB 4- Concessions System Development Plan



**PEPSICO**



Tropicana














## 4. Concessions Development Plan

### Pepsi Beverages Company – The Right Choice

#### 1. Why Best for ORD?

Having the right beverage matters. Today, it is not a cola only decision, as consumer beverage selection has shifted away from a primary soft drinks' market. Healthy choices have changed the beverage landscape, as consumers are influenced heavily by variety, non-carbonation, and health/wellness trends. Our vision is to be the global leader in convenient foods and beverages, and with Pepsi's advantaged portfolio, our market share and loyalty reflect this in the Midwest.

#### BECAUSE OF OUR ADVANTAGED PORTFOLIO, PEPSICO'S MARKET SHARE & LOYALTY ARE ESPECIALLY STRONG IN THE MIDWEST

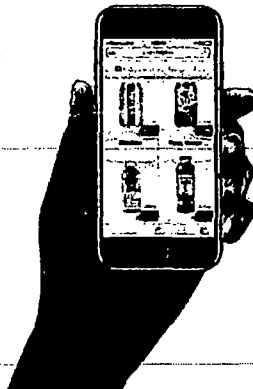
#1 CSD	#1 Isotonic	#1 Tea	#1 Coffee	#1 Water
50%	74%	50%	85%	15%
				
				
34%	18%	22%	12%	12%
				

Source: IRI, Convenience and Gas Value Share year to date Ending February 25, 2018; Information based on Freedom of Choice Outlets in the Midwest Region (KS, MO, IA, IL, IN)

CSD – CARBONATED SOFT DRINKS: Represents all Carbonated Soft Drinks (colas, diet colas, flavors, etc...)

Featuring our newest glass front vending Bev Max 6, our equipment is specifically designed to stand out from traditional vending. Custom "vending surrounds", from WBE certified Northstar Marketing, incorporate airport design elements and provide a sense of place. Easitrax Advance provides us with software solutions that improve the efficiency of our vending operations, enabling all forms of cashless payments, and providing real time data that allows us to determine the ideal product assortment and optimal time to schedule deliveries.

- 1 Customer scans the QR code from a small paper-like screen behind the glass.
- 2 Follows the link to the beautiful interface with available products. No app installation needed.
- 3 Makes product selection.
- 4 Pays from the phone, or on the vending machine.



The machines also report their own repair issues directly back to the service center. We are also working to introduce Touchless Vending by Renetec, which allows customers to pay directly from their phones by scanning a QR code from a small screen behind the glass of our Bev Max 6 machines. No app installation needed.



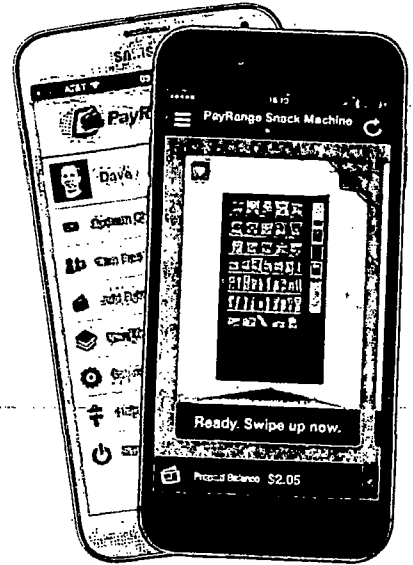
# PEPSICO



## More Revenue – Timely Service – No Out of Stocks – Less Downtime

We are also testing Bluetooth technology, Pay Range, to satisfy ORD's airport employee discount requirement. This is close to being approved, and by downloading the Pay Range app on their phone, employees are able to quickly swipe and go, receiving their airport discount at the time of purchase!

Pepsi Beverages Company (PBC) Equipment Service Program ensures uptime and maximization of sales in our vending locations. Preventative maintenance is key, and our 70-point quality review of all components ensures our machines are operational at all times. In the event a service call is needed, local (Chicago) dispatch is available seven days a week, with 75 trained bottler technicians ready to assist.



## Our Vision

...to be the premier full service vending company in North America; supporting our customers with exceptional & innovative products, technology, and equipment!



# PEPSICO

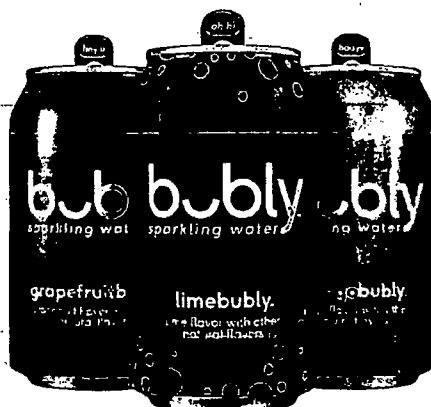


## 2. Products & Pricing

At Pepsi, we have become Faster, Stronger, Better, increasing the appeal of our portfolio by reducing added sugars, sodium, and saturated fats, and adding more positive ingredients. Our portfolio of sustainable packaging and reduced calorie is unrivaled and can make the difference in winning customers. We recognize the renewed cautiousness of health, in part due to COVID-19, and are projecting long-term growth in products that relate to nutrition, immunity, and pro-active health. By 2025, at least two thirds of PepsiCo beverages will contain 100 calories or less per 12 oz. serving.

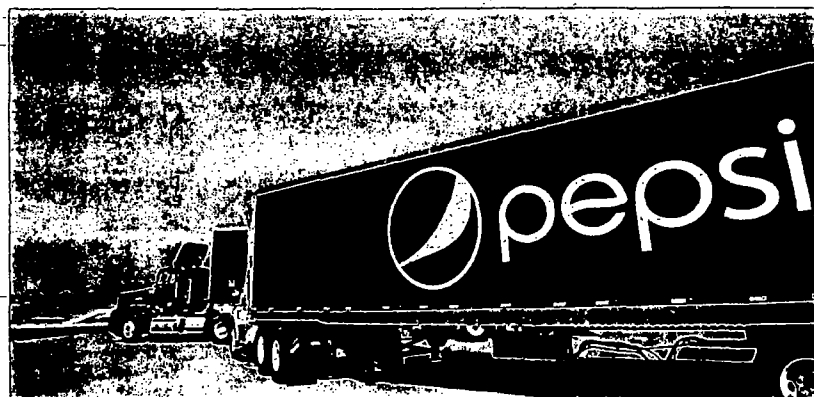
Pepsi's assortment of "Great Tasting/ Better for You" beverages for O'Hare will include carbonated drinks, water/ (sports) hydration, juices/ smoothies, teas, and protein drinks.

**Please see attached Products & Pricing List, following this page**



## 3. Source of Products

Products are readily available through Pepsi's extensive network of distribution facilities, including our Chicago Service Center, that supports 22 full-service routes, managed by six Route Supervisors, two District Managers, and one Director.



**PEPSICO**



## Products & Pricing List

ENERGY PORTFOLIO		
<b>120Z Kickstart \$3.50/UNIT</b>		
MTN DEW KICKSTART BLACK CHERRY	MTN DEW KICKSTART MIDNIGHT GRAPE	MTN DEW KICKSTART ORANGE CITRUS
MTN DEW KICKSTART PNAPL ORG MGO		
<b>150Z ROCKSTAR \$3.75/UNIT</b>		
ROCKSTAR JUICED ISLAND MANGO	ROCKSTAR JUICED PNAPLE ORANGE GUAVA	ROCKSTAR ORGANIC ISLAND FRUIT
ROCKSTAR ORGANIC STRAWBERRY		
<b>160Z Mountain Dew Kickstart \$3.50/UNIT</b>		
	MTN DEW KICKSTART BASE	MTN DEW KICKSTART BLACK CHERRY
MTN DEW KICKSTART FRUIT PUNCH	MTN DEW KICKSTART MANGO LIME	MTN DEW KICKSTART MIDNIGHT GRAPE
MTN DEW KICKSTART ORANGE CITRUS	MTN DEW KICKSTART PNAPL ORG MGO	
<b>160Z ROCKSTAR \$3.75/UNIT</b>		
ROCKSTAR ENERGY	ROCKSTAR ENR BM WHPD STRW	ROCKSTAR PUNCHED
ROCKSTAR PURE TANG MGO GUAVA STRAWB	ROCKSTAR PURE ZERO GRAPE	ROCKSTAR PURE ZERO ORANGE
ROCKSTAR PURE ZERO PUNCH	ROCKSTAR PURE ZERO SILVER ICE	ROCKSTAR RECOVERY
ROCKSTAR RECOVERY ORANGE	ROCKSTAR SUGAR FREE	ROCKSTAR THERMO NEON BLAST
ROCKSTAR THERMO TROP FIRE	ROCKSTAR XDURANCE BLUE RAZ	ROCKSTAR XDURANCE COTTON CANDY
ROCKSTAR XDURANCE KIWI STRAWBERRY	ROCKSTAR XDURANCE MARSHMALLOW	ROCKSTAR XDURANCE PEACH ICE TEA
ROCKSTAR XDURANCE SU SOUR GREEN APL	ROCKSTAR ZERO CARB	
CARBONATED SOFT DRINKS/NON CARB SOFT DRINKS PORTFOLIO		
<b>200Z CARBONATED SOFT DRINK/NON CARB \$3.00/UNIT</b>		
BRISK FRUIT PUNCH	BRISK SWEET W/LEMON	CRUSH GRAPE
CRUSH GRAPEFRUIT	CRUSH ORANGE	CRUSH PINEAPPLE
CRUSH SOUR PATCH KIDS BERRY	CRUSH STRAWBERRY	CRUSH WATERMELON
DOLE LEMONADE 3%	DOLE STRAWBERRY LEMONADE 3%	DT LIPTON GREEN TEA CITRUS
DT MTN DEW	DT PEPSI	DT PEPSI WILD CHERRY
LIPTON ICED GREEN TEA CITRUS	LIPTON ICED TEA PEACH	LIPTON ICED TEA SPLASH TROPICAL
MANZANITA SOL APPLE	MTN DEW	MTN DEW CODE RED
MTN DEW LIBERTY BREW	MTN DEW LIVE WIRE	MTN DEW VOLTAGE RASPBERRY CITRUS
MTN DEW VOO DEW	MTN DEW WHITE OUT CITRUS	MTN DEW ZERO
MUG ROOT BEER	PEPSI	PEPSI VANILLA HFCS
PEPSI W/ REAL SUGAR	PEPSI WILD CHERRY	PEPSI ZERO SUGAR WILD CHERRY
PEPSI ZR SGR	SCHWEPES GINGER ALE	SIERRA MIST LEMON LIME REAL SUGAR
Starbucks Coffee RTD PORTFOLIO		
<b>110Z COLD BREW \$4.50/UNIT</b>		
STARBUCKS COLD BREW BLACK UNSWEET	STARBUCKS COLD BREW COCOA & HONEY	
<b>13.70Z FRAPPUCCINO \$4.50/UNIT</b>		
FRAPPUCCINO CARAMEL	FRAPPUCCINO CARAMEL BUTTER	FRAPPUCCINO COFFEE
FRAPPUCCINO DULCE DE LECHE	FRAPPUCCINO MOCHA	FRAPPUCCINO TOASTED WHITE CHOCOLATE
FRAPPUCCINO VANILLA		
<b>150Z DOUBLE SHOT \$4.50/UNIT</b>		
STARBUCKS DS ENERGY HAZELNUT	STARBUCKS DS ENRG COF WHITE CHOC	STARBUCKS DS ENRG COFFEE
STARBUCKS DS ENRG COFFEE MOCHA	STARBUCKS DS ENRG COFFEE VANILLA	STARBUCKS TS ENRG COFFEE
STARBUCKS TS ENRG COFFEE CARAMEL	STARBUCKS TS ENRG COFFEE MOCHA	STARBUCKS TS ENRG COFFEE VANILLA
STARBUCKS TS ENRG ZR SGR BLK	STARBUCKS TS ENRG ZR SGR VAN BLK	
<b>6.50Z DOUBLE SHOT \$4</b>		
STARBUCKS DOUBLE SHOT	STARBUCKS DOUBLE SHOT LT	STARBUCKS DS ESPRESSO AMERICANO BLK
STARBUCKS DS SALTED CARAMEL CREAM		



**PEPSICO**



## Products & Pricing List, Cont.

Water		
20OZ \$3/UNIT		
AQUAFINA WATER		
20OZ \$3.50/UNIT		
PREMIUM LIFEWTR		

Sparkling Water		
16OZ \$3/UNIT		
BUBLY BLACKBERRY SPARKLING	BUBLY CHERRY SPARKLING	BUBLY GRAPEFRUIT SPARKLING
BUBLY LIME SPARKLING	BUBLY RASPBERRY SPARKLING	BUBLY STRAWBERRY SPARKLING

Functional Protein Drink PORTFOLIO		
14OZ \$4.50/UNIT		
MUSCLE MILK BANANA CREME	MUSCLE MILK CHOCOLATE	MUSCLE MILK COOKIES N CREME
MUSCLE MILK PROSR 40 INTENSE VAN	MUSCLE MILK PROSR 40 KNOCKOUT CHO	MUSCLE MILK PROSR 40STW N CRM
MUSCLE MILK STRAWBERRIES N CREME	MUSCLE MILK VANILLA CREME	

Enhanced Water PORTFOLIO		
20OZ \$3.50/UNIT		
SOBE LIFEWATER BLKBRY BLUBRY OCAL	SOBE LIFEWATER BLOOD ORANG MANGO OC	SOBE LIFEWATER FUJI APPLE PR OCAL
SOBE LIFEWATER STRAW DRGN FT OCAL	SOBE LIFEWATER YUMBERRY POM OCAL	SOBE LIFEWATER ACAI RASPBERRY OCAL
12OZ \$3/UNIT		
BUBBLR BLD ORG MGO MINGLR	BUBBLR CHE GUAVA BLENDR	BUBBLR CRAN GRPFRT SPARKLR
BUBBLR PASSION FRUIT WOND'R	BUBBLR PITAYA BRY NECTR	BUBBLR POM ACAI REFRESH'R
BUBBLR TWISTED ELIXR		

Electrolyte Enhanced Water PORTFOLIO		
20OZ \$3.50/UNIT		
GATORADE COOL BLUE	GATORADE FIERCE GRAPE	GATORADE FRUIT PUNCH
GATORADE G2 GRAPE	GATORADE GLACIER CHERRY	GATORADE GLACIER FREEZE
GATORADE LEMON LIME	GATORADE ORANGE	GATORADE ZERO GLACIER CHERRY
GATORADE ZERO GLACIER FREEZE		
16.9OZ \$4/UNIT		
GATORADE BOLT CHERRY LIME	GATORADE BOLT MIXED BERRY	GATORADE BOLT PASSION FRUIT
GATORADE BOLT STRAWBERRY LEMON	GATORADE BOLT TROPICAL MANGO	GATORADE BOLT WATERMELON STRAWBERRY
20OZ \$3.50/UNIT		
PROPEL ZERO STRAWBERRY LEMONADE	PROPEL ZERO WATERMELON	PROPEL ZERO BERRY
PROPEL ZERO BLACK CHERRY	PROPEL ZERO GRAPE	PROPEL ZERO KWI STRAWBERRY
PROPEL ZERO PEACH	PROPEL VITAMIN BOOST PEACH MANGO	PROPEL VTMIN BOOST STRWBRY RSPBRY

TEA/JUICE PORTFOLIO		
16.9OZ \$3/UNIT		
TWISTER BLUBERRY RASPBERRY RUSH	TWISTER CHERRY BERRY BLAST	TWISTER ORG/STRW/BAN BRST
TWISTER STRAWBERRY KIWI	TWISTER TROPICAL FRUIT FURY	
18.5OZ \$4/UNIT		
LIPTON PURELEAF CHERRY HIBISCUS	LIPTON PURELEAF IT EXTRA SWEET	LIPTON PURELEAF IT RASPBERRY
LIPTON PURELEAF IT SWEET NO LEMON	LIPTON PURELEAF IT SWEET WL	LIPTON PURELEAF IT UNSWEET
LIPTON PURELEAF IT UNSWEET WL	LIPTON PURELEAF MANGO HIBISCUS	LIPTON PURELEAF PEACH
LIPTON PURELEAF PEACH HIBISCUS	LIPTON PURELEAF RAZ CHAMOMILE	LIPTON PURELEAF UNSW MANGO HIBISCUS
15.2OZ \$4/UNIT		
DOLE APPLE JUICE	DOLE ORANGE JUICE	DOLE RUBY RED GRAPEFRUIT 100
OCEAN SPRAY CRAN GRAPE	OCEAN SPRAY CRANBERRY	TROPICANA APPLE JUICE
TROPICANA GRAPE JUICE	TROPICANA ORANGE JUICE	TROPICANA ORANGE PINEAPPLE
TROPICANA RUBY RED GRAPEFRUIT		



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#### 4. Proposed Capital Improvements

PBC's capital improvements, as detailed in Form D, include the purchase of Bev Max 6 state-of-the-art vending machines, including vending surrounds where appropriate provided by WBE certified Northstar Marketing. Our cost projections also include installation, delivery, and utility requirements (for installation). We understand there may be electrical work involved for some of the vending locations and have engaged in discussions with M/WBE vendor Hartmann Electric Company, which is ORD badged and currently working on the Terminal 5 redevelopment project. PBC is committed to meeting the Design & Construction proposal goal of 26% MBE and 6% WBE.

#### 5. Sustainability Initiatives (Design)

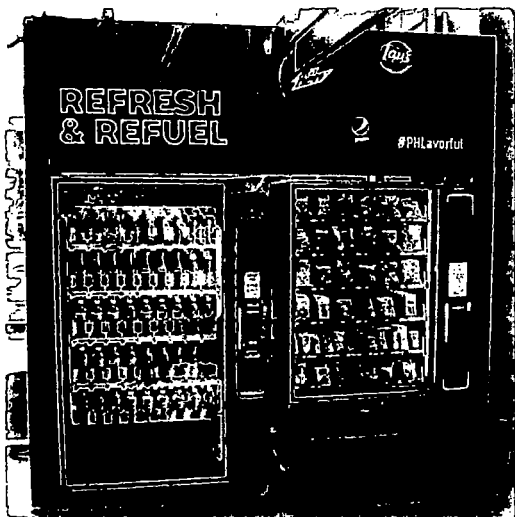
As of this year, all Pepsi's vending machines, coolers, and fountain dispensers are EPA-rated, HFC-free, and Energy Star Tier 2. Notably, with these sustainability initiatives in place, energy consumption of new units has been reduced by 60% and energy consumption per unit by over 25%.



#### 6. Quality & Design of Tenant Improvements

Form B – Concept Plan Package 3. **(Please see attached, following this section)**

Introducing our newest glass front Bev Max 6 vending machine for ORD, offering a larger screen, faster performance, and engaging experience for the customer. Featuring No-Drop robotics, which ensures the safe delivery of our products to the consumer, the Bev Max 6 is also ADA compliant, including easy access controls. Our machines and payment systems offer the highest level of security for customers.



Please refer to our Bev Max spec sheet and Vending Surround. **(See attached, following Form B)**

Offering the latest in software technology, including Suggestive Selling to help customers make selections while exposing them to new products, slow movers, or complimentary products. Digital Advertising encourages sales and builds brand loyalty, with interactive promotions that engage the customer. Nutritional Information informs customers with a large display of easy-to-read facts to support FDA requirements. Space-to-sales data, reviewed monthly, ensures the right product mix is in each machine. These state-of-the-art machines are also managed remotely with simplified CONNECT PLUS for price changes, planograms, and nutritional information.

Easitrax Advance, an industry leader in software solutions, improves the efficiency of our vending program by enabling PBC to manage our machines more like a retail store with the following capabilities:



**PEPSICO**

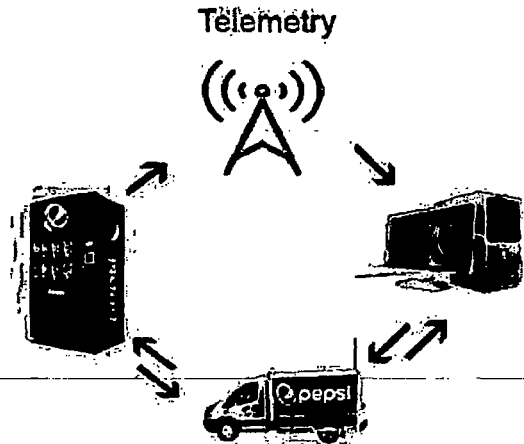


# Easitrax Capabilities

**EASITRAX Advance** is an industry leading software solution that improves efficiency of vending operations by enabling Pepsi Vending to manage its machines more like a retail store...

## Easitrax & Telemetry Benefits

1	Enables acceptance of all forms of cashless payments — <b>More Revenue</b>
2	Real time data to determine product assortment, maximizing sales — <b>Timely Service, More Revenue</b>
3	Machines tell us the optimal time to schedule deliveries — <b>No Out of Stocks</b>
4	Repair issues are reported by the machines — <b>Less Downtime</b>



There are many benefits for having PepsiCo machines online and monitored in real-time. We can monitor machine health, product inventory and sales activity from the back office, LIVE while it's happening.

## Pepsi Vending Cashless Benefits

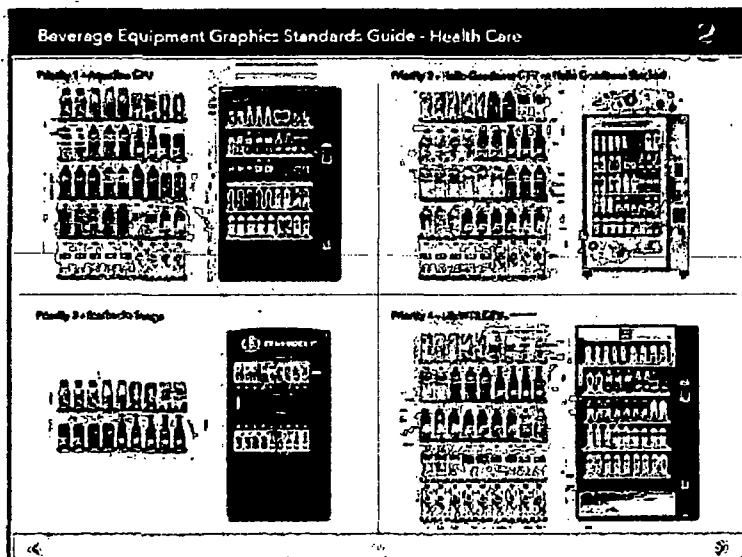
	<b>Eliminate Barriers of Payment</b> <ul style="list-style-type: none"> <li>• On average results in 20% revenue lift!</li> <li>• Mobile-Payment Accepted – Apple &amp; Android Pay</li> </ul>
	<b>NO Fees!</b> <ul style="list-style-type: none"> <li>• PepsiCo absorbs all transaction and processing fees</li> <li>• Enables two tiered pricing / Cash Discount</li> </ul>
	<b>Secure</b> <ul style="list-style-type: none"> <li>• PepsiCo maintains highest level of PCI security (Certificates of compliance available)</li> <li>• Does not retain or store customer credit card data</li> <li>• Drivers, techs &amp; managers required to take anti-tampering training</li> </ul>



**PEPSICO**



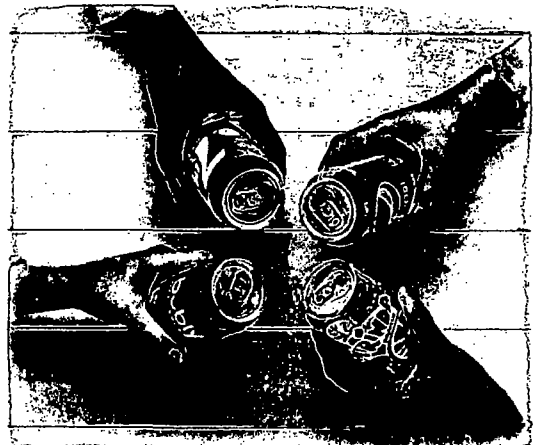
# We Provide Prescriptive Brand Set Recommendations Based on Sales Data



## Category Management Support

- Leverage IRI and machine-level data to ensure we are consistent with recent trends
- Recommendations are segment specific
- Dedicated Vending Analyst Team continuously optimize brand sets using real time, machine sales data from Easitrax

Pepsi increased its 2019 global advertising and marketing spend by more than 12%, reflecting investments across snacks and beverages, in both our large established and our emerging brands. We accelerated innovation through the introduction of new products, such as Gatorade Zero, and bubly, supported by international marketing campaigns. We expanded our market presence by increasing route capacity, adding merchandising racks and coolers, and advancing the technologies we deploy to drive greater and more precise execution. Investing in additional manufacturing capacity has removed bottlenecks and increased growth capacity for our products. This includes investments in new plants, new lines, and added distribution infrastructure.



**Proposed Project Schedule** – Please see attached

**Compensation to the City** – Proposal Form G (See attached)

**Projected Sales, Net Income, & Cash Flow** – Proposal Form C, including assumptions (See attached)

**Capital Investment & Financing Plan** – Form D; source of funds (See attached)




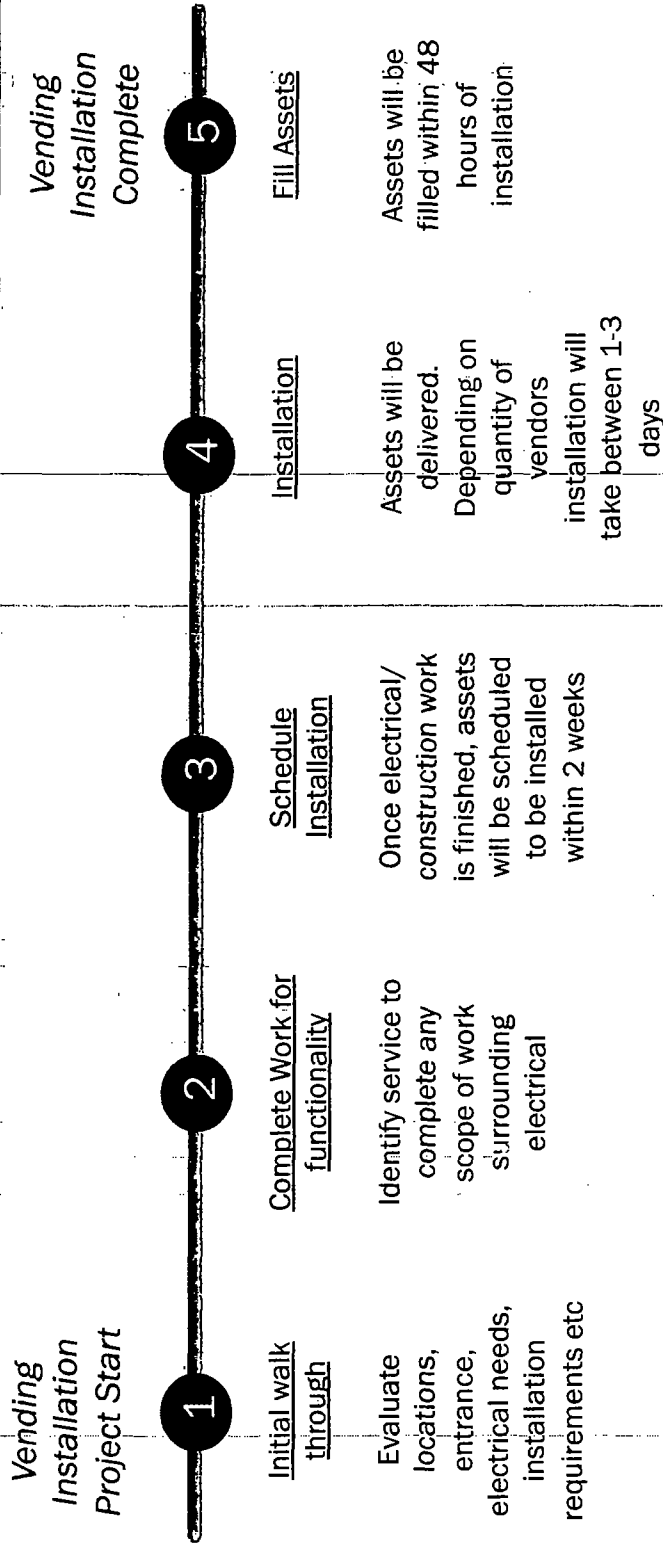
**PEPSICO**



Proposed Project Schedule:

# PROJECT SCHEDULE





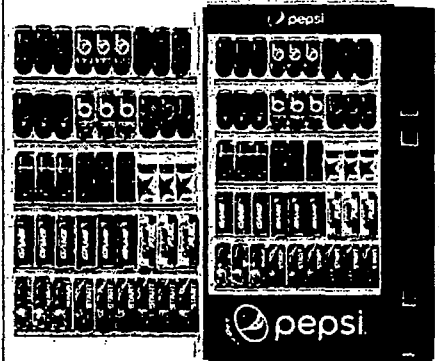
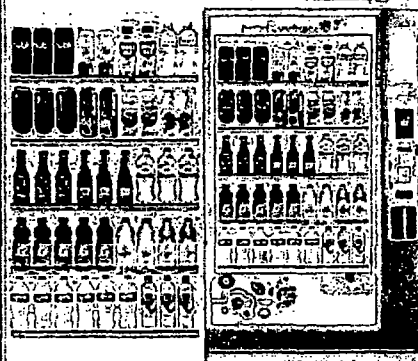
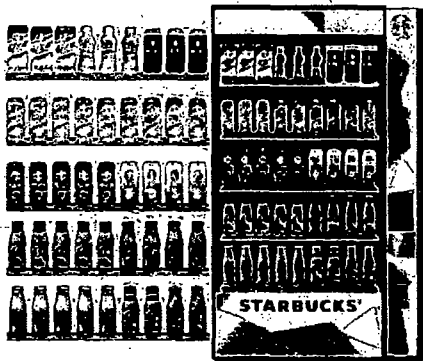
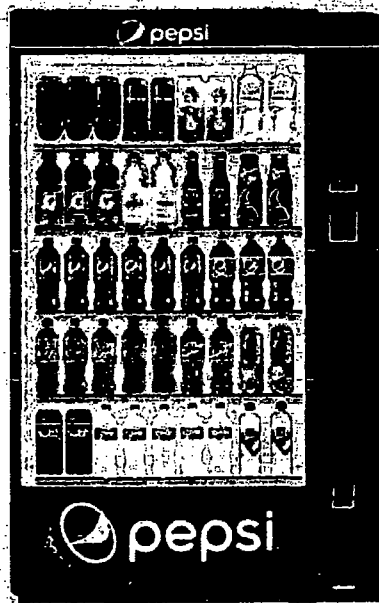
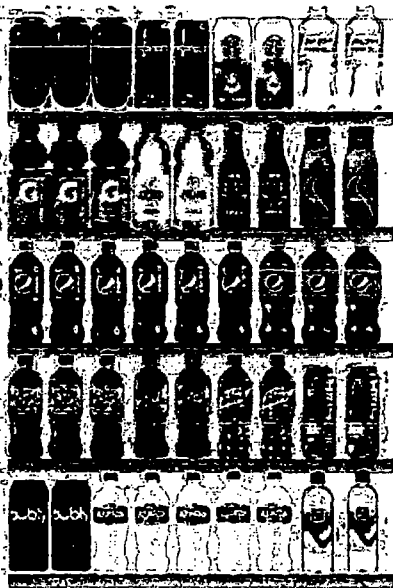
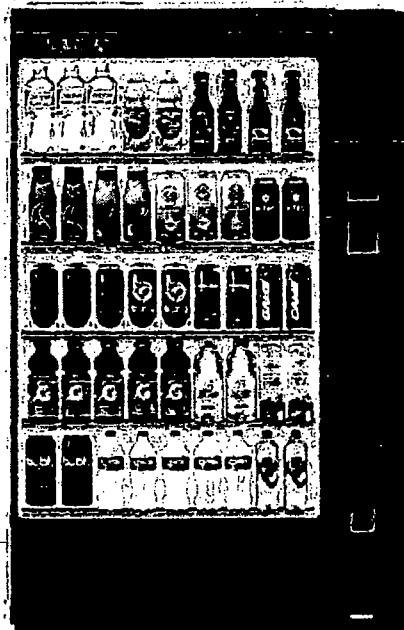
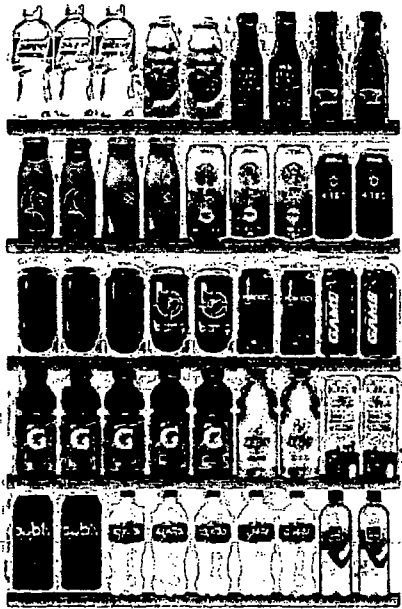
From the time electrical is completed, assets will be filled and functioning within 12 business days

**Proposal Form B**  
**Concept Plan**  
**Package 3**  
**(Automated Retail, Services and Food)**

*Instructions: Provide respondent's proposed concept plan showing the following information for each proposed Concession Location. Use additional copies of this table as necessary. Submit additional information as set forth in the Proposal Requirements following this proposal*

Respondent: Pepsi Beverages Company

Concession Location	Location Description	Concession Description	Proposed Equipment/Facility	Proposed Operator	Anticipated Opening Date
<b>Terminal 1</b>					
Location #1 - T1,B12		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #2 - T1,C11		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #4 - T1,LL Baggage		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #5 - T1,BL Tunnel		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
<b>Terminal 2</b>					
Location #3 - T2,E1		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #6 - T2,E6		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #7 - T2 Adjacent to ATM		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #8 - T2,F12		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #9 - T2,E8		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #10 - T2,E1		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #11 - T2,H3		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #12 - T2-T3 Bridge		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
<b>Terminal 3</b>					
Vacant Space T3HK.U.9.H.B		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location # 13 - T3,H1		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #14 - T3,G11		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #15 - T3,H3		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #16 - T3, K18		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location # 17 - T3, K19		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #18 - T3, LL Baggage		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
Location #19 - T3,BL Passageway to CTA		Pepsi Beverage Portfolio See Example Planograms/Brand	Bev Max 6	Pepsi Beverage Company	Q1 2020
<b>Add Additional Proposed Locations Below (insert additional rows as needed)</b>					



CRANE MERCHANDISING SYSTEMS

MEDIA2

Bev

**POWERFUL PERFORMANCE.  
ENGAGING EXPERIENCE.**

**Powerful Performance**

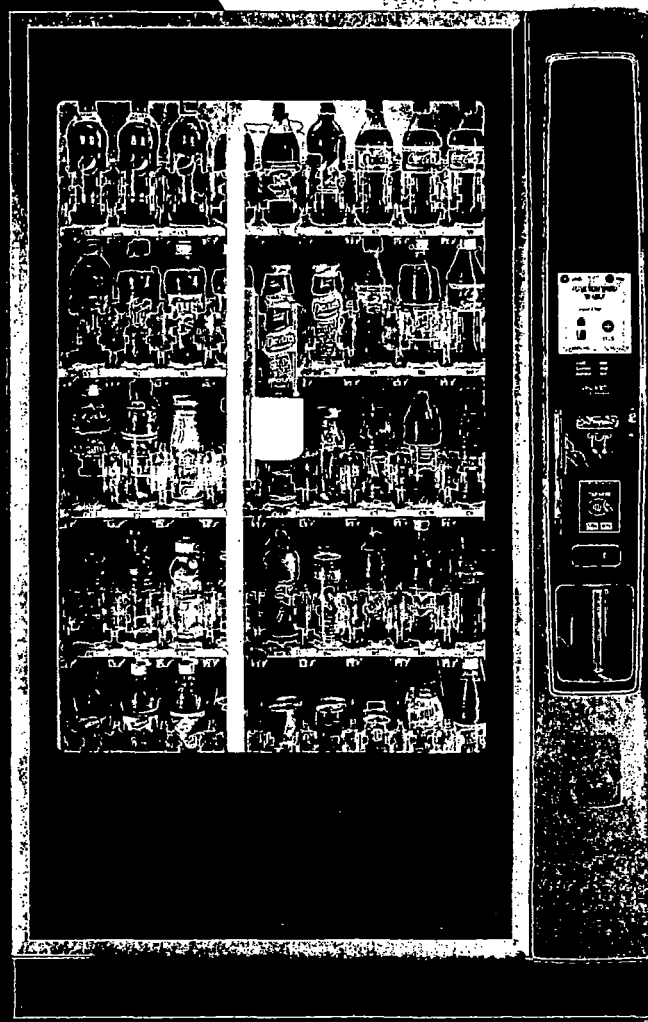
Delivering unparalleled speed, reliability and screen responsiveness

**Engaging Experience**

Suggestive selling and digital advertising drive impulsive and multi-product sales

**Full Motion Video**

A larger 9" touchscreen with full-motion video attracts and engages consumers



## ENGAGING EXPERIENCE

### SUGGESTIVE SELLING

Help consumers make selections while exposing them to new products, slow movers, or complimentary products

### DIGITAL ADVERTISING

Encourage sales while building brand loyalty with display advertising and interactive promotions throughout the purchase experience

### SHOPPING CART

Enable multi-product purchases with one simple transaction

### INTEGRATED CASHLESS PAYMENT

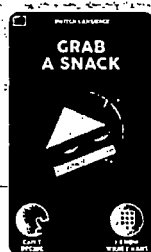
Capture every sale with a built-in and intuitive cashless solution

### INCREDIBLE VARIETY

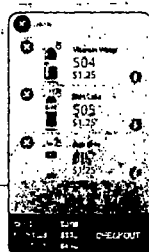
Increase sales and consumer satisfaction with the greatest product selection in the industry

### NUTRITIONAL INFORMATION

Inform consumers with a large display of easy-to-read facts to support FDA requirements



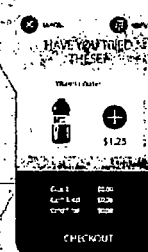
Color Display



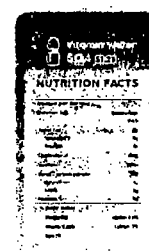
Shopping Cart



Digital Advertising



Suggestive Selling



Nutritional Information

## POWERFUL PERFORMANCE

### SCREEN PERFORMANCE

Improve the user experience with a more responsive screen and boot up time of less than a minute

### COLOR DISPLAY

Engage consumers with larger, 9-inch touchscreen and full-motion video

### REMOTE MANAGEMENT

Manage machines over the air with **simplifi CONNECT PLUS** for price changes, planograms and nutritional information

## CUSTOMIZE YOUR END LOCATION

Add graphics that connect with your customer.

### BEVMAX MEDIA2 SPECIFICATIONS

	723 Narrow	713 Wide
Height	72"	72"
Width	39"	47"
Depth	32"	32"
Weight	545 lbs.	764 lbs.
Electrical	115 VAC 60 Hz 10.2A	115 VAC 60 Hz 10.2A
Selection	35	45
Capacity	280	360

AVAILABLE CERTIFICATIONS cULus, FCC | REFRIGERATION R134a CFC-Free Refrigerant Gas 1/3 HP Compressor

# MEDIA

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## Proposal Form G

### Proposed Concession Fee Rates

*Compensation to the City consists of the Minimum Annual Guarantee Fee ("MAG") and Percentage Fee as described in Section D.2. of the RFP. The City has established the MAG to be paid the City during the Lease Years of the Term. This amount is not "biddable." Any respondent who states a different amount in its proposal will be deemed non-responsive and eliminated from further consideration for award of the offered concession. The City has not established a range of Percentage Fee Rate (s) for each concession category. Respondents must propose a Percentage fee rate(s) for each Package. Any respondent who fails to propose a Percentage Fee Rate(s) will be deemed non-responsive and eliminated from further consideration for award of the offered concession.*

**Respondent:** Pepsi Beverages Company

#### 1) Proposed Percentage Fee Rate:

Concession Category	Percentage Fee Rate Ranges (for product)	Sales Tiers	Proposed Percentage Fee Rate
Alternative Mobile Self-Ordering and Delivery Service	N/A	N/A	N/A
Automated Self-Checkout Micro Marts	N/A	N/A	N/A
Automated Retail, Services and Food	N/A	1. 0-\$450,000 2. \$450,001+  Gross Revenue	<u>Non Exclusive</u> 1. 25% Net Sales 2. 28% Net Sales  <u>Exclusive</u> 1. 30% Net Sales 2. 33% Net Sales

*Note: if not proposing on one or more concession categories (packages) indicate with an "n/a" in the corresponding boxes.*

The below table represents O'hare commission at 33% and is an example posed of how commissions will be paid considering the MAG

MAG/Commission Projection						
	Year 1	Year 2	Year 3	Year 4	Year 5	Total Commissions
Actual Gross Rev	\$ 100,000.00	\$ 100,000.00	\$ 50,000.00	\$ 60,000.00	\$ 80,000.00	\$ 390,000.00
Taxes	\$ 11,000.00	\$ 11,000.00	\$ 5,500.00	\$ 6,600.00	\$ 8,800.00	\$ 42,900.00
Commission at 33%	\$ 29,370.00	\$ 29,370.00	\$ 14,685.00	\$ 17,622.00	\$ 23,496.00	\$ 114,543.00
MAG at 85%	NA	\$ 24,964.50	\$ 24,964.50	\$ 12,432.25	\$ 14,978.70	\$ 77,389.95
Actual MAG		\$ 24,964.50	\$ 24,964.50	\$ 2,202.75	\$ 14,978.70	\$ 67,110.45
True Up Commission*	NA	\$ 4,405.50	\$ (10,279.50)	\$ 5,139.75	\$ 8,517.30	\$ 7,783.05
*If overpayment in any year, Pepsi reserves the right to true up commission in following years. In the above example, MAG 4 would be adjusted less the overpayment in year 3.						

# Proposal Form C

## Projected Gross Receipts by Concession Type

Instructions: Provide a good faith estimate of Gross Receipts for each proposed Concession for the 2020 through 2026 Lease Years. The listing of Proposed Concession on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary. On a separate sheet, provide major assumptions in narrative format.

Respondent: Pepsi Beverages Company Package 3

Concession Type	Proposed Concept/Brand	Anticipated Opening Date	XX Months 2020	2021	2022	2023	2024	2025	2026
Package 1	Alternative Mobile Electronic Self-Ordering and Delivery Service								
Package 2	Automated Self-Checkout Micro Marts								
Package 3	Automated Retail, Services and Food	Q1 2021	2021 Install Expectation	\$360,240	\$387,540	\$387,540	\$414,840	\$414,840	\$442,140

Based on like accounts including Philadelphia Airport, we have made the below assumptions:

- 200 cases sold per asset annually
- 30 assets
- 6,000 cases annually

	Year 1	Year 2*	Year 3	Year 4*	Year 5	Year 6*
\$/case	\$60.04	\$64.59	\$64.59	\$69.14	\$69.14	\$73.69
Cases	6,000	6,000	6,000	6,000	6,000	6,000
Annual Gross Rev	\$360,240	\$387,540	\$387,540	\$414,840	\$414,840	\$442,140

\*Years that indicate mech rate increase of \$.25/unit

## Proposal Form D

### Capital Investment and Financing Sources Plan

*Instructions: Provide proposed capital investment and financing sources for each proposed Concession Package. Investment includes leasehold improvements; furniture, fixtures, and equipment; franchise fees. Investment does not include other start-up costs. The listing of Proposed Concessions on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary.*

**Respondent:**

**Pepsi Beverages Company**

**Packages**

**Package 3**

**Proposed:**

Concession Location ID	Proposed Capital Investment	Financing Sources (Investor and Debt or Equity) and Amount				
		Source 1	Amount 1	Source 2	Amount 2	Source 3
Alternative Mobile Self-Ordering and Delivery Service						
Automated Self-Checkout Micro Marts						
Automated Retail, Services and Food	-30 New Bev Max 6 Vendors \$135,000 -8 Custom Surrounds \$40,000	Pepsi Owned				

Chicago Department of Aviation  
Proposal Form D

July 30, 2020

**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**

---





## Products & Pricing List

ENERGY PORTFOLIO		
<b>120Z Kickstart \$3.50/UNIT</b>		
MTN DEW KICKSTART BLACK CHERRY	MTN DEW KICKSTART MIDNIGHT GRAPE	MTN DEW KICKSTART ORANGE CITRUS
MTN DEW KICKSTART PNAPL ORG MGO		
<b>150Z ROCKSTAR \$3.75/UNIT</b>		
ROCKSTAR JUICED ISLAND MANGO	ROCKSTAR JUICED PNAPL ORANGE GUAVA	ROCKSTAR ORGANIC ISLAND FRUIT
ROCKSTAR ORGANIC STRAWBERRY		
<b>160Z Mountain Dew Kickstart \$3.50/UNIT</b>		
	MTN DEW KICKSTART BASE	MTN DEW KICKSTART BLACK CHERRY
MTN DEW KICKSTART FRUIT PUNCH	MTN DEW KICKSTART MANGO LIME	MTN DEW KICKSTART MIDNIGHT GRAPE
MTN DEW KICKSTART ORANGE CITRUS	MTN DEW KICKSTART PNAPL ORG MGO	
<b>160Z ROCKSTAR \$3.75/UNIT</b>		
ROCKSTAR ENERGY	ROCKSTAR ENR BM WHPD STRW	ROCKSTAR PUNCHED
ROCKSTAR PURE TANG MGO GUAVA STRAWB	ROCKSTAR PURE ZERO GRAPE	ROCKSTAR PURE ZERO ORANGE
ROCKSTAR PURE ZERO PUNCH	ROCKSTAR PURE ZERO SILVER ICE	ROCKSTAR RECOVERY
ROCKSTAR RECOVERY ORANGE	ROCKSTAR SUGAR FREE	ROCKSTAR THERMO NEON BLAST
ROCKSTAR THERMO TROP FIRE	ROCKSTAR XDURANCE BLUE RAZ	ROCKSTAR XDURANCE COTTON CANDY
ROCKSTAR XDURANCE KIWI STRAWBERRY	ROCKSTAR XDURANCE MARSHMALLOW	ROCKSTAR XDURANCE PEACH ICE TEA
ROCKSTAR XDURANCE SU SOUR GREEN APL	ROCKSTAR ZERO CARB	
CARBONATED SOFT DRINKS/NON CARB SOFT DRINKS PORTFOLIO		
<b>200Z CARBONATED SOFT DRINK/NON CARB \$3.00/UNIT</b>		
BRISK FRUIT PUNCH	BRISK SWEET W/LEMON	CRUSH GRAPE
CRUSH GRAPEFRUIT	CRUSH ORANGE	CRUSH PINEAPPLE
CRUSH SOUR PATCH KIDS BERRY	CRUSH STRAWBERRY	CRUSH WATERMELON
DOLE LEMONADE 3%	DOLE STRAWBERRY LEMONADE 3%	DT LIPTON GREEN TEA CITRUS
DT MTN DEW	DT PEPSI	DT PEPSI WILD CHERRY
LIPTON ICED GREEN TEA CITRUS	LIPTON ICED TEA PEACH	LIPTON ICED TEA SPLASH TROPICAL
MANZANITA SOL APPLE	MTN DEW	MTN DEW CODE RED
MTN DEW LIBERTY BREW	MTN DEW LIVE WIRE	MTN DEW VOLTAGE RASPBERRY CITRUS
MTN DEW VOO DEW	MTN DEW WHITE OUT CITRUS	MTN DEW ZERO
MUG ROOT BEER	PEPSI	PEPSI VANILLA HFCS
PEPSI W/ REAL SUGAR	PEPSI WILD CHERRY	PEPSI ZERO SUGAR WILD CHERRY
PEPSI ZR SGR	SCHWEPES GINGER ALE	SIERRA MIST LEMON LIME REAL SUGAR
Starbucks Coffee RTD PORTFOLIO		
<b>110Z COLD BREW \$4.50/UNIT</b>		
STARBUCKS COLD BREW BLACK UNSWEET	STARBUCKS COLD BREW COCOA & HONEY	
<b>13.70Z FRAPPUCCINO \$4.50/UNIT</b>		
FRAPPUCCINO CARAMEL	FRAPPUCCINO CARAMEL BUTTER	FRAPPUCCINO COFFEE
FRAPPUCCINO DULCE DE LECHE	FRAPPUCCINO MOCHA	FRAPPUCCINO TOASTED WHITE CHOCOLATE
FRAPPUCCINO VANILLA		
<b>150Z DOUBLE SHOT \$4.50/UNIT</b>		
STARBUCKS DS ENERGY HAZELNUT	STARBUCKS DS ENRG COF WHITE CHOC	STARBUCKS DS ENRG COFFEE
STARBUCKS DS ENRG COFFEE MOCHA	STARBUCKS DS ENRG COFFEE VANILLA	STARBUCKS TS ENRG COFFEE
STARBUCKS TS ENRG COFFEE CARAMEL	STARBUCKS TS ENRG COFFEE MOCHA	STARBUCKS TS ENRG COFFEE VANILLA
STARBUCKS TS ENRG ZR SGR BLK	STARBUCKS TS ENRG ZR SGR VAN BLK	
<b>6.50Z DOUBLE SHOT \$4</b>		
STARBUCKS DOUBLE SHOT	STARBUCKS DOUBLE SHOT LT	STARBUCKS DS ESPRESSO AMERICANO BLK
STARBUCKS DS SALTED CARAMEL CREAM		



**PEPSICO**



## Products & Pricing List. Cont.

Water		
<b>200Z \$3/UNIT</b>		
AQUAFINA WATER		
<b>200Z \$3.50/UNIT</b>		
PREMIUM LIFEWTR		

Sparkling Water		
<b>160Z \$3/UNIT</b>		
BUBLY BLACKBERRY SPARKLING	BUBLY CHERRY SPARKLING	BUBLY GRAPEFRUIT SPARKLING
BUBLY LIME SPARKLING	BUBLY RASPBERRY SPARKLING	BUBLY STRAWBERRY SPARKLING

Functional Protein Drink PORTFOLIO		
<b>140Z \$4.50/UNIT</b>		
MUSCLE MILK BANANA CREME	MUSCLE MILK CHOCOLATE	MUSCLE MILK COOKIES N CREME
MUSCLE MILK PROSR 40 INTENSE VAN	MUSCLE MILK PROSR 40 KNOCKOUT CHO	MUSCLE MILK PROSR 40STW N CRM
MUSCLE MILK STRAWBERRIES N CREME	MUSCLE MILK VANILLA CREME	

Enhanced Water PORTFOLIO		
<b>200Z \$3.50/UNIT</b>		
SOBE LIFEWATER BLKBRY BLUBRY OCAL	SOBE LIFEWATER BLOOD ORANG MANGO OC	SOBE LIFEWATER FUJI APPLE PR OCAL
SOBE LIFEWATER STRAW DRGN FT OCAL	SOBE LIFEWATER YUMBBRY POM OCAL	SOBE LIFEWATER ACAI RASPBERRY OCAL
<b>120Z \$3/UNIT</b>		
BUBBLR BLD ORG MGO MINGLR	BUBBLR CHE GUAVA BLENDR	BUBBLR CRAN GRPFRT SPARKLR
BUBBLR PASSION FRUIT WOND'R	BUBBLR PITAYA BRY NECTR	BUBBLR POM ACAI REFRESH'R
BUBBLR TWISTED ELIXR		

Electrolyte Enhanced Water PORTFOLIO		
<b>200Z \$3.50/UNIT</b>		
GATORADE COOL-BLUE	GATORADE FIERCE GRAPE	GATORADE FRUIT PUNCH
GATORADE G2 GRAPE	GATORADE GLACIER CHERRY	GATORADE GLACIER FREEZE
GATORADE LEMON LIME	GATORADE ORANGE	GATORADE ZERO GLACIER CHERRY
GATORADE ZERO GLACIER FREEZE		
<b>16.90Z \$4/UNIT</b>		
GATORADE BOLT CHERRY LIME	GATORADE BOLT MIXED BERRY	GATORADE BOLT PASSION FRUIT
GATORADE BOLT STRAWBERRY LEMON	GATORADE BOLT TROPICAL MANGO	GATORADE BOLT WATERMELON STRAWBERRY
<b>200Z \$3.50/UNIT</b>		
PROPEL ZERO STRAWBERRY LEMONADE	PROPEL ZERO WATERMELON	PROPEL ZERO BERRY
PROPEL ZERO BLACK CHERRY	PROPEL ZERO GRAPE	PROPEL ZERO KWI STRAWBERRY
PROPEL ZERO PEACH	PROPEL VITAMIN BOOST PEACH MANGO	PROPEL VTMIN BOOST STRWBRY RSPBRY

TEA/JUICE PORTFOLIO		
<b>16.90Z \$3/UNIT</b>		
TWISTER BLUBERRY RASPBERRY RUSH	TWISTER CHERRY BERRY BLAST	TWISTER ORG/STRW/BAN BRST
TWISTER STRAWBERRY KIWI	TWISTER TROPICAL FRUIT FURY	
<b>18.50Z \$4/UNIT</b>		
LIPTON PURELEAF CHERRY HIBISCUS	LIPTON PURELEAF IT EXTRA SWEET	LIPTON PURELEAF IT RASPBERRY
LIPTON PURELEAF IT SWEET NO LEMON	LIPTON PURELEAF IT SWEET WL	LIPTON PURELEAF IT UNSWEET
LIPTON PURELEAF IT UNSWEET WL	LIPTON PURELEAF MANGO HIBISCUS	LIPTON PURELEAF PEACH
LIPTON PURELEAF PEACH HIBISCUS	LIPTON PURELEAF RAZ CHAMOMILE	LIPTON PURELEAF UNSW MANGO HIBISCUS
<b>15.20Z \$4/UNIT</b>		
DOLE APPLE JUICE	DOLE ORANGE JUICE	DOLE RUBY RED GRAPEFRUIT 100
OCEAN SPRAY CRAN GRAPE	OCEAN SPRAY CRANBERRY	TROPICANA APPLE JUICE
TROPICANA GRAPE JUICE	TROPICANA ORANGE JUICE	TROPICANA ORANGE PINEAPPLE
TROPICANA RUBY RED GRAPEFRUIT		



**PEPSICO**



**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

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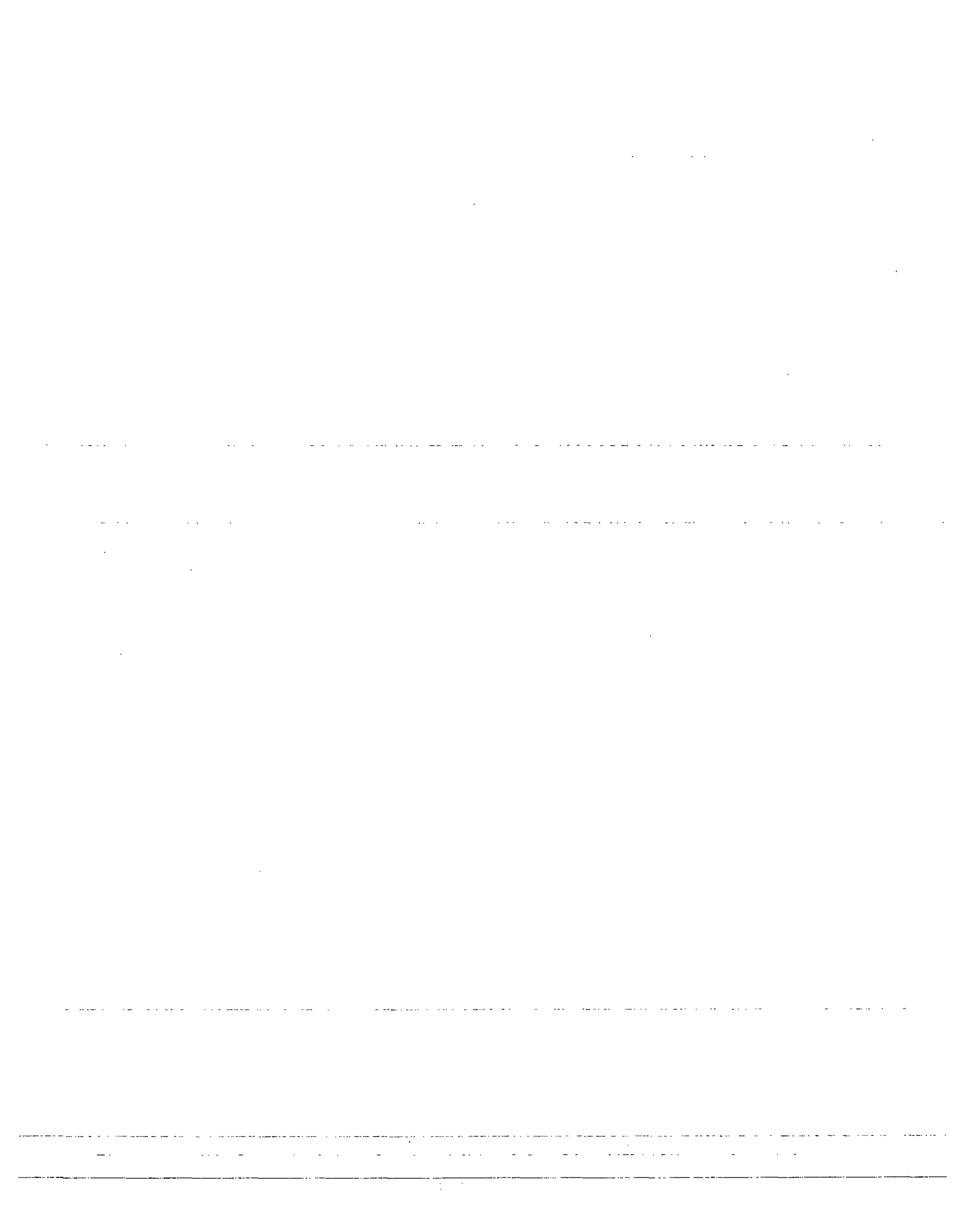


Exhibit 5  
Form of Letter of Credit

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*  
(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20

Chicago Department of Aviation  
Chicago's O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_."

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). ~~To the extent that the provisions of the IUCP and UCC conflict, the provisions~~ of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CERTIFICATE FOR DRAWING

2. Payment of the draft shall be made by bank wire paid to our account as per our wire instructions below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

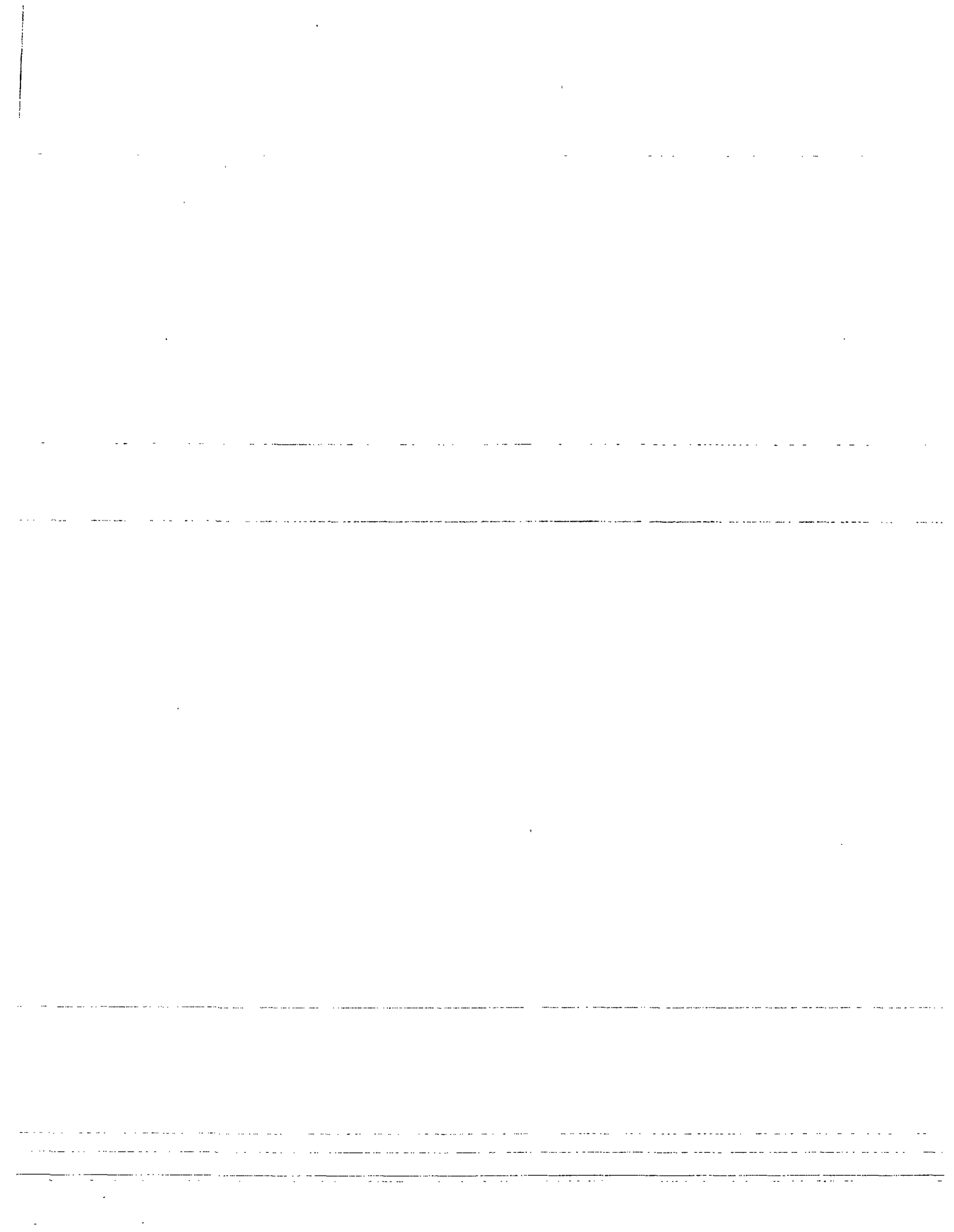
(Name of Bank)  
(City & State)  
(ABA No.)  
(Account Name)  
(Account No.)  
(Reference No., if any)

3. All defined terms used but not defined herein shall have the meaning assigned hereto in the Letter of Credit.

In witness hereof, the City has executed this certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF CHICAGO

BY: \_\_\_\_\_  
Its: Commissioner of Aviation





**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**

## **EXHIBIT 6**

### **INSURANCE REQUIREMENTS** **Chicago Department of Aviation**

#### **Automated Retail License Agreement** **Food, beverage, retail products gifts and vending merchandise at O'Hare** **(Vending Machines)**

#### **A. INSURANCE REQUIRED**

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

- 1) Workers Compensation and Employers Liability (Primary and Umbrella)  
Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 2) Commercial General Liability (Primary and Umbrella)  
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Licensee with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Property

The Licensee must maintain All Risk Property Insurance for the licensed space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Licensee is responsible for all loss or damage to personal property including equipment, fixtures, contents, materials and supplies.

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) Builders Risk

When Licensee undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Licensee must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Licensee is responsible for all loss or damage to City of Chicago property at full replacement cost.

**B. Additional Requirements**

Evidence of Insurance. Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL. 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Licensee must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

Waiver of Subrogation. Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

herein for any loss arising from or relating to this Agreement. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

Licensee's Insurance Primary. All insurance required of Licensee under this Agreement must be endorsed to state that Licensee's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Licensee under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Licensee maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

Exhibit 7  
ACDBE Special Conditions and Related Forms

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below-aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")



was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs**

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives.

### C. REPORTING

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

### D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

## VI. GOOD FAITH EFFORTS

### A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

## B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders/proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
- ~~7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.~~
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ~~ACDBE quotes are excessively costly.~~

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making



the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**

#### A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

#### B. NON-COMPLIANCE WITH ACDBE AGREEMENT

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.

**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

Exhibit 8  
MBE/WBE Special Conditions and Related Forms

**SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION  
CONTRACTS**

**I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

**Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%**  
**WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.



1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second-tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

- H. If the MBE or WBE subcontracts out any of its work:
1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
  3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**V. Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

**A. Schedule B: MBE/WBE Affidavit of Joint Venture**

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

**B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier**

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed

original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

D. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

F. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

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**VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740



of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

~~A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid pro rata by the parties.~~

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

**EXHIBIT 9**

**ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I – GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

PEPSICO, INC.

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party:

700 ANDERSON HILL ROAD  
PURCHASE, NY 10057

C. Telephone: 847-812-1496 Fax: \_\_\_\_\_ Email: Thomas.maggio@pepsico.com

D. Name of contact person: THOMAS MAGGIO

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD AUTOMATED RETAIL FOOD AND SERVICE VENDING UNITS RFP

G. Which City agency or department is requesting this EDS? CDA

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # N/A and Contract # N/A

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |  |  |
|--|--|
| <input type="checkbox"/> Person  | <input type="checkbox"/> Limited liability company       |
| <input checked="" type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership   |
| <input type="checkbox"/> Privately held business corporation                 | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                                 | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                                 | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                                 | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust   | <input type="checkbox"/> Other (please specify)          |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

NORTH CAROLINA

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☒ Yes ☐ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
------	-------

SEE ATTACHMENT

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
------	------------------	--------------------------------------

### SECTION III – INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV – DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
MOBILITY INNOVATION INC.	2020 W SUPERIOR ST. CHICAGO, IL 60612	ACDBE CONTRACTOR	32% OF GROSS REVENUES

(Add sheets if necessary)

[ ] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V – CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

[ ] Yes [ ] No ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

[ ] Yes [ ] No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such



contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☒ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

N/A

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

CONDUCTED A COMMERCIALLY REASONABLE SEARCH

X 1. The Disclosing Party verifies that the Disclosing Party has ~~searched~~ any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

N/A

## SECTION VI – CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

N/A

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## **B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes ☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes ☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes ☐ No ☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes ☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII – FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

PEPSICO, INC.  
(Print or type exact legal name of Disclosing Party)

By: [Signature]  
(Sign here)

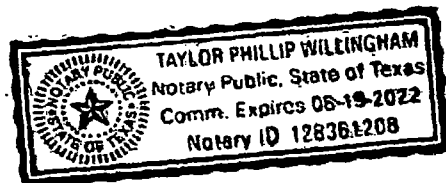
CURT WEBBER  
(Print or type name of person signing)

DIRECTOR  
(Print or type title of person signing)

Signed and sworn to before me on (date) July 15 2021  
at McKinney <sup>City</sup> County, Texas (state).

[Signature]  
Notary Public

Commission expires: \_\_\_\_\_



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

N/A

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

☐ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☒ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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# PepsiCo Board of Directors

<b>Sagun Aghajie</b> Managing Director and Chief Executive Officer, Guaranty Trust Bank plc Elected 2020	<b>Inn Cook</b> Former Chairman, President and Chief Executive Officer, Calstate-Palmolive Company Elected 2008	<b>Michelle Gass</b> Chief Executive Officer, Kohls Corporation Elected 2019	<b>David C. Paga, MD</b> Professor, Massachusetts Institute of Technology, Former Director and President, Whitehead Institute for Biomedical Research Elected 2014	<b>Daniel Vasella, MD</b> Former Chairman and Chief Executive Officer, Novartis AG Elected 2003
<b>Shona L. Brown</b> Independent Advisor, Former Senior Advisor, Google Inc. Elected 2009	<b>Dina Dublin</b> Former Executive Vice President and Chief Financial Officer, JPMorgan Chase & Co. Elected 2005	<b>Ramon L. Laguarda</b> Chairman of the Board of Directors and Chief Executive Officer, PepsiCo Elected 2018	<b>Robert C. Pohlud</b> President of various family-owned entities, Former Chairman and Chief Executive Officer, PepsiAmericas, Inc. Elected 2015	<b>Darren Walker</b> President, Ford Foundation Elected 2016
<b>Cesar Conde</b> Chairman, NBCUniversal News Group Elected 2016	<b>Richard W. Fisher</b> Former President and Chief Executive Officer, Federal Reserve Bank of Dallas Elected 2015	<b>Sir Dave Lewis</b> Former Group Chief Executive Officer, Tesco PLC Elected 2020	<b>Alberto Weissar</b> Former Chairman and Chief Executive Officer, Bunge Limited Elected 2011	

\*Not standing re-election  
and retiring at PepsiCo USA  
Annual Meeting of Shareholders

# PepsiCo Leadership

See pages 24-28 of the Proxy 10-K for a list of PepsiCo Executive Officers subject to election  
16 of the Securities Exchange Act of 1934. David Threlkeld assumed the role of Executive  
Vice President, General Counsel and Corporate Secretary effective March 1, 2021.

<b>Ramon L. Laguarda</b> Chairman of the Board of Directors and Chief Executive Officer	<b>Jon Banner</b> Executive Vice President, Global Communications and President, PepsiCo Foundation	<b>Athina Kanioura</b> Executive Vice President and Chief Strategy and Transformation Officer	<b>Grace Punia</b> Executive Vice President, Global Operations	<b>Kirk Tenner</b> Chief Executive Officer, PepsiCo Beverages North America
<b>Jim Andrew</b> Executive Vice President, Beyond the Bottle and Chief Sustainability Officer	<b>David Fluvall</b> Executive Vice President, General Counsel and Corporate Secretary	<b>Ram Krishnan</b> Global Chief Commercial Officer	<b>Paula Smith</b> Chief Executive Officer, Latin America	<b>Eugene Williamson</b> Chief Executive Officer, Africa, Middle East, South Asia
<b>Roberto Azavedo</b> Executive Vice President and Chief Corporate Affairs Officer	<b>Hugh P. Johnston</b> Vice Chairman, Executive Vice President and Chief Financial Officer	<b>Rand Lammers</b> Executive Vice President and Chief Science Officer	<b>Ronald Schallaborn</b> Executive Vice President and Chief Human Resources Officer	<b>Stevan Williams</b> Chief Executive Officer, PepsiCo Foods North America

**Wern-Yuen Tan**  
Chief Executive Officer,  
Asia Pacific, Australia,  
New Zealand and China

**EXHIBIT 10**  
**AIRPORT CONCESSIONS PROGRAM**  
**HANDBOOK**

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Exhibit 10  
Airport Concessions Program Handbook

# AIRPORT CONCESSION PROGRAM HANDBOOK



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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- 2 CONCESSION INSPECTION FORMS
- 3 FINANCIAL AUDIT STANDARDS
- 4 CONCESSIONS OPERATING STANDARDS
- 5 LISTING OF KEY DEPARTMENT OF AVIATION PERSONNEL
- 6 LISTING OF KEY CONCESSIONS MANAGEMENT PERSONNEL
- 7 RULES AND REGULATIONS

## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### CDA UNIT FUNCTIONS

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.



### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis; the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

Altering of layout  
Renovations/construction  
Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

Consider areas for improving the concession location either from layout changes or renovation.  
Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.  
All signs must be professionally produced.  
All signs and sign holders must be kept clean and in good repair.  
All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

Properly functioning equipment

**STANDARD:**

Preventative maintenance program.  
Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

Have employees' spot check all equipment for possible malfunction.  
Maintain a back-up/alternative plan.  
Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

Courteous and professional appearance  
Proper dress  
Proper identification including CDA security badge  
Customer Service  
Attend customer service meetings, as offered

**STANDARD:**

Employees should be polite and courteous to the traveling public.  
Employees must wear clean and neat uniforms or approved attire.  
Employees must not eat while on duty.  
Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.  
Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.  
Give all new employees airport tours so they are familiar with the airport layout and available services.  
Encourage employees to be polite and courteous.  
Provide necessary employee breaks to discourage eating while on duty.  
Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.  
Supply employees with company identification.  
Obtain CDA security badges for all employees..  
Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages  
Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.  
Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.  
Obtain and post proper instructions regarding health information available from City, State and Federal sources.  
Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.  
A Certified Food Manger must be on-site during food preparation.  
A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only  
Adequate inventory level  
Proper/professional approved signage  
Merchandising  
Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS

## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?



### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## Monthly F&B

### Dishwashing Area

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### Documents/Logs

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### Equipment

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### Exterior

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### Interior

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

**Merchandise/Product**

Are Merchandise/Product Levels Adequate?

**Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

**Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

**Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

**Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning

- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## APPENDIX 3

### FINANCIAL AUDIT STANDARDS:

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In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- ~~- Maintenance of an internal control system (e.g. cash register, point-of-sale equipment) to insure proper reporting to the City.~~
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- ~~- Other insurance as required in the Lease Agreement~~

The City of Chicago will be named as "Additional Insured", with the following language:  
~~"The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."~~



### Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## APPENDIX 4

### CONCESSIONS OPERATING STANDARDS:

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#### General Airport Guidelines

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### Laws and Ordinances

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### Default Notices

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

**APPENDIX 6****KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905 
Yolanda Woodruff Director of Retail Operations	(773) 894-5463 
Dorine Litman Property Manager / ORD	(773) 894-3908 
Patricia Grzyb Property Manager / MDW	(773) 838-0733 
Sungjin Choi Construction and Design Manager	(773) 686-7606 

## APPENDIX 7

### RULES AND REGULATIONS:

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.

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15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.
22. ~~Keep from public view all personal property, cups, papers, cleaning and other supplies.~~
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.



**EXHIBIT 11**

**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

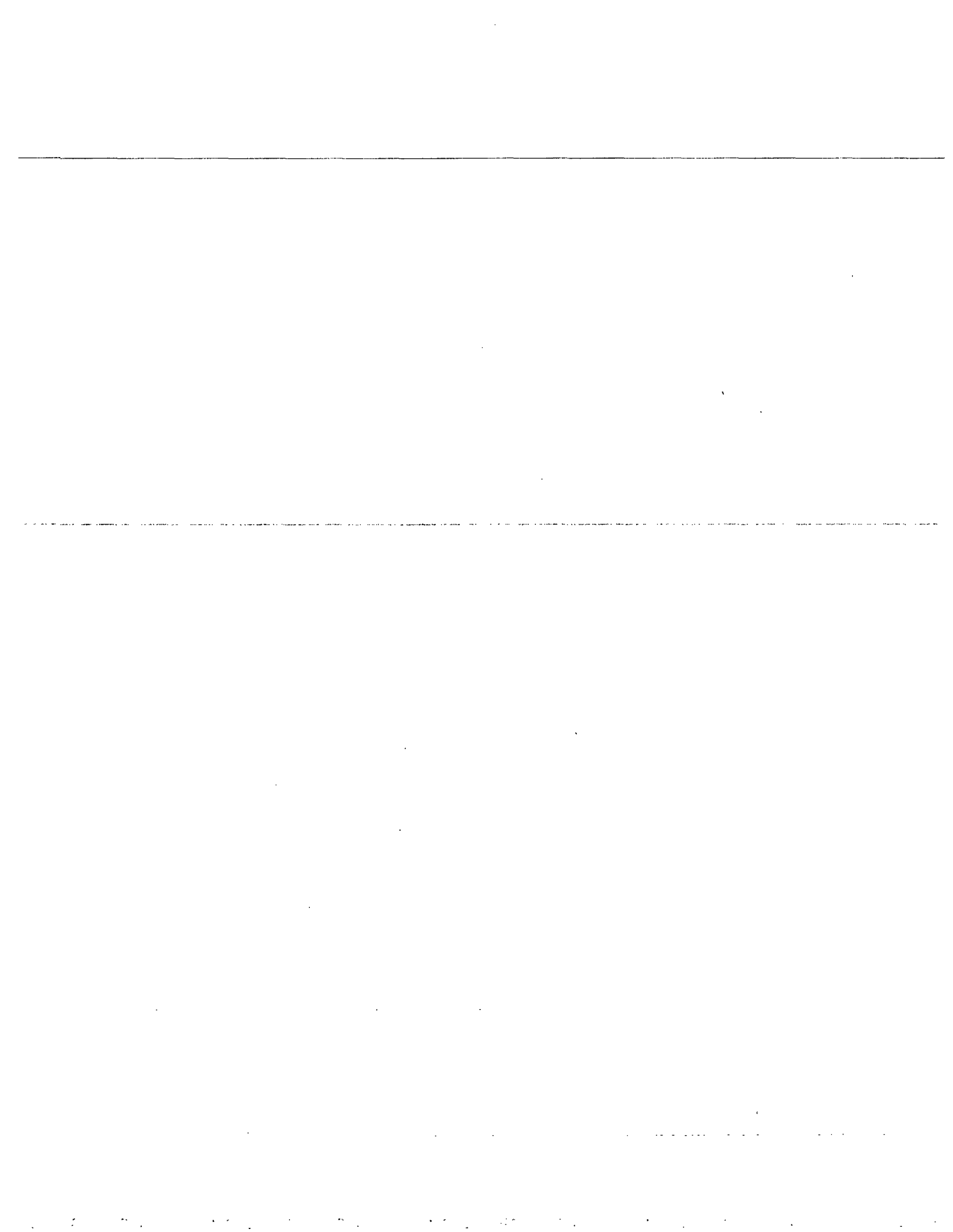
<b>Infraction</b>	<b>1<sup>st</sup> Violation</b>	<b>2<sup>nd</sup> Violation</b>	<b>3<sup>rd</sup> Violation</b>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

(Initial Here)

**EXHIBIT 12**

**UTILITY USAGE FEE**



**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## **EXHIBIT B-4**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**Best Vending Midwest LLC**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT  
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**



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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]

## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

The City owns and, through CDA, operates Chicago O'Hare International Airport ("**O'Hare**" or the "**Airport**"). O'Hare includes an international terminal, three domestic terminals, a multimodal facility and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

The City and Licensee acknowledge that the continued operation of the Airport as safe, convenient, and attractive facility is vital to the economic health and welfare of the City of Chicago, and that the City's right to supervise performance under this Agreement by Licensee is a valuable right incapable of quantification.

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

2.1 Incorporation of Background. The background set forth above is incorporated by reference as if fully set forth here.

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE\WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

"Affiliate" means, except where otherwise defined, any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Licensee.

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

"Airport Concession Program Handbook" means the handbook developed by CDA to govern the uniform operation of the concessions' programs at the Airport. The Airport Concession Program Handbook is available on the CDA website and may be amended from time to time by CDA. Any amendment of the Airport Concession Program Handbook by CDA during the Term of this Agreement will be binding on Licensee without need for amendment of this Agreement, provided that the amendment of Airport Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissioner" means the head of the Department and any City officer or employee authorized to act on the Commissioner's behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where such person is expressly authorized to do so.

"Common Areas" means those areas of the Terminals that are not leased, licensed, or otherwise designated or made available by the Department for exclusive or preferential use by specific party or parties.

"Comptroller" means the head of the Department of Finance of the City and any City officer or employee authorized to act on the Comptroller's behalf.

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

The DBO shall be confirmed in writing by the parties, and such written "Confirmation of DBO" shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement.

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.

§6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other



political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

“Event of Default” has the meaning set forth in Article 9.

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the

Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

"Products" means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Licensee is permitted to sell in its Licensed Retail Space and maintain in inventory in its Storage Space, if any, under the terms of this Agreement, as set forth by category or item in Exhibit 4. Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4 unless otherwise agreed in writing by the Commissioner.

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

4.1 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

4.2 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43     Products.

(a)     General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)     Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)     Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44     Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first- class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix 1 of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.



(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

4.7 Operation of Concession.

(a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

(b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors;' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

5.5 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## **ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS**

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

- (i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.
- (ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee,**" if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this



Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

## 6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

(d) Year End True Up. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year exceeds the amount of all payments made by Licensee to the City for the License Year in question, then Licensee must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year is less than the amount of all License Fee payments made by Licensee to the City for the period in question, but the Percentage Fee still exceeds the MAG for that License Year, then Licensee will receive a credit against the next License Fee payment due under this Agreement for the amount by which the License Fee actually paid by Licensee exceeded the Percentage Fee attributable to the period.

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

#### 6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

(i) Licensee must also furnish to Commissioner no later than March 1 of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Licensee, showing in reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Concessions during the preceding License Year, copies of all returns and other information filed with respect to Illinois sales and use taxes, and as such other financial and statistical reports as the Commissioner may, from time to time, reasonably require by written notice to Licensee.

(ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$\_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

(b) Losses. "Losses" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Licensee, its employees, agents, subtenants, and Subcontractors.

(c) Defense of Suits. At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Agreement. Licensee must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involves the Airport.

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

(b) Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately vacate some or all of the Licensed Spaces until the Letter of Credit is in place and effective.

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

(d) Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

## **ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION**

9.1 Events of Default. Each of the following (a) through (n) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed thirty (30) days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within forty-five (45) days from delivery of the notice, Licensee will have the additional time, not in any event to exceed forty-five (45) days, to cure the failure.

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.



- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## **ARTICLE 10. SPECIAL CONDITIONS**

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

(a) Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

(b) Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

- (i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or
- (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

(d) There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.

(e) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

(f) No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

(g) Licensee has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

(i) Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

(j) Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

(a) Authorization to do Business. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

(b) Economic Disclosure Statement. Licensee has provided the Commissioner with an EDS for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within thirty (30) days of any event or change in circumstance that

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

103 City's Right to Assign. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

- a. City Council, in its sole discretion, if the Change in Ownership involves

a 100% Change in Ownership of Licensee, or

- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the



Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgment.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

(b) It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2-55 of the Municipal Code, respectively. Licensee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractors as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

(c) Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must surrender the Licensed Space to the City free from the presence and contamination of any hazardous substances.

(d) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

7-28-390 Dumping on public way—Violation—Penalty; 7-  
28-440 Dumping on real estate without permit;  
11-4-1410 Disposal in waters prohibited;  
11-4-1420 Ballast tank, bilge tank or other discharge; 11-  
4-1450 Gas manufacturing residue;  
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-  
1530 Compliance with rules and regulations required; 11-4-  
1550 Operational requirements;  
11-4-1560 Screening requirements; and  
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Licensee's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect Licensee's eligibility for future City agreements.

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

- (f) Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):
- (i) Licensee agrees that Licensee, any person or entity who directly or indirectly has an ownership or beneficial interest in Licensee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Licensee's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Licensee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this bid, proposal or Agreement by Licensee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Licensee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.
- (ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

- (iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

(g) Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a “**business relationship**” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

- (i) Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "**Artwork**") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 *et seq.*) (the "**Copyright Act**"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and sublicensees, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

106 Airport Security.

(a) This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Licensee is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Licensee must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Licensee must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum-security enhancement. Any drawings, plans, and specifications provided by Licensee under this Agreement must comply with those guidelines for airport security developed by the City, the

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

(c) Gates and doors located on the Licensed Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Licensee until the malfunction is remedied.

(d) In connection with the implementation of its security program, Licensee may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Licensee acknowledges that all such knowledge and information is of a highly confidential nature. Licensee covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Licensee further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

(e) Licensee understands that fines and/or penalties may be assessed by the TSA or FAA for Licensee's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Licensee's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Licensee, or any party for which Licensee is liable under this Agreement, is responsible for all or part of the fine or penalty, Licensee shall pay said amount of the fine or penalty as Additional Fees.

#### 10.7 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or



otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the furnishing of services in the Licensed Spaces, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the License in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

(b) It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the License, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(f) Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Licensee of Licensee's obligations under this Agreement relative to nondiscrimination.

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

(h) Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

109 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

10.10 Avigation Easement. There is reserved to the City, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Licensed Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Licensee by accepting this License agrees for itself, its successors, and assigns that it will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Licensed Space and cause the abatement of the interference at the expense of Licensee.

10.11 National Emergency. This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.12 2014 Hiring Prohibitions.

(a) The City is subject to the June 16, 2014, "City of Chicago Hiring Plan" (the "**2014 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a sublicensee, and from directing Licensee to hire an individual as an employee or as a sublicensee. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Licensee in connection with this License are employees or sublicensees of Licensee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer- employee relationship of any kind between the City and any personnel of Licensee.

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Licensee by a City employee or City official in violation of this Section, or advocating a violation of this Section above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

## **ARTICLE 11. GENERAL CONDITIONS**

11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the grant and use of the License and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

11.2 Counterparts. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be

interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Chicago Department of Aviation  
City of Chicago  
O'Hare International Airport  
10510 W. Zemke Rd Chicago,  
Illinois 60666

and with a copy to:  
Deputy Commissioner of Concessions at the same address.

If the notice or communication relates to payment of Fees or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller  
City of Chicago  
City Hall - Room 501 121  
N. LaSalle Street  
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section 2  
North LaSalle Street, Suite 540  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

(a) This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

(c) To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs (a) and (b) above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs (a) and (b).

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee. Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 Estoppel Certificate. From time to time upon not less than fifteen (15) days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 No Personal Liability. Licensee, or any sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 Joint and Several Liability. If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Licensee is the joint and several obligations or undertaking of each such individual or other legal entity.

11.18 Non-Recordation. Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.



11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure event*"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within twenty (20) days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than sixty (60) days due to a *force majeure* event, without the express written consent of the Commissioner.

**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**

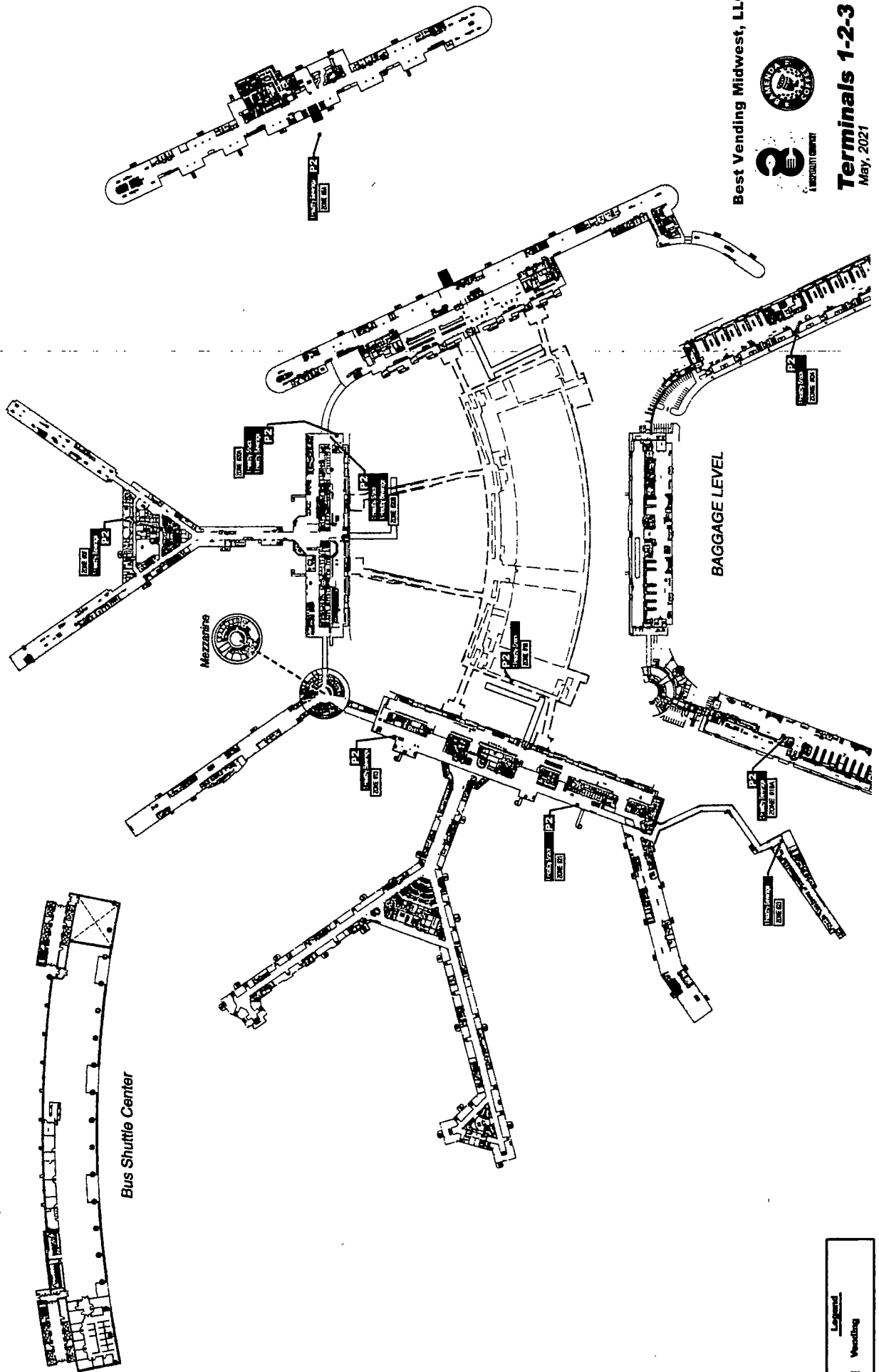
**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO )**

The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	n/a	T1B.U.107.B
2	n/a	T1B.U.12.B
3	n/a	T1B.U.73.M
4	Healthy Snack	T1B.L.94.O
5A	Healthy Snack	T1C.T.G.C
5B	n/a	T1B.THH.V
6	n/a	T2E.U.39.A
7	Healthy Beverage	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	n/a	T2E.U.48.A
10	n/a	T2.L.40.6
11	n/a	T2EF.U.16.D
12	n/a	T2.U.45.J
13	Healthy Beverage	T3.U.8C.D
14	n/a	T3G.U.33.C
15	n/a	T3H.U.30.E
16	n/a	T3K.9Ma.A

17	n/a	T3K.U.75.L
18A	Healthy Snack	T3.L.8Y.C
18B	n/a	T3.L.8Y.C
19	Healthy Snack	CTA Pedway
20A	Healthy Snack Healthy Beverage	T2.U.4A.D
20B	Healthy Snack Healthy Beverage	T2.U.4C.E
21	Healthy Snack	T3.U.8AA.F
22	n/a	T3HK.U.9R.E
23	Healthy Beverage	L Stinger.U.2.3.A
24A	n/a	T2 CTA Pedway
24B	n/a	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD



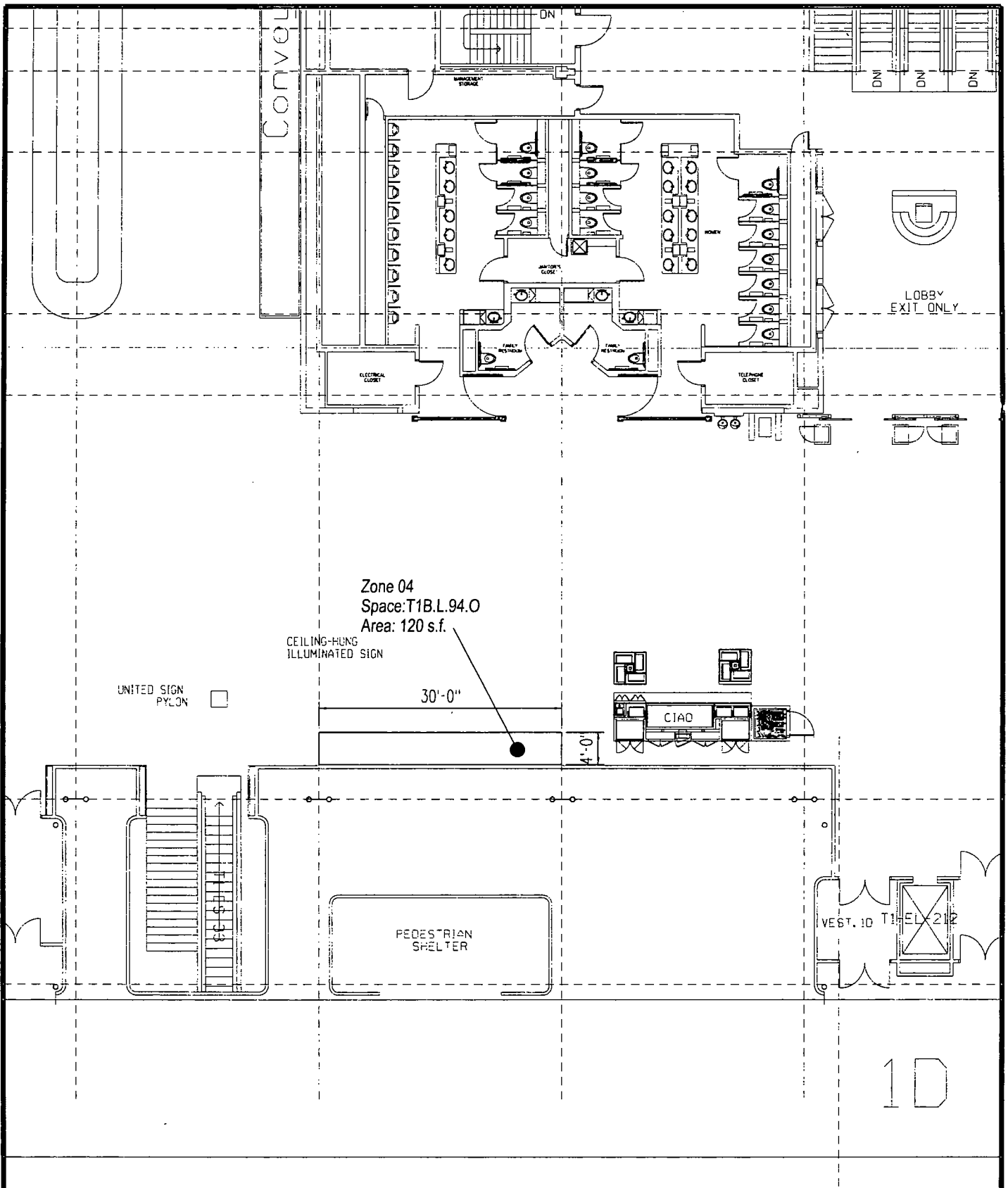
Best Vending Midwest, LLC



**Terminals 1-2-3**  
May, 2021

Legend

P2 Vending



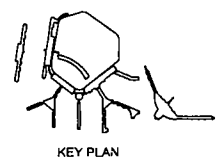
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

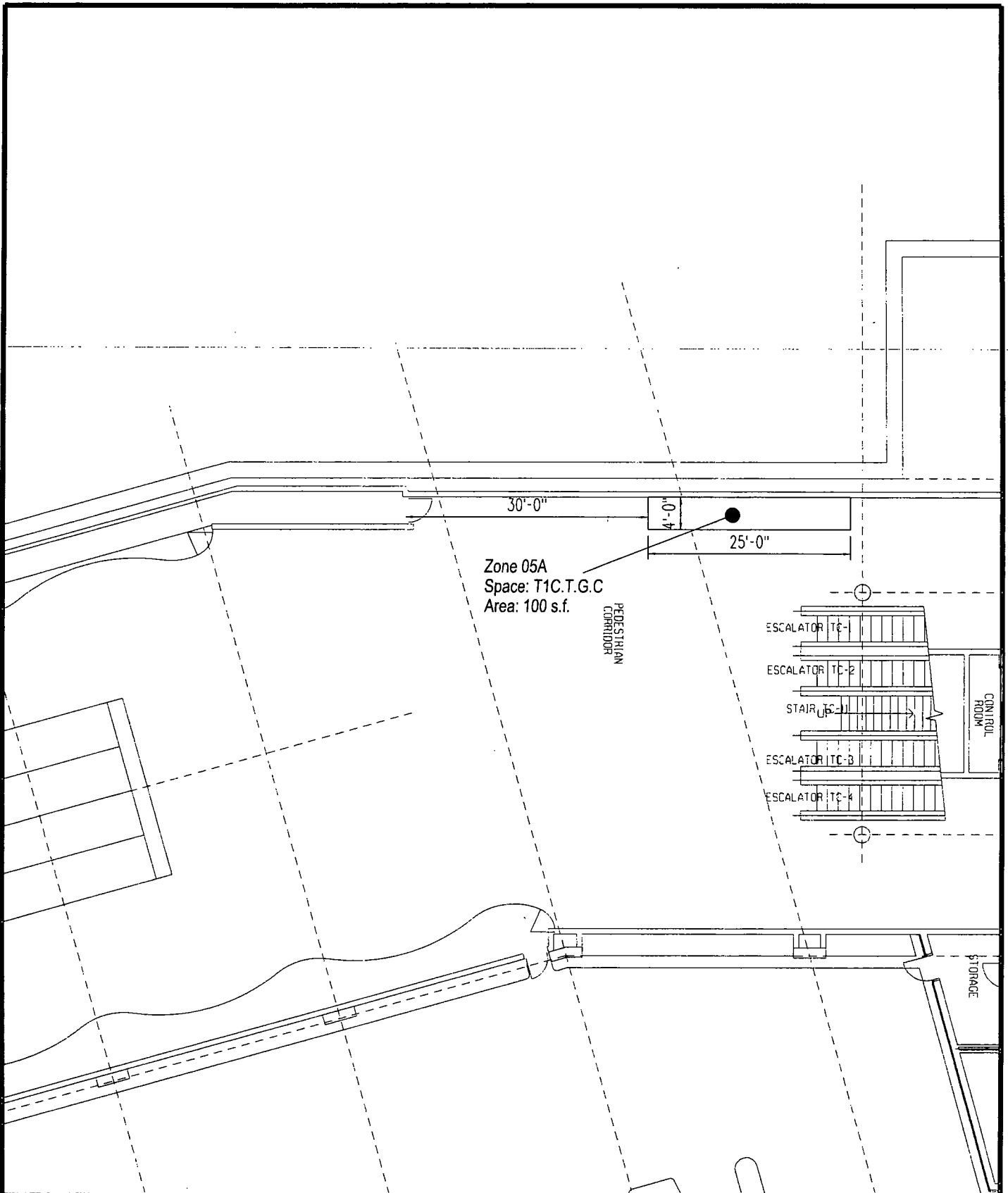
Terminal 1 Lower Level

Automated Retail  
Zone #04 (T1B.L.94.O)



Date: May, 2021

Created by CADO Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

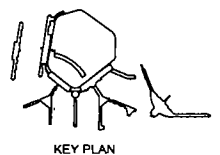
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 1 / Concourse C Pedestrian Tunnel

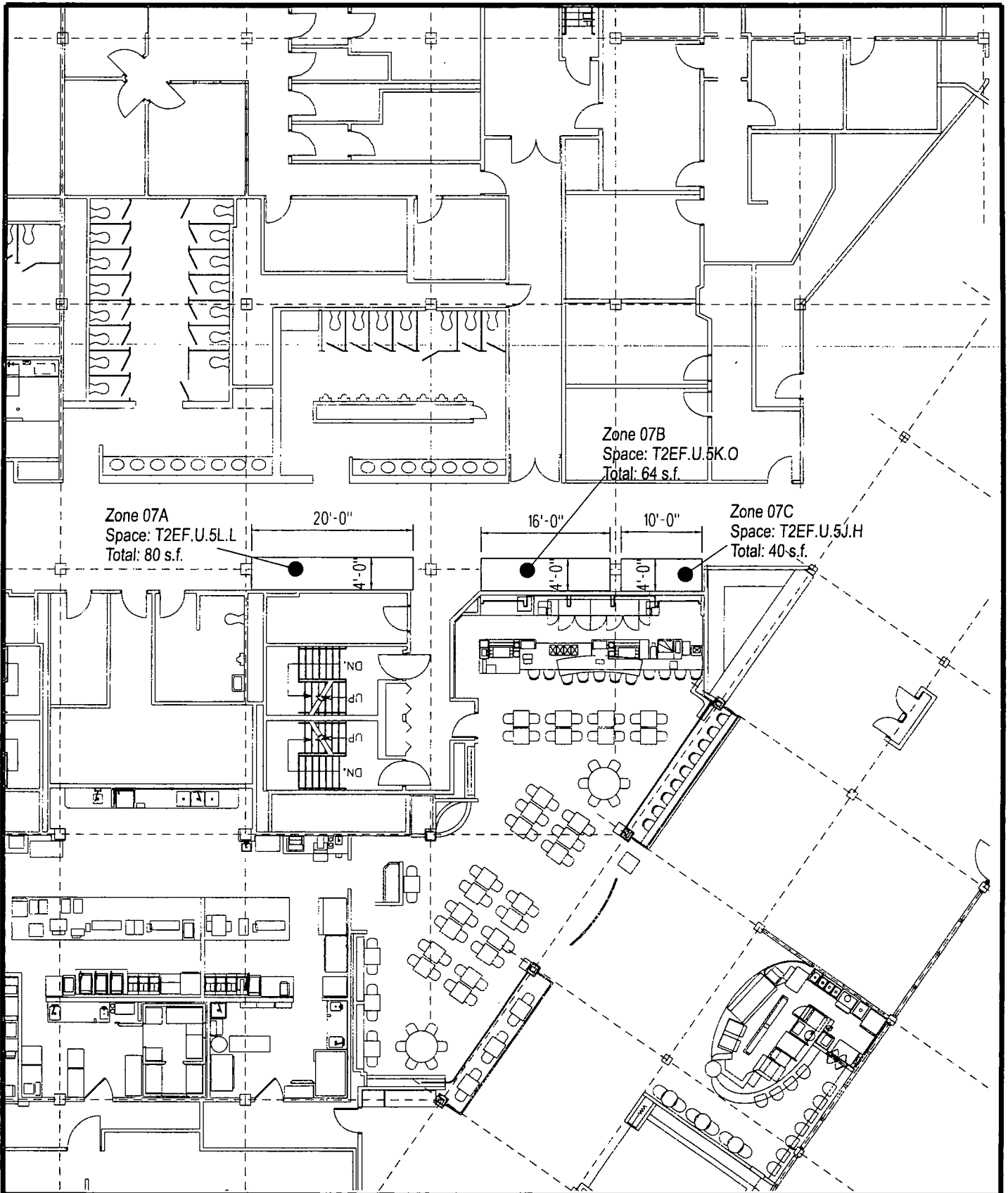
Automated Retail  
Zone #05A (T1C.T.G.C)

Scale: 1/16" = 1'-0"



Date: May, 2021

Created by CADD Services



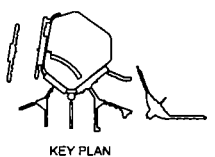
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGER

Terminal 2/Concourse EF Upper Level

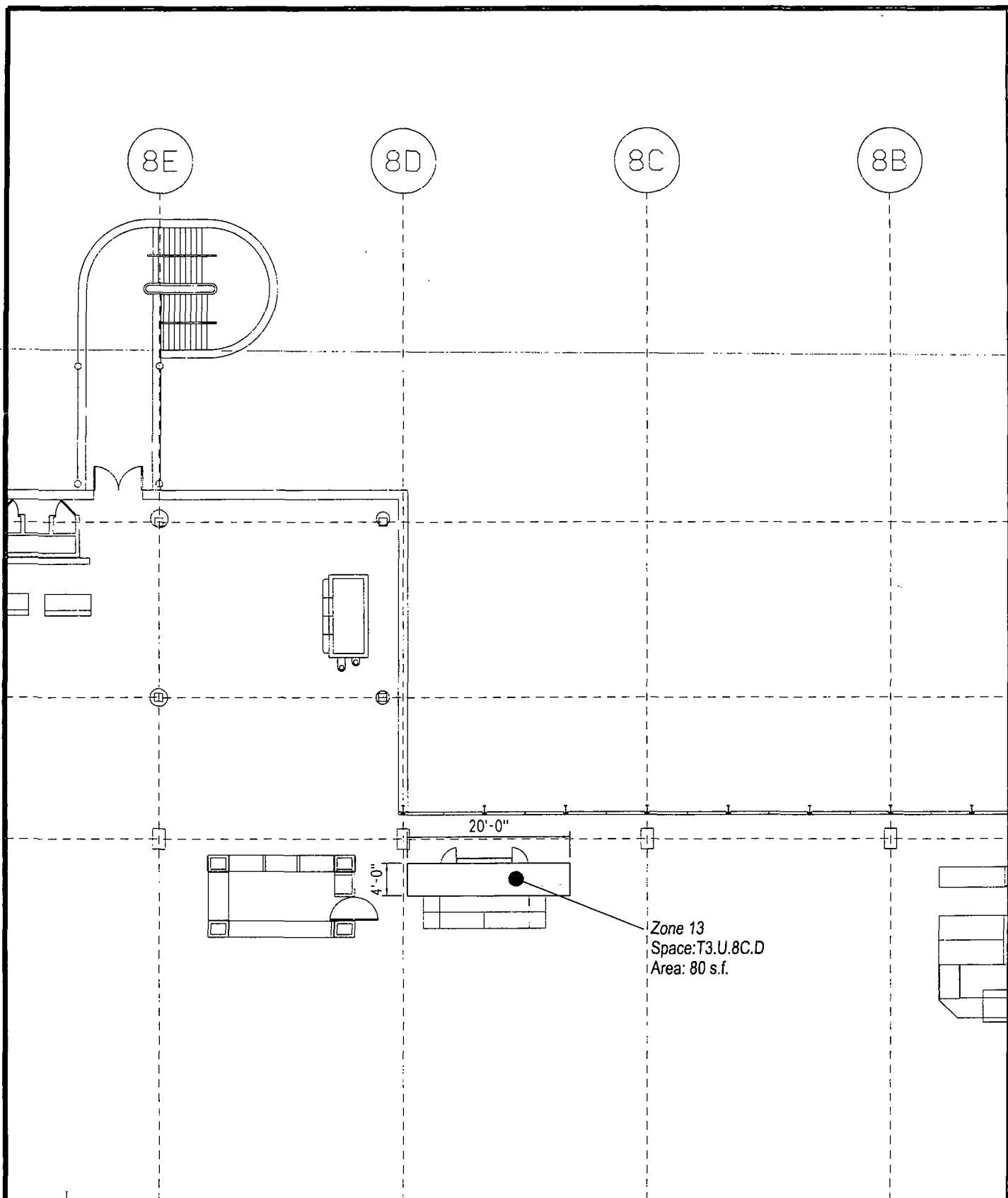
Automated Retail  
Zone #07 A-B-C  
Space: TEF.U.5L.L  
Total: 184 s.f.



Date: May, 2021

Created by CAD0 Services





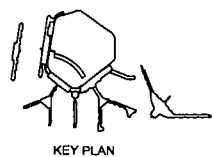
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

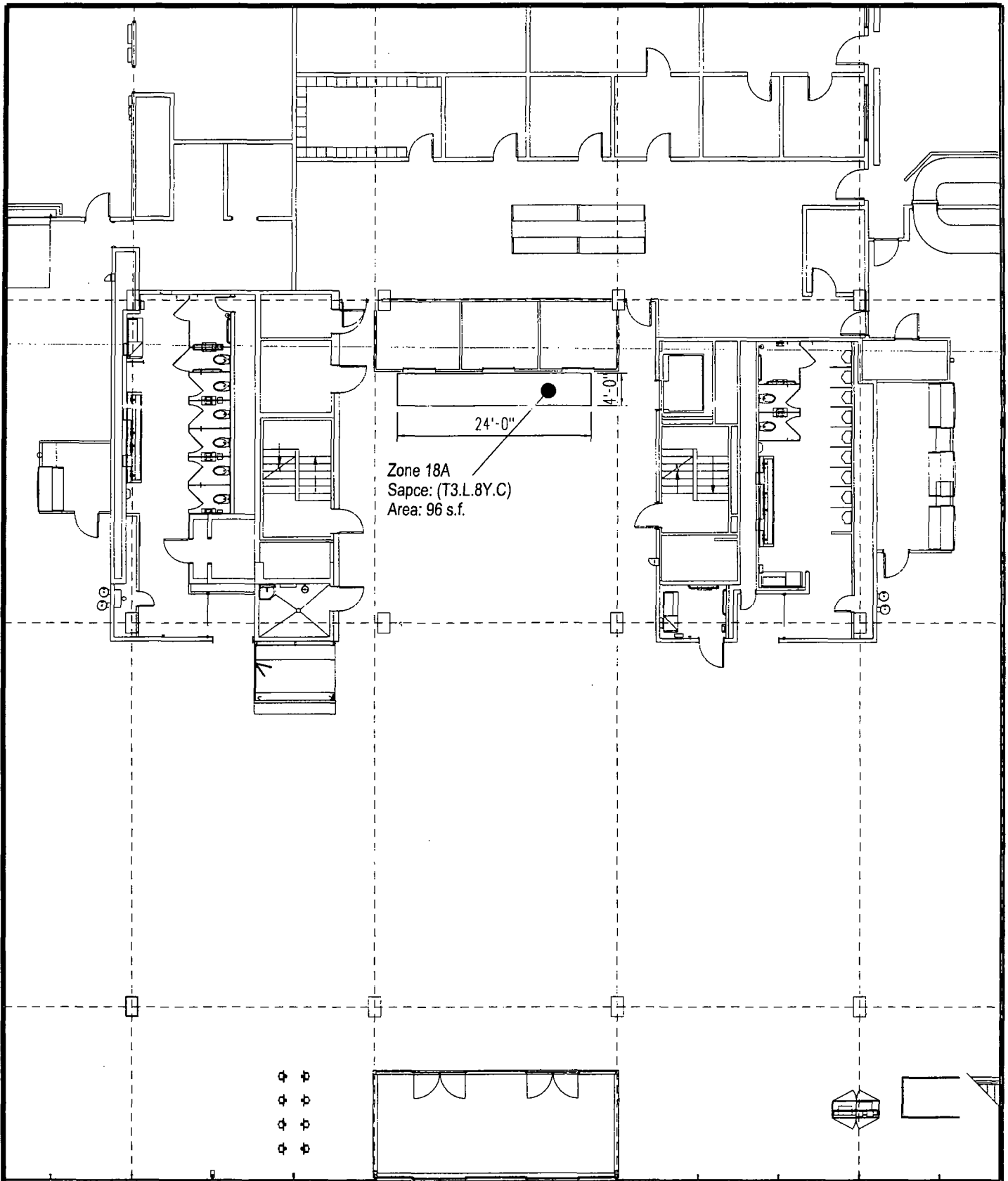
Terminal 3 Upper Level

Automated Retail  
Zone #13 (T3.U.8C.D)



Date: May, 2021

Created by CADD Services



Chicago O'Hare International Airport  
 Mayor • Lori Lightfoot

Chicago Department of Aviation  
 Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 Lower Level

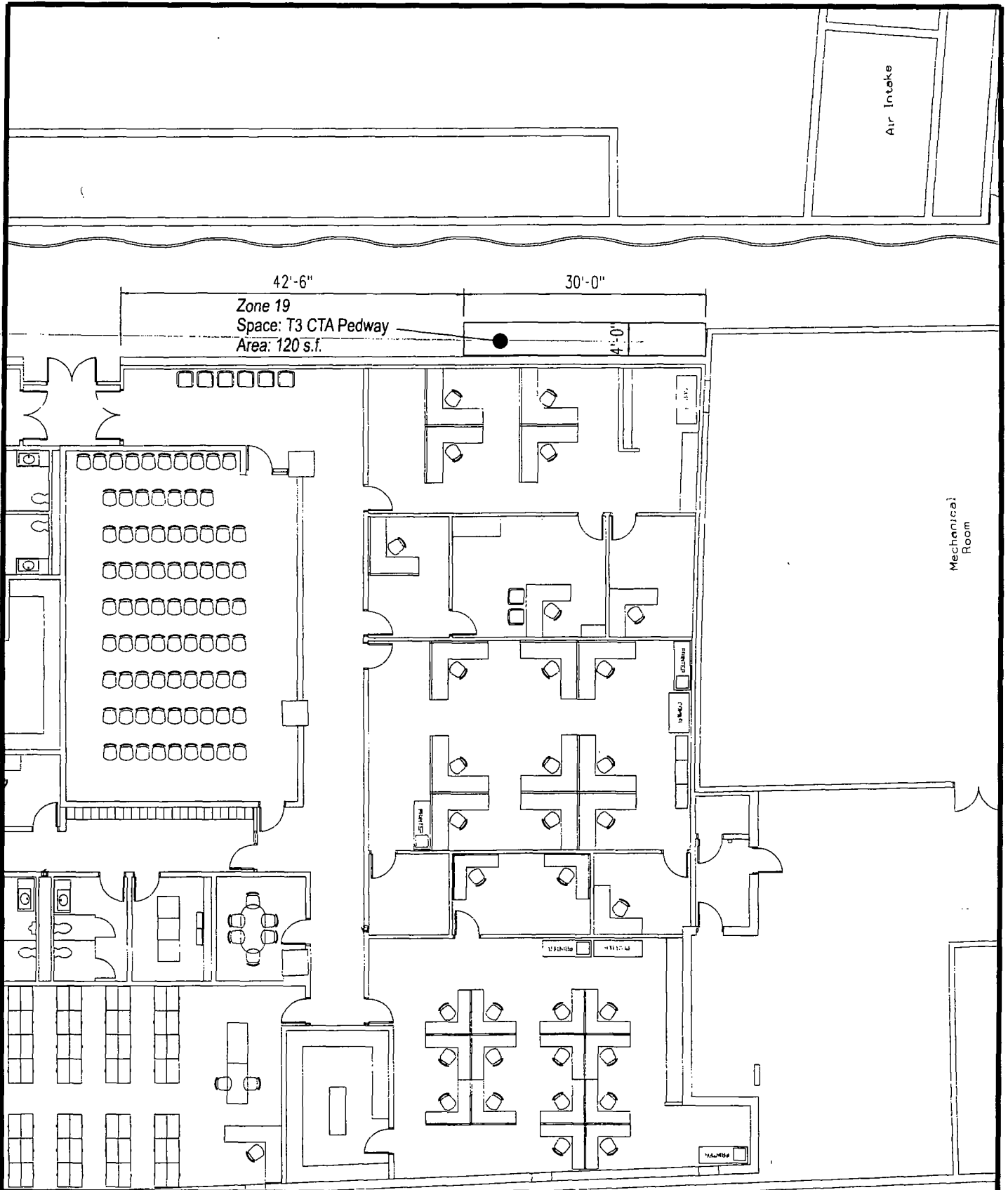
Automated Retail  
 Zone #18A (T3.L.8Y.C)



KEY PLAN

Date: May, 2021

Created by CADD Services



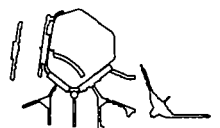
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 CTA Pedestrian Tunnel

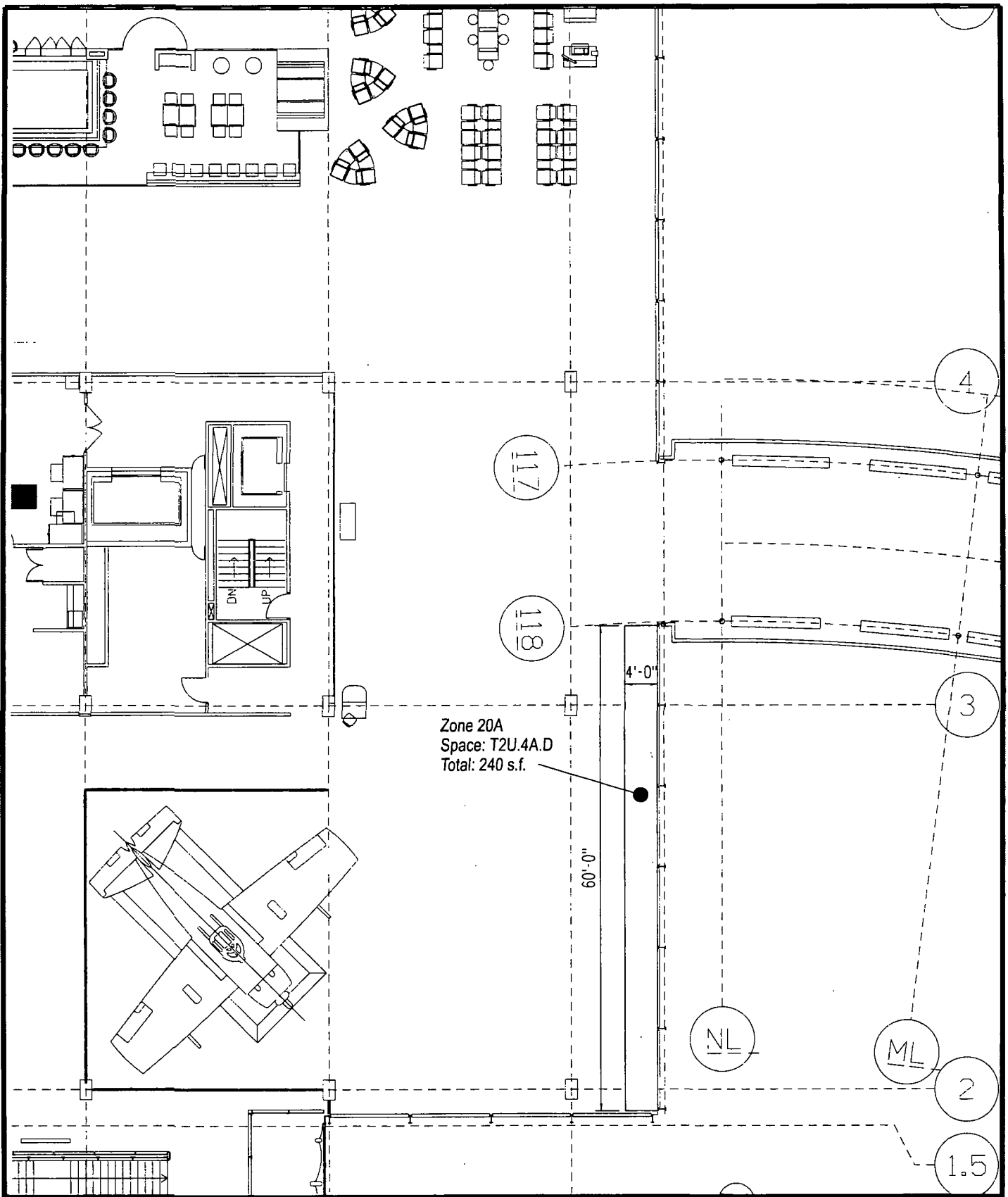
Automated Retail  
Zone #19



KEY PLAN

Date: May, 2021

Created by CADDO Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

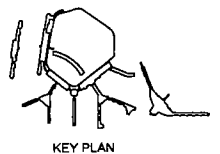
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

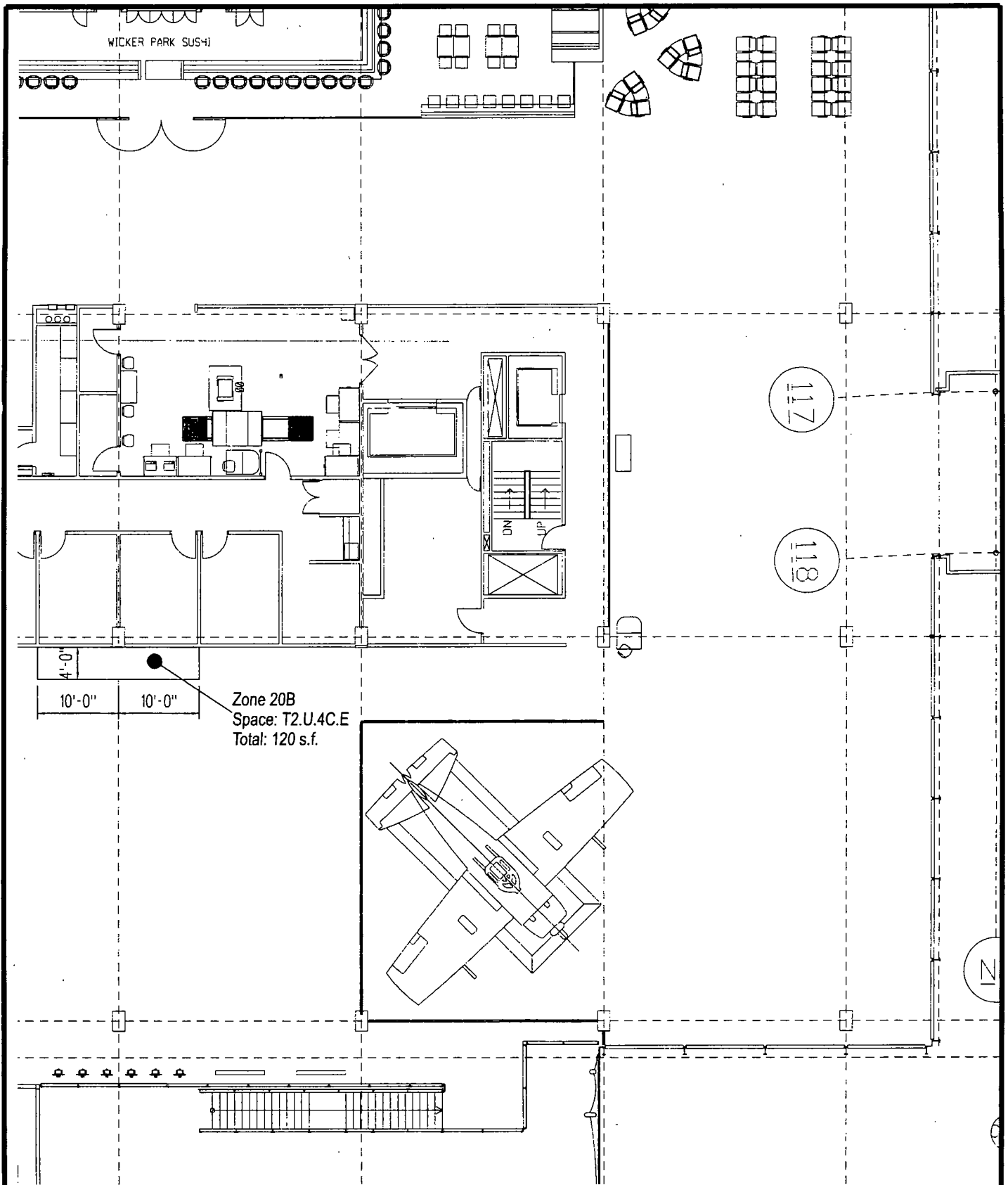
Automated Retail  
Zone #20A (T2.U.4A.D)

Scale: 1/16" = 1'-0"



Date: May, 2021

Created by CAD3 Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

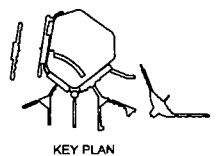
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

Automated Retail  
Zone # 20B (T2.U.4C.E)

Scale: 1/16" = 1'-0"

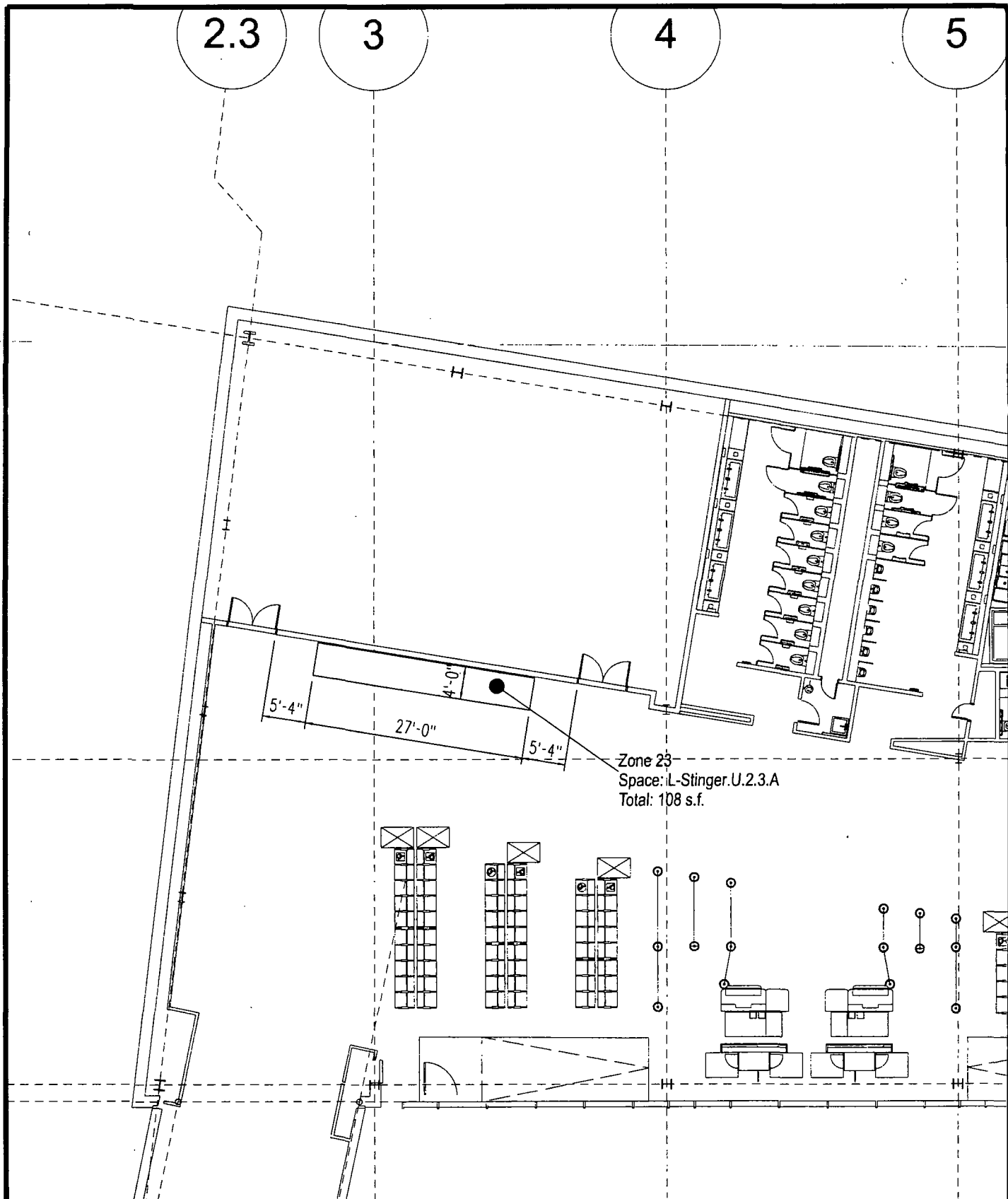


KEY PLAN

Date: May, 2021

Created by CADD Services





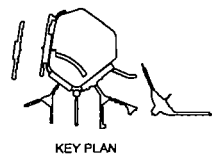
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 / L-Stinger Upper Level

Automated Retail  
Location # 23 (L-Stinger.U.2.3.A)



Date: May, 2021

Created by CADDO Services

## **EXHIBIT 2**

### **FEES**



## **EXHIBIT 2**

### **FEES**

1. Percentage Fee: Best Vending Midwest, LLC

Gross Revenues	Percentage Fee
All	20.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

**EXHIBIT 3**  
**DEVELOPMENT PLAN**

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## Concessions Development Plan

### PHONE CHECKOUT

Bamenda Coffee Company Inc and 8 Hospitality have partnered with Scandit to provide a next level cashier-less experience with our travelers at O'Hare airport. Scandit brings the technology that will integrate into our Site and enable all shoppers phones to become mobile self-checkout for a faster checkout experience. When customers walk into our Micro-Mart, They sign into our website BamendaCoffee.com without having to download an app, with a location geofence and microfence activated automatically the shopper or traveler will use their phone to scan their items of interest which are automatically added to their checkout basket. When they are complete with their shopping experience, they click checkout and walk out the door. This is comparable to the Sam's Club scan n' Go process or amazon-go but you don't have to download an app making the shopping time easier and faster. The Mart Will be WIFI equipped for all travelers.

### SELF-CHECKOUT KIOSK

For customers that are not tech savvy, their phone died, they don't have a wireless service, we will have two mini wireless self-checkout kiosks with a screen about the size of a tablet on both sides of the Micro-Mart that will also allow for a self-scan checkout process.

The Ultimate Micro-Mart Experience at O'Hare: Stocked with customer favorites in top 20 Snacks, top 10 sodas, Chicago Craft on the go, Package vend Salads on the go and gifts, customers will walk away with the ultimate Chicago experience. Micro Mart will be staffed at all operating hours with staff to keep the Mart stocked and offer guidance to visitors.

### OUR FOOD

Breakfast: Offering delicious and healthy choices ranging from croissants, cold breakfast sandwiches, granola, nutrition bars, fresh fruit and yogurt selections. Price range \$7.00 to \$10.00.

Lunch and Dinner: Pre-packed salads made from the freshest locally sourced ingredients. Price range \$10.00 to \$15.00.

Wholesome Sandwiches...artisan breads layered with the freshest meats, cheeses and vegetables available. Our produce partners will be work tirelessly to provide delicious fare, delivered on a daily basis. Price range \$15.00.

Easy, grab and go items consisting of fresh fruit, protein bars, an array of chips and candy bars. Price range \$2.00 to \$5.00.

Drinks: An array of bottled water, juice and soda. Price range \$4.00 to \$6.00.

Beer and Wine: We will also be featuring local craft beer and wine. Featured beer will all local products, e.g., Revolution Anti Hero, Half Acre Daisy Cutter, Maplewood Pulaski Pilsner, 5 Rabbit Xcago, Goose Island 312. Price range \$10.00.

Plus our Signature Bamenda coffee products. Price range \$5.00 to \$7.00.

### STORE CONCEPT AND DESIGN

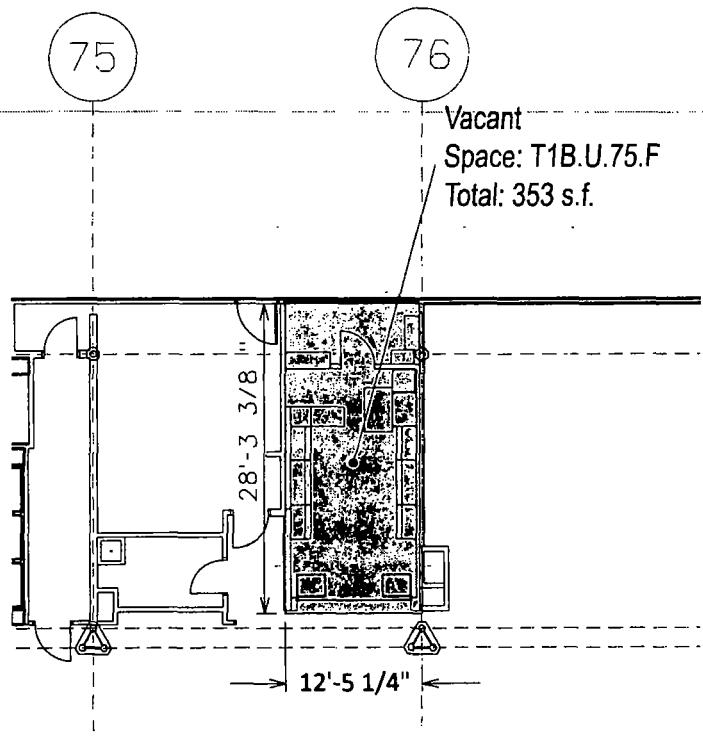
Designed to meet the needs of busy travelers, Windy City Market incorporates modern technology to streamline and elevate grab-and-go dining options in a virtually touch-free environment.

## Store Concept and Design

### T1 - B - MICRO MARKET



- 353 sq ft
- One PPE station
- Two self checkouts
- One coffee station
- Two beverage coolers
- Two food coolers
- One station for snacks
- In back there will be a room for a three basin sink and on site pantry to restock shelves

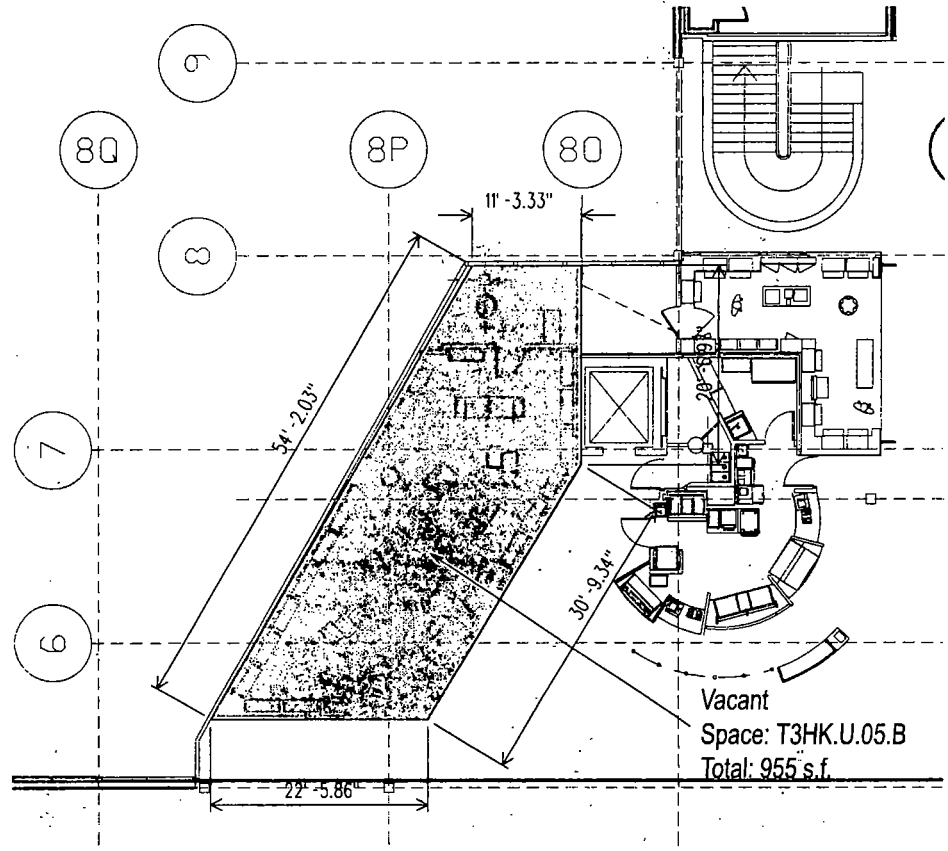


# Store Concept and Design

## T3 - MICRO MARKET

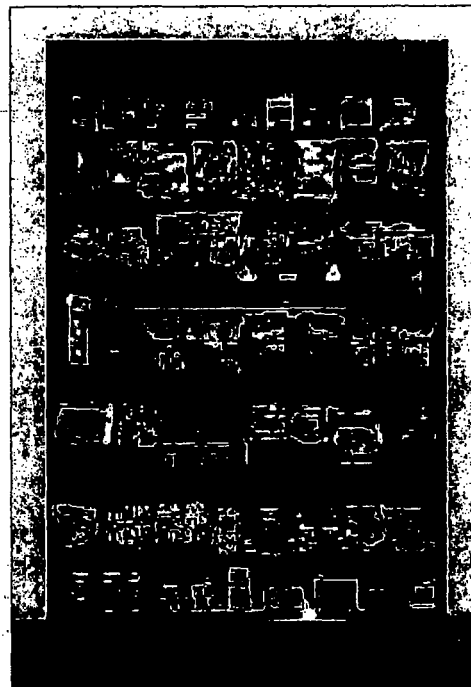
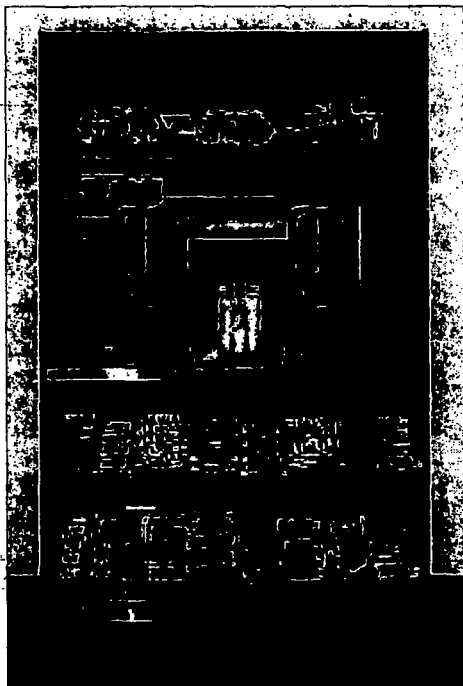
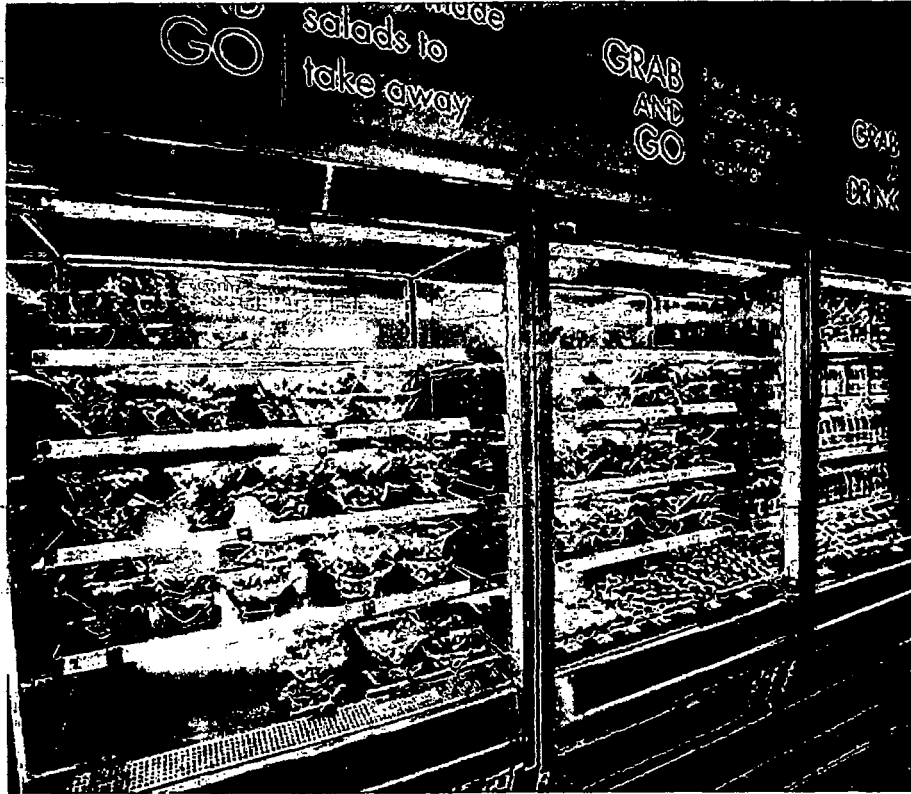


- 953 sq ft
- Two self checkouts
- Two coffee stations
- Four beverage coolers
- Four food coolers
- Two stations for snacks
- Two souvenir stations
- Railing for eating and drinking north west side of space
- There is a closet for a three basin sink and on site pantry to restock shelves



## Store Concept and Design

### MICRO MARKET EQUIPMENT/PRODUCTS



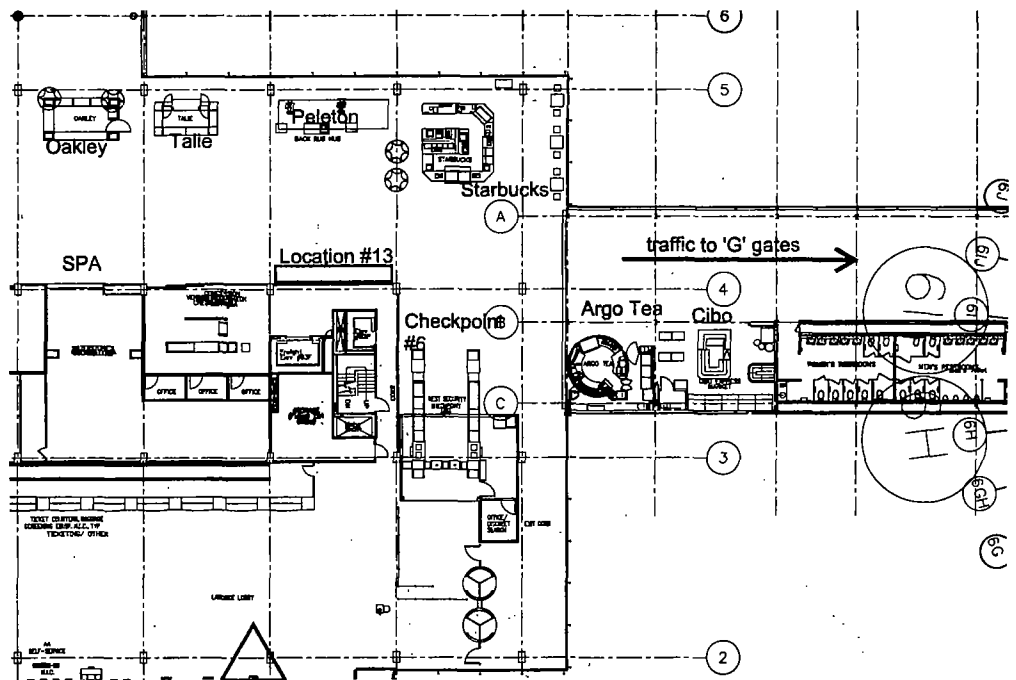
## Store Concept and Design

### LOCATION #13 - T3, H1 - VENDING



Vending machine location we will be serving:

- Fresh salads
- Gourmet sandwiches
- Water and Cold soda
- Craft beer
- Snacks and candy
- PPE
- Ice cream

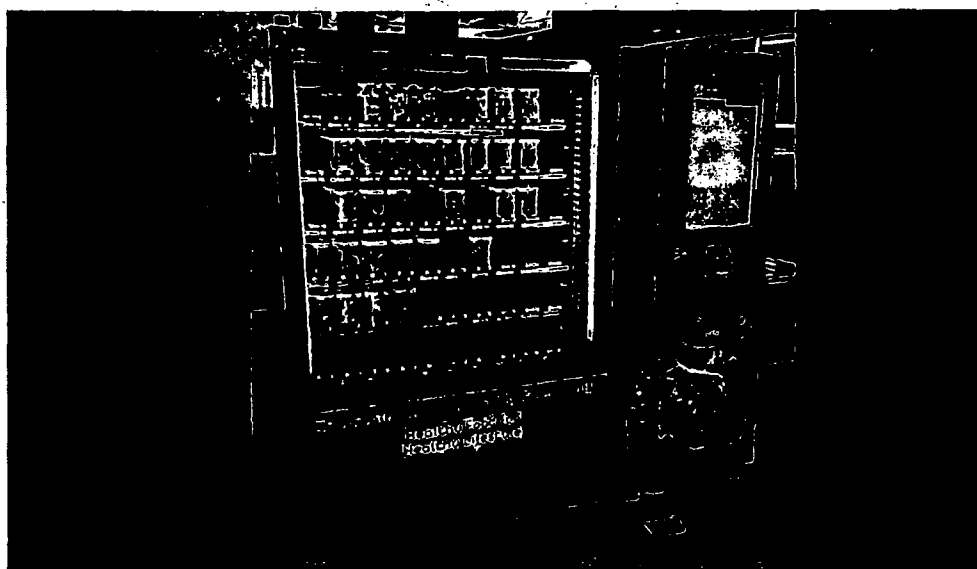
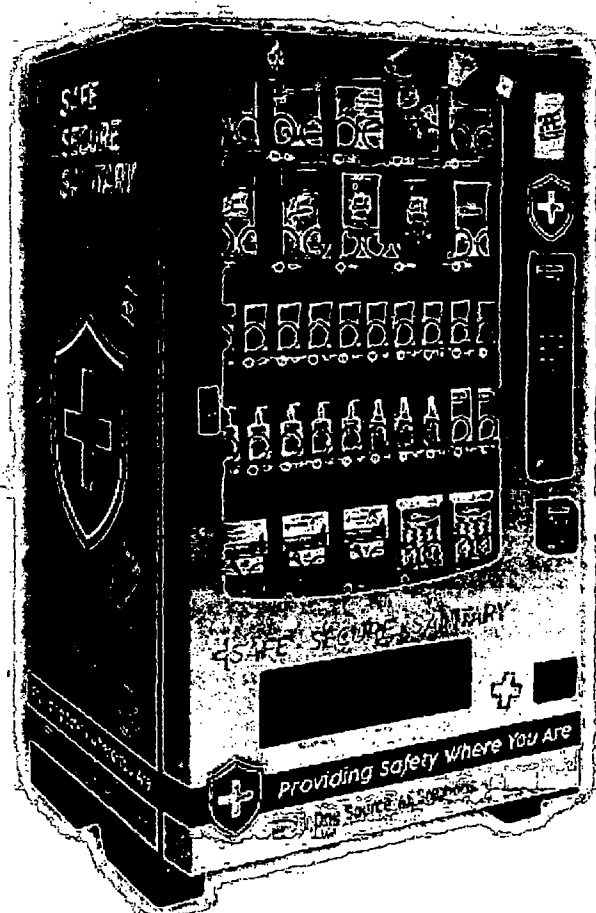


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## Store Concept and Design

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### VENDING LOCATION EQUIPMENT/PRODUCTS





**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**

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## Concessions Development Plan

### PHONE CHECKOUT

Bamenda Coffee Company Inc and 8 Hospitality have partnered with Scandit to provide a next level cashier-less experience with our travelers at O'Hare airport. Scandit brings the technology that will integrate into our Site and enable all shoppers phones to become mobile self-checkout for a faster checkout experience. When customers walk into our Micro-Mart, They sign into our website BamendaCoffee.com without having to download an app, with a location geofence and microfence activated automatically the shopper or traveler will use their phone to scan their items of interest which are automatically added to their checkout basket. When they are complete with their shopping experience, they click checkout and walk out the door. This is comparable to the Sam's Club scan n' Go process or amazon-go but you don't have to download an app making the shopping time easier and faster. The Mart Will be WIFI equipped for all travelers.

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Beer and Wine: We will also be featuring local craft beer and wine. Featured beer will all local products, e.g., Revolution Anti Hero, Half Acre Daisy Cutter, Maplewood Pulaski Pilsner, 5 Rabbit Xcago, Goose Island 312. Price range \$10.00.

Plus our Signature Bamenda coffee products. Price range \$5.00 to \$7.00.

### STORE CONCEPT AND DESIGN

Designed to meet the needs of busy travelers, Windy City Market incorporates modern technology to streamline and elevate grab-and-go dining options in a virtually touch-free environment.

**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*

(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Chicago Department of Aviation  
Chicago's O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_."

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CERTIFICATE FOR DRAWING

BY: \_\_\_\_\_  
Its: Commissioner of Aviation

**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**

**Chicago Department of Aviation**

**Automated Retail License Agreement**

**Food, beverage, retail products gifts and vending merchandise at O'Hare  
(Vending Machines)**

**A. INSURANCE REQUIRED**

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

1) Workers Compensation and Employers Liability (Primary and Umbrella)

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.



3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Licensee with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Property

The Licensee must maintain All Risk Property Insurance for the licensed space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Licensee is responsible for all loss or damage to personal property including equipment, fixtures, contents, materials and supplies.

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) **Builders Risk**

When Licensee undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Licensee must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Licensee is responsible for all loss or damage to City of Chicago property at full replacement cost.

**B. Additional Requirements**

**Evidence of Insurance.** Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

**Failure to Maintain Insurance.** Failure of the Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

**Notice of Material Change, Cancellation or Non-Renewal.** Licensee must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

**Waiver of Subrogation.** Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

herein for any loss arising from or relating to this Agreement. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

Licensee's Insurance Primary. All insurance required of Licensee under this Agreement must be endorsed to state that Licensee's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Licensee under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Licensee maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated



satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### IV. COUNTING ACDBE PARTICIPATION

#### A. CONCESSIONS OTHER THAN RENTAL CAR

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives. . . . .

### **C. REPORTING**

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

### **D. MONITORING**

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

## **VI. GOOD FAITH EFFORTS**

### **A. EXAMPLES**

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

## B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
    - a) concession identification and location;
    - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
    - c) date, time and location for submittal of bids or proposals.
  3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
  4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders/proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
  5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
  6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
  7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
  8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
  9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
  10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
  11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
    - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
    - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
    - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
    - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.
- C. ADMINISTRATIVE RECONSIDERATION
1. For the purposes of this Agreement, the City has delegated the responsibility for making

the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**

**A. NON-COMPLIANCE GENERALLY**

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

**B. NON-COMPLIANCE WITH ACDBE AGREEMENT**

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.



**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

**SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION  
CONTRACTS**

**I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

**Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%**

**WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.

1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

- H. If the MBE or WBE subcontracts out any of its work:
1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
  3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**V. Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

**A. Schedule B: MBE/WBE Affidavit of Joint Venture**

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

**B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier**

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed



original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

**C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization**

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

**D. Letters of Certification**

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

**E. Schedule F: Report of Subcontractor Solicitations**

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

**F. Schedule H: Documentation of Good Faith Efforts**

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

**VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification).
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740

of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

**EXHIBIT 9**

**ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS**



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

BEST VENDING MIDWEST LLC

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the

Applicant OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: 110 W Hubbard St. Chicago, IL 60654

C. Telephone: 815-277-6037 Fax: XXXX Email: \_\_\_\_\_

D. Name of contact person: CARMEN ROSSI

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD AUTOMATED RETAIL, FOOD AND SERVICE VENDING UNITS RFP

G. Which City agency or department is requesting this EDS? DEPT. OF AVIATION

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # N/A and Contract # N/A

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input checked="" type="checkbox"/> Sole proprietorship           | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

ILLINOIS

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

CARMEN ROSSI

MANAGER

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Bamenda Coffee Company Inc	924 E Hyde Park Blvd 3W Chicago, IL 60615	50%
8 Hospitality LLC	110 W Hubbard St. Chicago, IL 60654	50%

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If yes to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

---

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

---

### **SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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N/A

(Add sheets if necessary)

[ X] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

[ ] Yes [ ] No [ X] No person directly or indirectly owns 10% or more of the Disclosing Party.

If Yes, has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

[ ] Yes [ ] No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any Contractor (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;

b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any controlling person [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a gift does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
N/A		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.



## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

X 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

\_\_\_ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

N/A

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded**, complete this Section VI. **If the Matter is not federally funded**, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

N/A

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

---

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party; and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

BEST VENDING MIDWEST LLC

(Print or type exact legal name of Disclosing Party)

By: 

(Sign here)

CARMEN ROSSI

(Print or type name of person signing)

MANAGER

(Print or type title of person signing)

Signed and sworn to before me on (date) July 8<sup>th</sup>, 2021

at Cook County, IL (state).

  
Notary Public

Commission expires: 2/13/22

OFFICIAL SEAL  
JOSEPH A ZAGORSKI  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 02/13/22

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof currently has a familial relationship with any elected city official or department head. A familial relationship exists if, as of the date this EDS is signed, the Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. Principal officers means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes                      ☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes                      ☐ No                      ☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wagesalary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☒ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

8 HOSPITALITY LLC

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: BEST VENDING MIDWEST LLC

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: 110 W Hubbard St. Chicago, IL 60654

C. Telephone: 815-277-6037 Fax: XXXX Email: c

D. Name of contact person: CARMEN ROSSI

E. Federal Employer Identification No. (if you have one): 8

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD AUTOMATED RETAIL, FOOD AND SERVICE VENDING UNITS RFP

G. Which City agency or department is requesting this EDS? DEPT. OF AVIATION

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # N/A and Contract # N/A



## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

ILLINOIS

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

CARMEN ROSSI

MANAGER

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
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NONE

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### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If yes to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

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Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes

☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

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### **SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether <u>paid or estimated</u> .) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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N/A

(Add sheets if necessary)

[ X] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

[ ] Yes [ ] No [ X] No person directly or indirectly owns 10% or more of the Disclosing Party.

If Yes, Has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

[ ] Yes [ ] No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any Contractor (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any controlling person [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a gift does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

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### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
N/A		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

X 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

N/A

## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

N/A

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee



of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

---

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

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4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

---

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

8-Hospitality LLC

(Print or type exact legal name of Disclosing Party)

By:                     

(Sign here)

Carmen Rossi

(Print or type name of person signing)

Manager

(Print or type title of person signing)

Signed and sworn to before me on (date) July 13<sup>th</sup>, 2021

at Cook County, IL (state).

Joseph A. Zagorski  
Notary Public

Commission expires: 2/13/22

OFFICIAL SEAL  
JOSEPH A ZAGORSKI  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 02/13/22

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof currently has a familial relationship with any elected city official or department head. A familial relationship exists if, as of the date this EDS is signed, the Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. Principal officers means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

[ ] Yes      ☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wagesalary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Bamenda Coffee Company Inc

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: Best Vending Midwest LLC

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: 924 E Hyde Park Blvd 3W, Chicago IL 60615

C. Telephone: 214-566-8175 Fax: 866-223-1005 Email: Felix@bamendacoffee.com

D. Name of contact person: Felix Leshey

E. Federal Employer Identification No. (if you have one):   

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Retail, Food and Service Vending Units RFP

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # N/A and Contract # N/A

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>Felix Leshey</u>	<u>Founder &amp; CEO</u>
<u>Angel Leshey</u>	<u>President</u>

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a



limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
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N/A		
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### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

N/A

### **SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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N/A

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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No    N/A

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity (see definition in (5) below) has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly, controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise;
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name N/A

Business Address

Nature of Financial Interest

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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

N/A

## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

N/A

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## **SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION**

The Disclosing Party understands and agrees that:

**A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.**

**B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.**

**C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.**

**D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.**

**E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to MCC Chapter 1-23, Article I (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.**

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Bamenda Coffee Company Inc

(Print or type exact legal name of Disclosing Party)

By: Felix Leshey

(Sign here)

Felix Leshey

(Print or type name of person signing)

Founder & CEO

(Print or type title of person signing)

Signed and sworn to before me on (date) June 1<sup>st</sup>, 2021

at Cook County, IL (state).

Joseph A. Zagorski

Notary Public

Commission expires: 2/13/22

OFFICIAL SEAL  
JOSEPH A ZAGORSKI  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 02/13/22

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

**Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?**

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

N/A

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

---

N/A

---

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wagesalary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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## Exhibit 10

### Airport Concessions Program Handbook

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*

# **AIRPORT CONCESSION PROGRAM HANDBOOK**



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### CDA UNIT FUNCTIONS

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.



## **APPENDIX 2**

**CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS**

## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay
- Is the Health Department Inspection Report Posted?
- Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Monthly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

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Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

**Merchandise/Product**

Are Merchandise/Product Levels Adequate?

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**Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?



- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## **APPENDIX 3**

### **FINANCIAL AUDIT STANDARDS:**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

### Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### **General Airport Guidelines**

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### **Laws and Ordinances**

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### **Default Notices**

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

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**APPENDIX 6**

**KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905
Yolanda Woodruff Director of Retail Operations	(773) 894-5463
Dorine Litman Property Manager / ORD	(773) 894-3908
Patricia Grzyb Property Manager / MDW	(773) 838-0733
Sungjin Choi Construction and Design Manager	(773) 686-7606

## **APPENDIX 7**

### **RULES AND REGULATIONS:**

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.



25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

**EXHIBIT 11**

**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<u>Infraction</u>	<u>1<sup>st</sup> Violation</u>	<u>2<sup>nd</sup> Violation</u>	<u>3<sup>rd</sup> Violation</u>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

(Initial Here)

**EXHIBIT 12**

**UTILITY USAGE FEE**

**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## **EXHIBIT B-5**



**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**Oops Diapers 2Go Inc.**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT  
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]

## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

The City owns and, through CDA, operates Chicago O'Hare International Airport ("**O'Hare**" or the "**Airport**"). O'Hare includes an international terminal, three domestic terminals, a multimodal facility and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

The City and Licensee acknowledge that the continued operation of the Airport as safe, convenient, and attractive facility is vital to the economic health and welfare of the City of Chicago, and that the City's right to supervise performance under this Agreement by Licensee is a valuable right incapable of quantification.

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

2.1 Incorporation of Background. The background set forth above is incorporated by reference as if fully set forth here.

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE/WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

"Affiliate" means, except where otherwise defined, any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Licensee.

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

"Airport Concession Program Handbook" means the handbook developed by CDA to govern the uniform operation of the concessions' programs at the Airport. The Airport Concession Program Handbook is available on the CDA website and may be amended from time to time by CDA. Any amendment of the Airport Concession Program Handbook by CDA during the Term of this Agreement will be binding on Licensee without need for amendment of this Agreement, provided that the amendment of Airport Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissioner" means the head of the Department and any City officer or employee authorized to act on the Commissioner's behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where such person is expressly authorized to do so.

"Common Areas" means those areas of the Terminals that are not leased, licensed, or otherwise designated or made available by the Department for exclusive or preferential use by specific party or parties.

"Comptroller" means the head of the Department of Finance of the City and any City officer or employee authorized to act on the Comptroller's behalf.

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to



Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

The DBO shall be confirmed in writing by the parties, and such written "Confirmation of DBO" shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement.

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.

§6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

“Event of Default” has the meaning set forth in Article 9.

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the

Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

"Products" means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Licensee is permitted to sell in its Licensed Retail Space and maintain in inventory in its Storage Space, if any, under the terms of this Agreement, as set forth by category or item in Exhibit 4. Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4 unless otherwise agreed in writing by the Commissioner.

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

41 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

42 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43     Products.

(a)     General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)     Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written a written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)     Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44     Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first-class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix 1 of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and



(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

4.7 Operation of Concession.

(a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

(b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

- (1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,
- (2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors;' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

55 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The



Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

- (i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.
- (ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

## 6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

(d) Year End True Up. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year exceeds the amount of all payments made by Licensee to the City for the License Year in question, then Licensee must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year is less than the amount of all License Fee payments made by Licensee to the City for the period in question, but the Percentage Fee still exceeds the MAG for that License Year, then Licensee will receive a credit against the next License Fee payment due under this Agreement for the amount by which the License Fee actually paid by Licensee exceeded the Percentage Fee attributable to the period.

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

(i) Licensee must also furnish to Commissioner no later than March 1 of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Licensee, showing in reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Concessions during the preceding License Year, copies of all returns and other information filed with respect to Illinois sales and use taxes, and as such other financial and statistical reports as the Commissioner may, from time to time, reasonably require by written notice to Licensee.

(ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$\_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

(b) Losses. "**Losses**" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Licensee, its employees, agents, subtenants, and Subcontractors.

(c) Defense of Suits. At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Agreement. Licensee must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involves the Airport.

(d) Wavier of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

(b) Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately vacate some or all of the Licensed Spaces until the Letter of Credit is in place and effective.

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

(d) Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.



## ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION

9.1 Events of Default. Each of the following (a) through (n) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed thirty (30) days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within forty-five (45) days from delivery of the notice, Licensee will have the additional time, not in any event to exceed forty-five (45) days, to cure the failure.

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.

- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## **ARTICLE 10. SPECIAL CONDITIONS**

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

(a) Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

(b) Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

- (i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or
- (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

(d) There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.

(e) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

(f) No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

(g) Licensee has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

(i) Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

(j) Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

(a) Authorization to do Business. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

(b) Economic Disclosure Statement. Licensee has provided the Commissioner with an EDS for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within thirty (30) days of any event or change in circumstance that

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

103 City's Right to Assign. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

- a. City Council, in its sole discretion, if the Change in Ownership involves



a 100% Change in Ownership of Licensee, or

- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the

Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgment.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

(b) It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2-55 of the Municipal Code, respectively. Licensee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractors as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

(c) Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must surrender the Licensed Space to the City free from the presence and contamination of any hazardous substances.

(d) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

7-28-390 Dumping on public way—Violation—Penalty; 7-  
28-440 Dumping on real estate without permit;  
11-4-1410 Disposal in waters prohibited;  
11-4-1420 Ballast tank, bilge tank or other discharge; 11-  
4-1450 Gas manufacturing residue;  
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-  
1530 Compliance with rules and regulations required; 11-4-  
1550 Operational requirements;  
11-4-1560 Screening requirements; and  
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Licensee's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect Licensee's eligibility for future City agreements.

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

- (f) Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):
- (i) Licensee agrees that Licensee, any person or entity who directly or indirectly has an ownership or beneficial interest in Licensee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Licensee's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Licensee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this bid, proposal or Agreement by Licensee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Licensee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.
- (ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

- (iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

(g) Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a “business relationship” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

- (i) Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "**Artwork**") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 et seq.) (the "**Copyright Act**"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and sublicensees, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

106 Airport Security.

(a) This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Licensee is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Licensee must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Licensee must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum-security enhancement. Any drawings, plans, and specifications provided by Licensee under this Agreement must comply with those guidelines for airport security developed by the City, the



TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

(c) Gates and doors located on the Licensed Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Licensee until the malfunction is remedied.

(d) In connection with the implementation of its security program, Licensee may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Licensee acknowledges that all such knowledge and information is of a highly confidential nature. Licensee covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Licensee further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

(e) Licensee understands that fines and/or penalties may be assessed by the TSA or FAA for Licensee's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Licensee's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Licensee, or any party for which Licensee is liable under this Agreement, is responsible for all or part of the fine or penalty, Licensee shall pay said amount of the fine or penalty as Additional Fees.

#### 107 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the furnishing of services in the Licensed Spaces, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the License in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

(b) It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the License, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(f) Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Licensee of Licensee's obligations under this Agreement relative to nondiscrimination.

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

(h) Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

109 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

10.10 Avigation Easement. There is reserved to the City, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Licensed Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Licensee by accepting this License agrees for itself, its successors, and assigns that it will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Licensed Space and cause the abatement of the interference at the expense of Licensee.

10.11 National Emergency. This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.12 2014 Hiring Prohibitions.

(a) The City is subject to the June 16, 2014, "City of Chicago Hiring Plan" (the "**2014 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a sublicensee, and from directing Licensee to hire an individual as an employee or as a sublicensee. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Licensee in connection with this License are employees or sublicensees of Licensee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer- employee relationship of any kind between the City and any personnel of Licensee.

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Licensee by a City employee or City official in violation of this Section, or advocating a violation of this Section above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

## **ARTICLE 11. GENERAL CONDITIONS**

11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the grant and use of the License and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

11.2 Counterparts. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability . Whenever possible, each provision of this Agreement must be

interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Chicago Department of Aviation  
City of Chicago  
O'Hare International Airport  
10510 W. Zemke Rd Chicago,  
Illinois 60666

and with a copy to:  
Deputy Commissioner of Concessions at the same address.

If the notice or communication relates to payment of Fees or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller  
City of Chicago  
City Hall - Room 501 121  
N. LaSalle Street  
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section 2  
North LaSalle Street, Suite 540  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

(a) This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

(c) To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs (a) and (b) above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs (a) and (b).

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee. Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 Estoppel Certificate. From time to time upon not less than fifteen (15) days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts



of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 No Personal Liability. Licensee, or any sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 Joint and Several Liability. If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Licensee is the joint and several obligations or undertaking of each such individual or other legal entity.

11.18 Non-Recordation. Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure event*"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within twenty (20) days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than sixty (60) days due to a *force majeure* event, without the express written consent of the Commissioner.

**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**

EXHIBIT 1  
LICENSED SPACE  
(INCLUDING CONFIRMATION OF DBO)

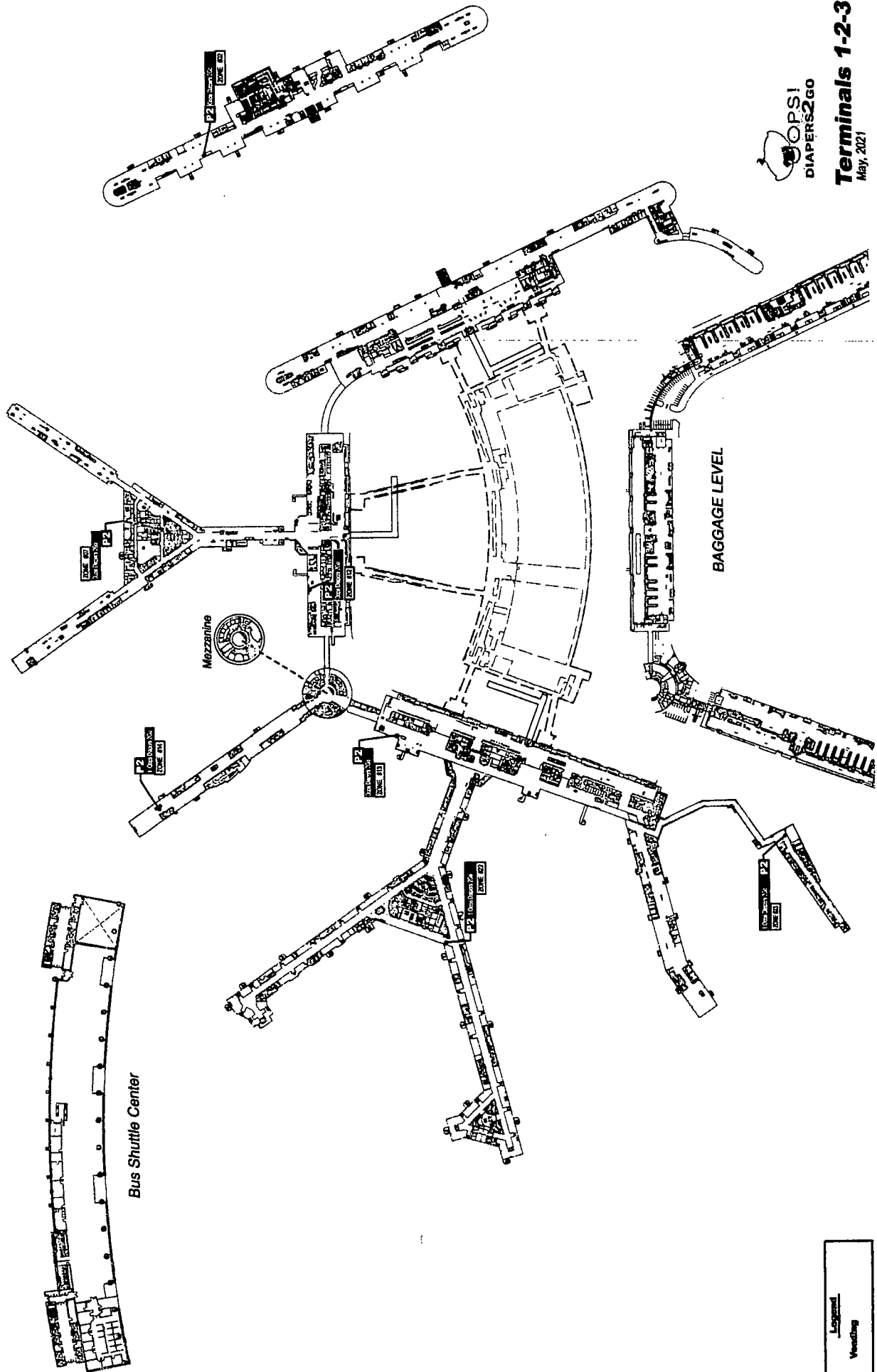
The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

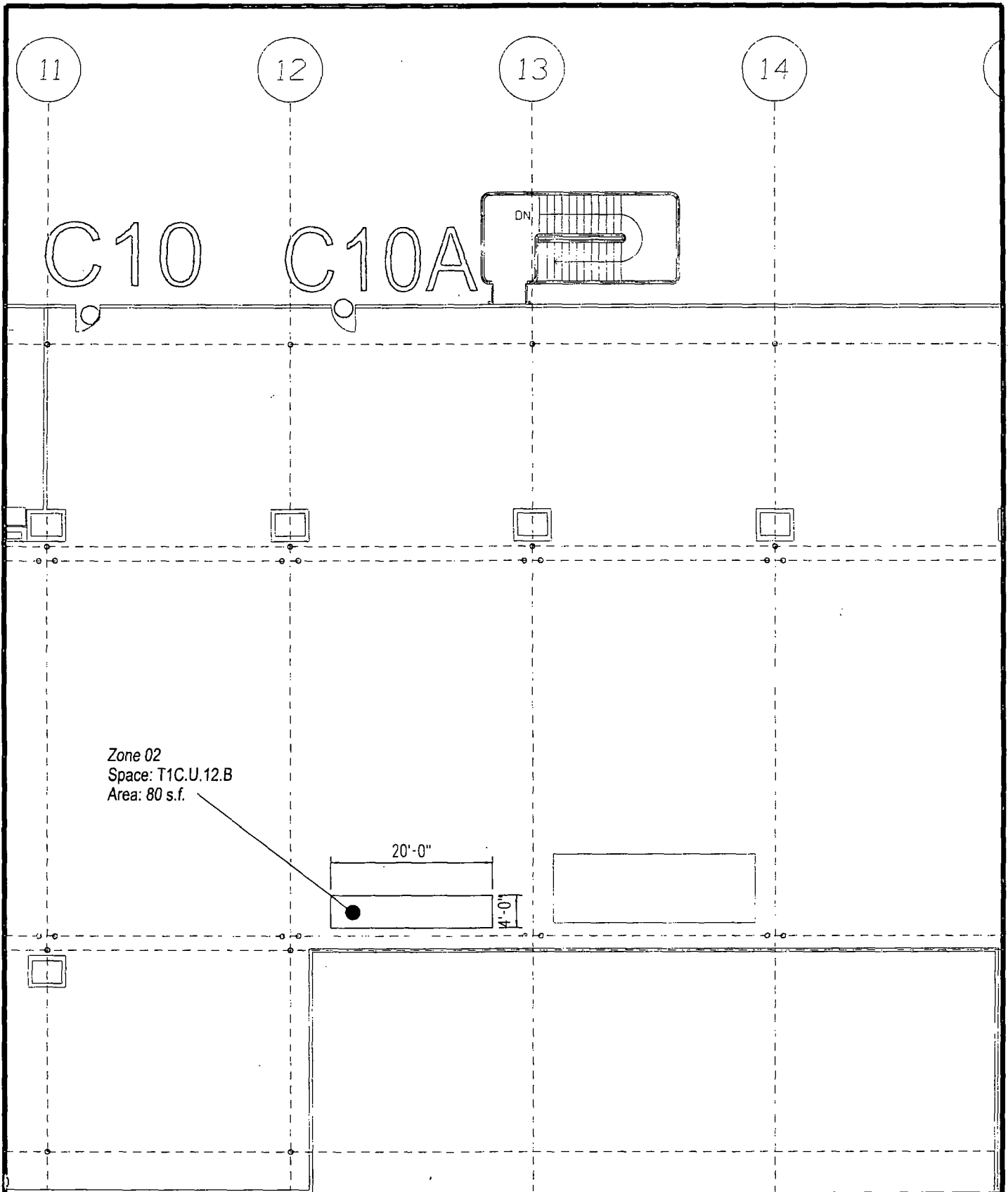
Vending Zone	Automated Retail Vending Machine*	LOD Space ID Number
1	n/a	T1B.U.107.B
2	Oops Diapers	T1B.U.12.B
3	n/a	T1B.U.73.M
4	n/a	T1B.L.94.O
5A	n/a	T1C.T.G.C
5B	n/a	T1B.THH.V
6	n/a	T2E.U.39.A
7	Oops Diapers	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	n/a	T2E.U.48.A
10	n/a	T2.L.40.6
11	n/a	T2EF.U.16.D
12	Oops Diapers	T2.U.45.J
13	Oops Diapers	T3.U.8C.D
14	Oops Diapers	T3G.U.33.C
15	n/a	T3H.U.30.E
16	n/a	T3K.9Ma.A

17	n/a	T3K.U.75.L
18A	n/a	T3.L.8Y.C
18B	n/a	T3.L.8Y.C
19	n/a	CTA Pedway
20A	n/a	T2.U.4A.D
20B	n/a	T2.U.4C.E
21	n/a	T3.U.8AA.F
22	Oops Diapers	T3HK.U.9R.E
23	Oops Diapers	L Stinger.U.2.3.A
24A	n/a	T2 CTA Pedway
24B	n/a	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

*\*Oops Diapers 2Go will initially install four units in four mutually selected locations.*

The Date of Beneficial Occupancy is: TBD





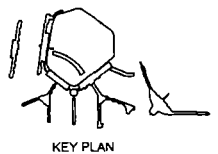
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

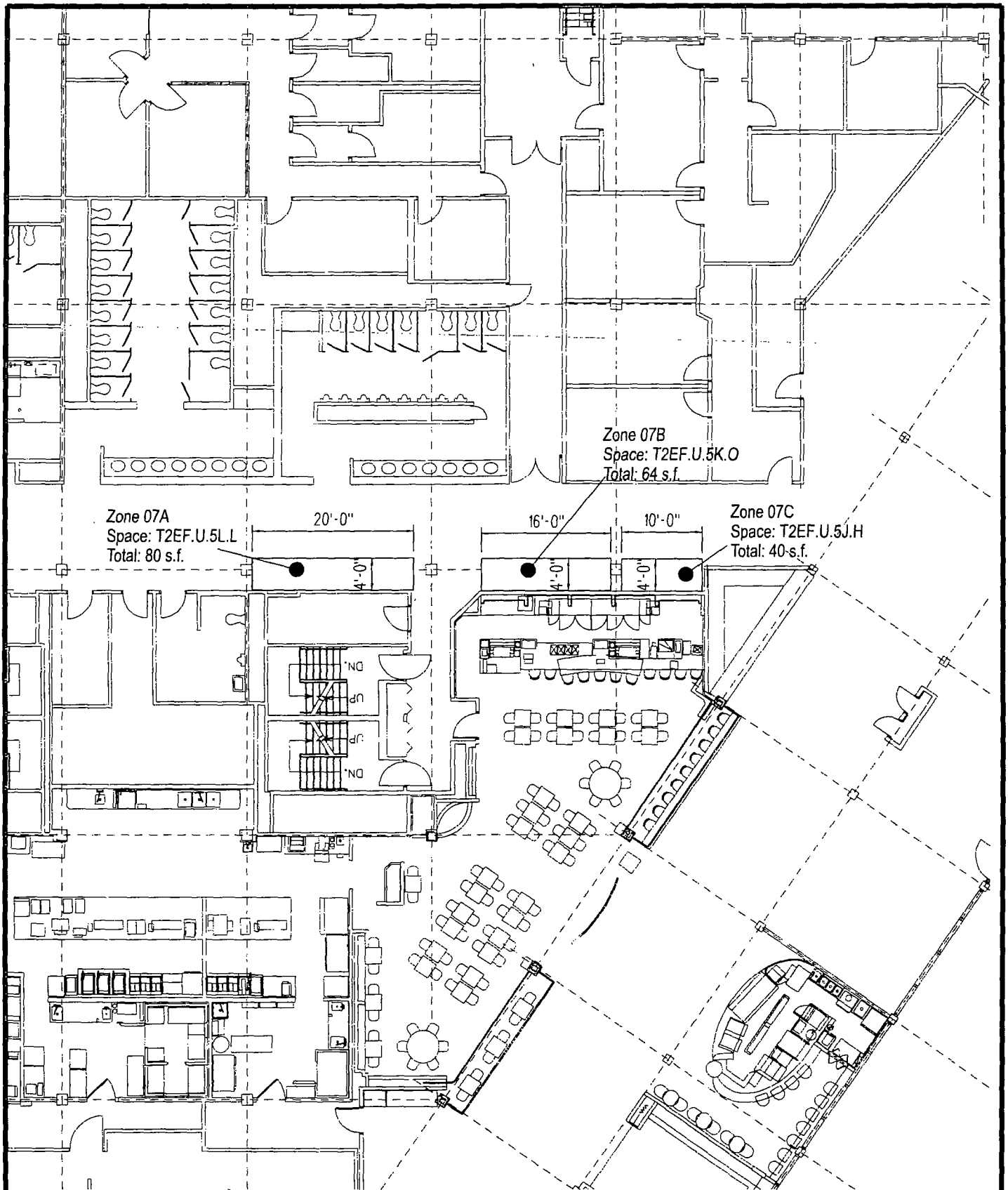
Terminal 1 / Concourse C Upper Level

Automated Retail  
Zone #02 (T1B.U.12.B)



Date: May, 2021

Created by CADD Services



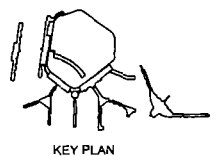
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2/Concourse EF Upper Level

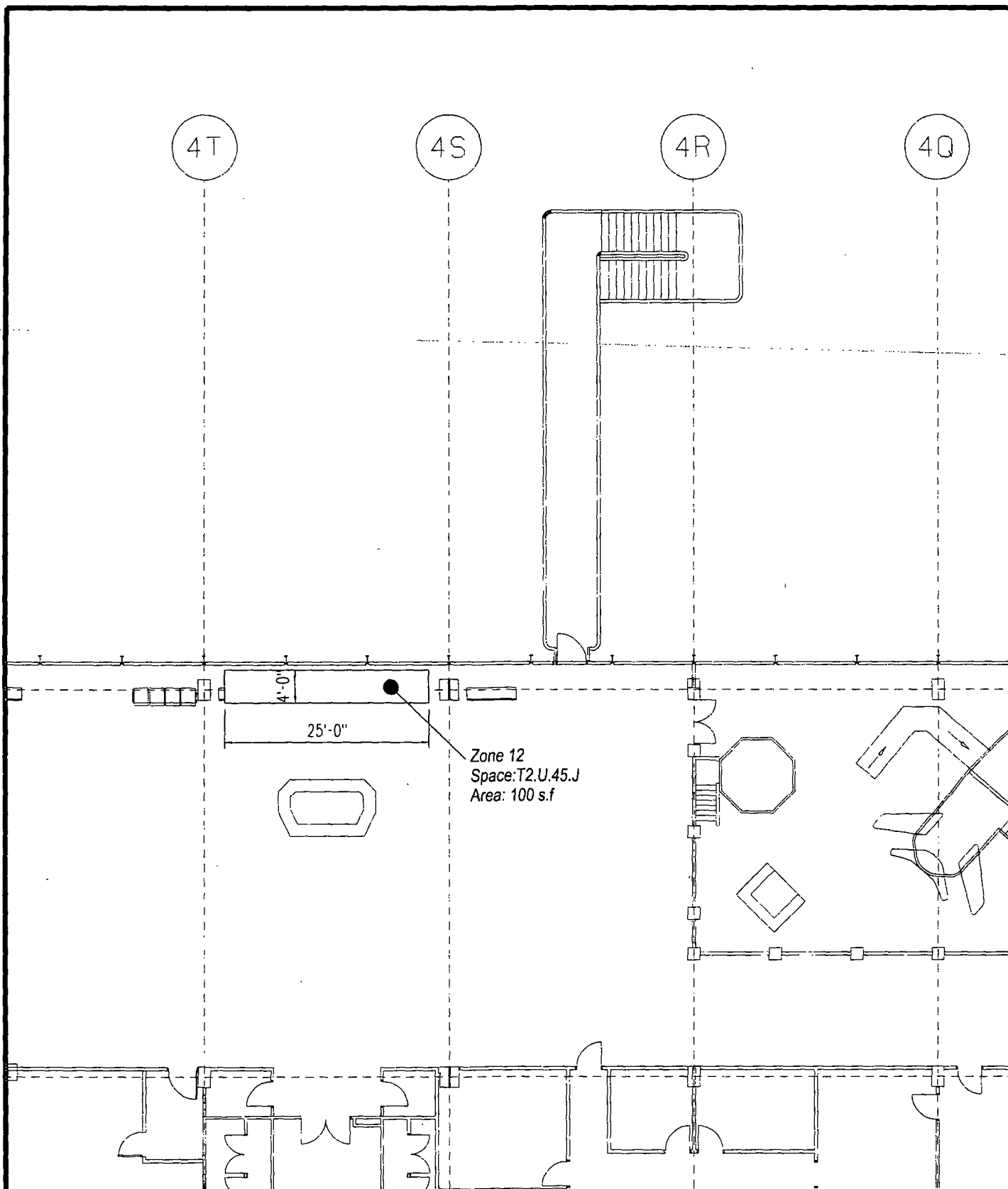
Automated Retail  
Zone #07 A-B-C  
Space: TEF.U.5L.L  
Total: 184 s.f.



Date: May, 2021

Created by CAD0 Services





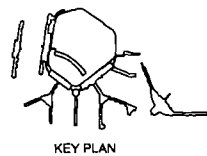
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Terminal 2 Upper Level

Automated Retail  
Zone #12 (T2.U.45.J)

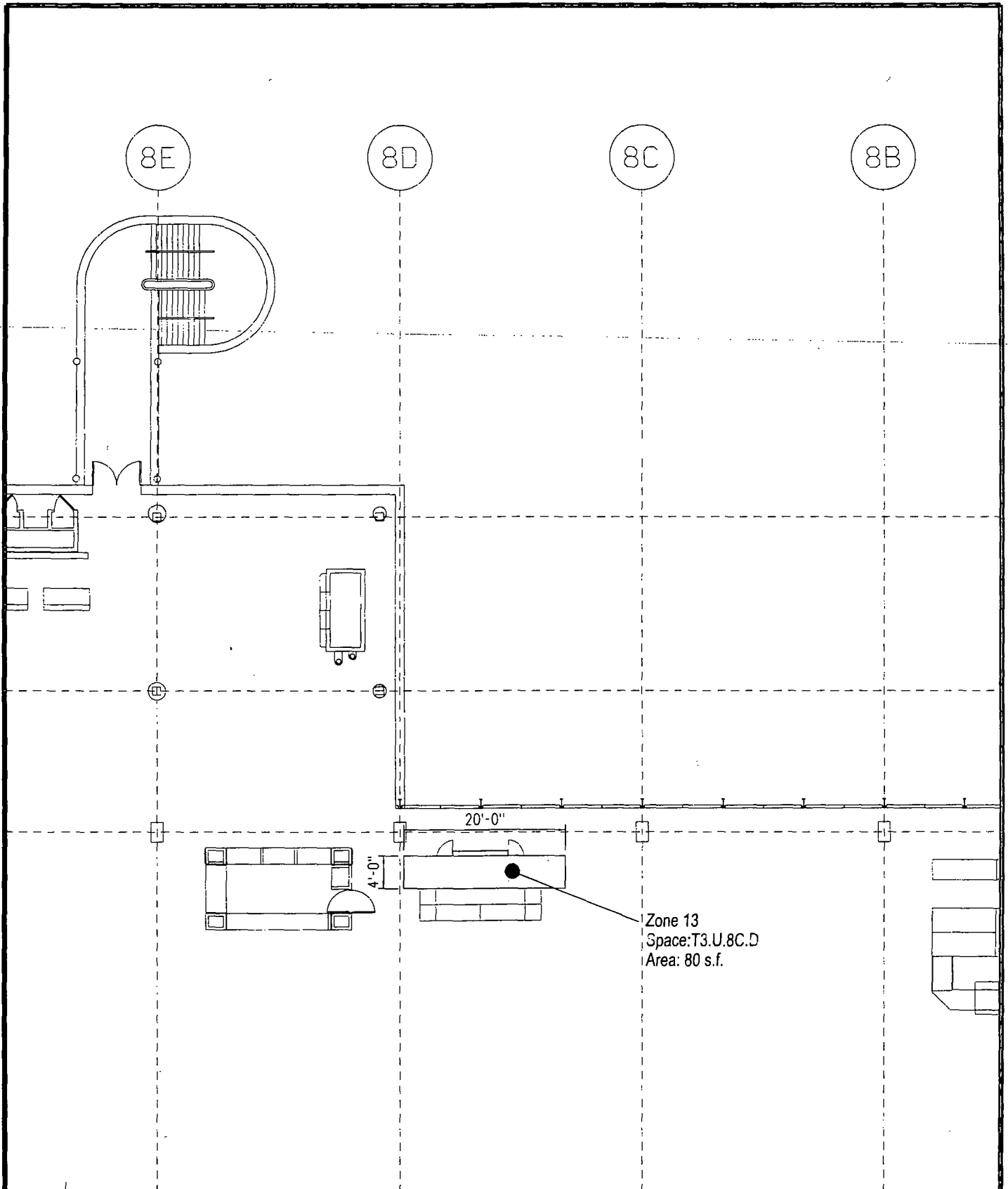
Scale: 1/16" = 1'-0"



KEY PLAN

Date: May, 2021

Created by CAD0 Services



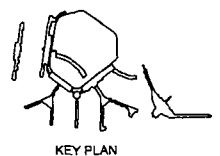
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

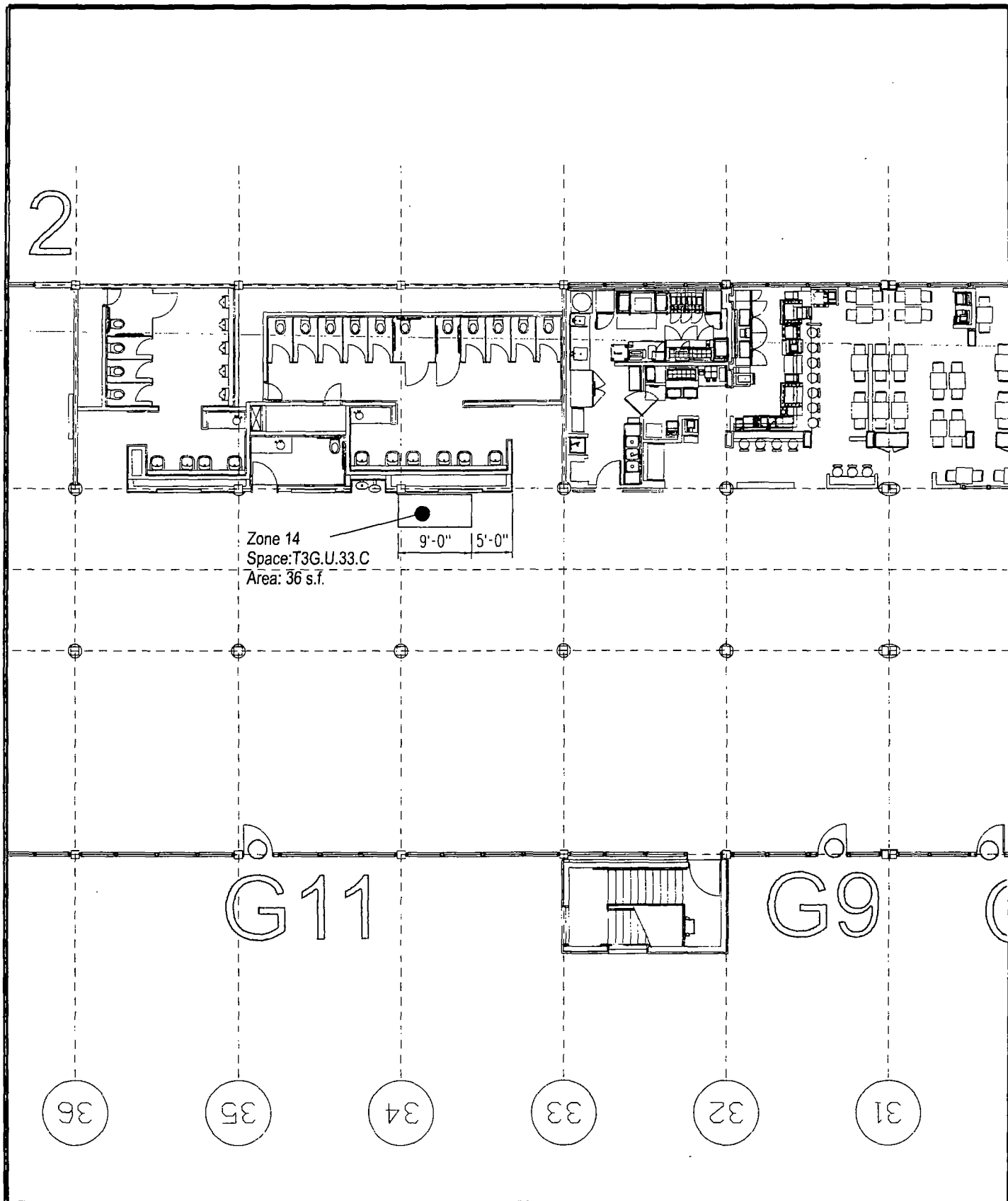
Terminal 3 Upper Level

Automated Retail  
Zone #13 (T3.U.8C.D)



Date: May, 2021

Created by CADD Services

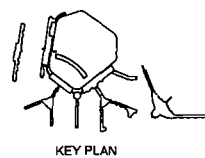


Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Terminal 3 / Concourse G Upper Level

Automated Retail  
Zone #14 (T3G.U.33.C)

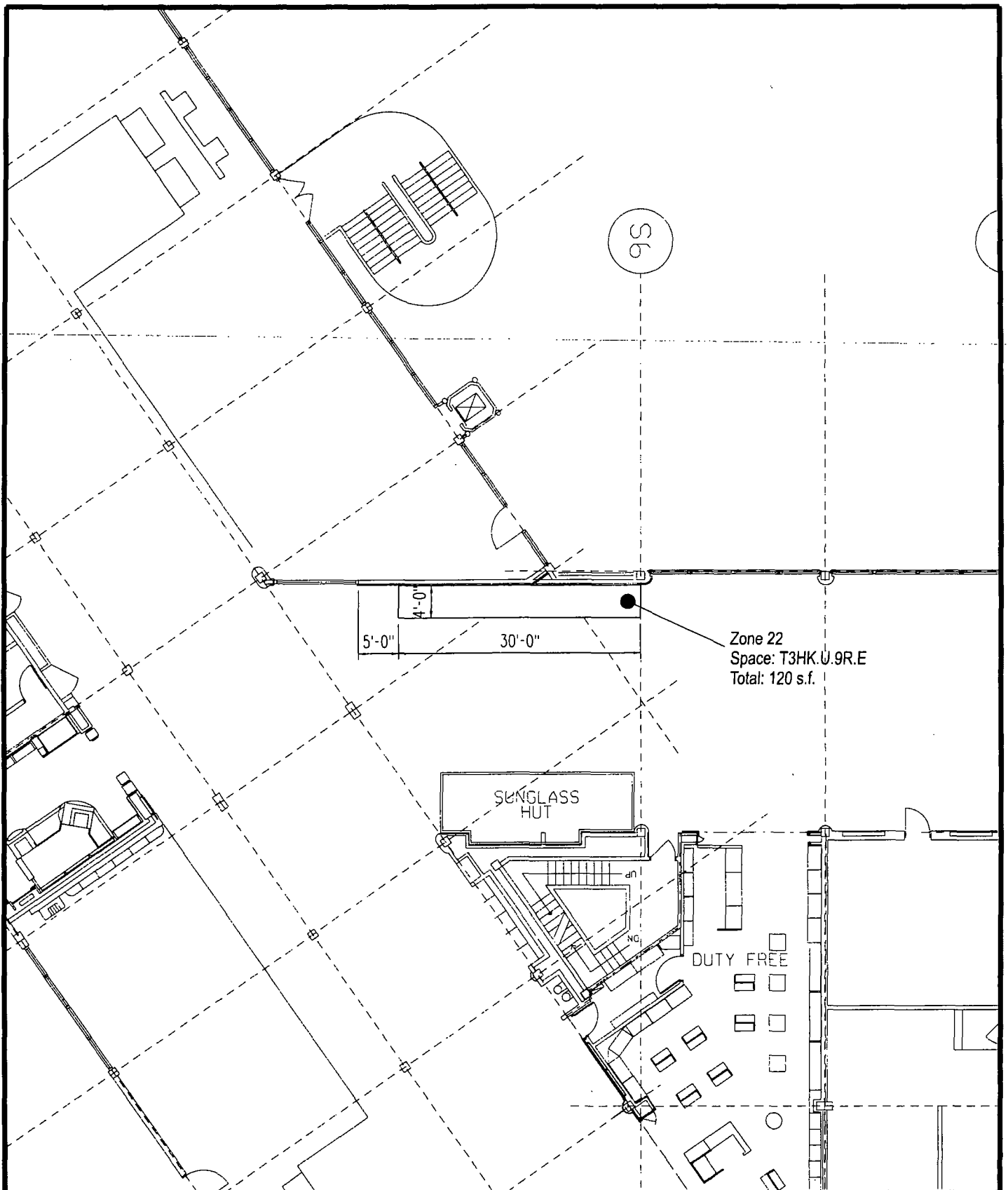


UNISON RETAIL MANAGEMENT

Scale: 1" = 20'-0"

Date: May, 2021

Created by CADDO Services



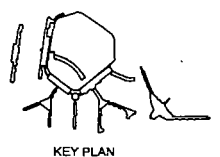
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

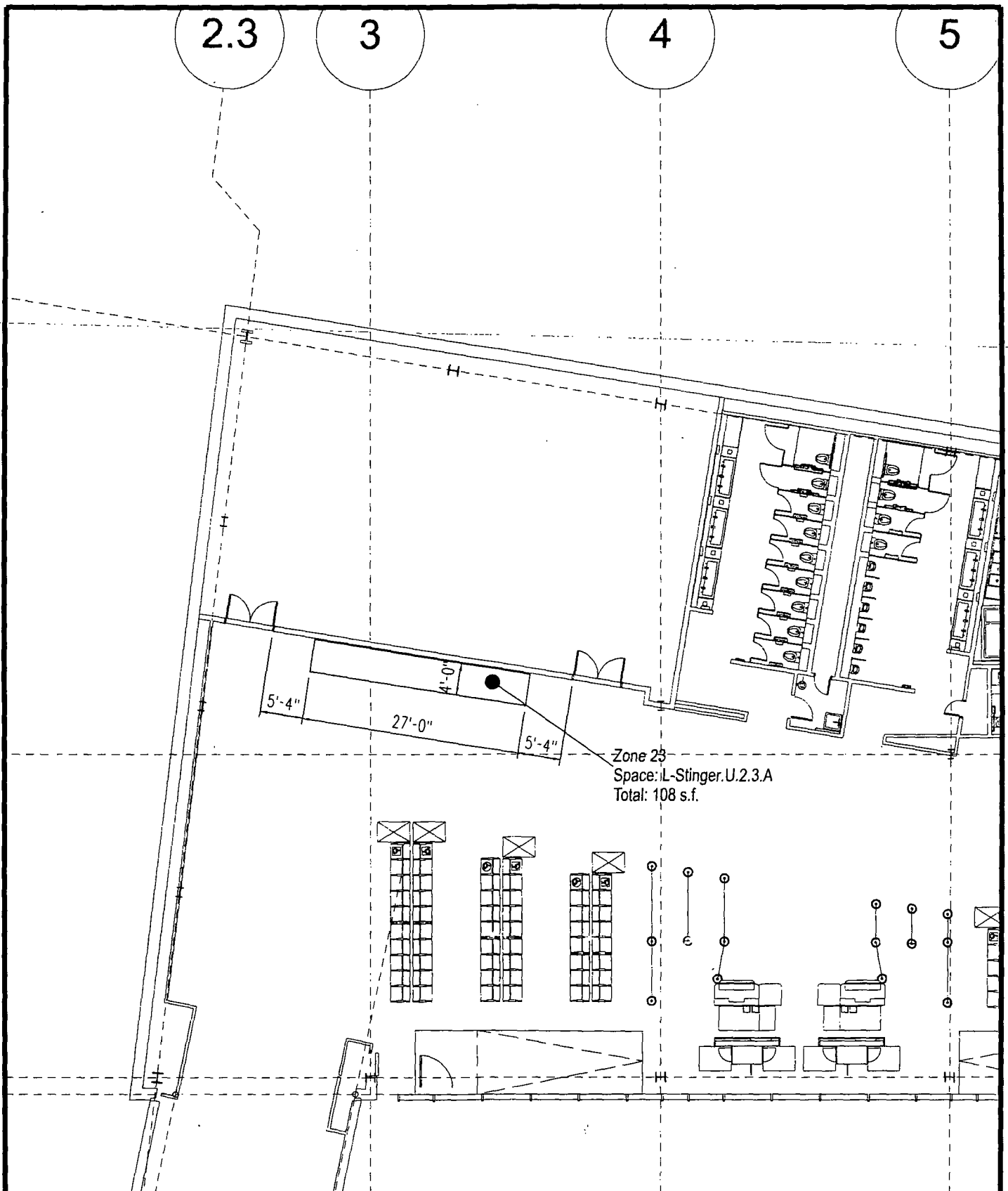
Terminal 3 Upper Level

Automated Retail  
Location # 22 (T3HK.U.9R.E)



Date: May, 2021

Created by CADJ Services



## **EXHIBIT 2**

### **FEES**

## **EXHIBIT 2**

### **FEES**

1. Percentage Fee: Oops Diapers 2Go

Gross Revenues	Percentage Fee
All	20.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.





**EXHIBIT 3**  
**DEVELOPMENT PLAN**

**Proposal Form B**  
**Concept Plan**  
**Package 3**  
**(Automated Retail, Services and Food)**

*Instructions: Provide respondent's proposed concept plan showing the following information for each proposed Concession Location. Use additional copies of this table as necessary. Submit additional information as set forth in the Proposal Requirements following this proposal*

Respondent: Oops Diapers 2Go Inc.

Concession Location	Location Description	Concession Description	Proposed Equipment/Facility	Proposed Operator	Anticipated Opening Date
<b>Terminal 1</b>					
Location #1 - T1,B12					
Location #2 - T1,C11					
Location #4 - T1,LL Baggage	T1 Lowerlevel	Diaper Bag essentials	Vending Machine	LaVenita Martin	01/15/2021
Location #5 - T1,BL Tunnel					
<b>Terminal 2</b>					
Location #3 - T2,E1					
Location #6 - T2,E6					
Location #7 - T2 Adjacent to ATM					
Location #8 - T2,F12					
Location #9 - T2,E8					
Location #10 - T2,E1					
Location #11 - T2,H3					
Location #12 - T2-T3 Bridge					
<b>Terminal 3</b>					
Vacant Space T3HK.U.9.H.8					
Location # 13 - T3,H1	T3 Gate 1	Diaper Bag essentials	Vending Machine	LaVenita Martin	01/15/2021
Location #14 - T3,G11	T3 Gate 11	Diaper Bag essentials	Vending Machine	LaVenita Martin	01/15/2021
Location #15 - T3,H3					
Location #16 - T3, K18					
Location # 17 - T3, K19					
Location #18 - T3, LL Baggage					
Location #19 - T3,BL Passageway to CTA					
<b>Add Additional Proposed Locations Below (insert additional rows as needed)</b>					

## **Concessions Development Plan**

Oops Diapers 2Go has operated in the vending industry since 2010. We have developed a brand using custom-made vending machines equipped with diaper bag essentials. We use attractive, colorful custom design panels displaying our exclusive logo. Our machines hold thirty-three products. Each vending machine is approximately seventy-two inches in height and is highly visible and appealing. We have uniquely designed our spirals to specifically hold each of our products. Due to covid19 concerns our touch-less credit card device is a welcomed option. We are scheduled to also offer touchless keypads available for usage on iPhone and android cell phones.

Oops Diapers 2Go offers fundamental items parents need for their infant/toddler on a daily basis. Unfortunately, the demands for these items encountered by parents do not dissipate while traveling. On the contrary the demand seems to intensify. Therefore, to accommodate as many visitors as possible it is our desire to strategically place our vending machines in the following locations at O'Hare Airport:

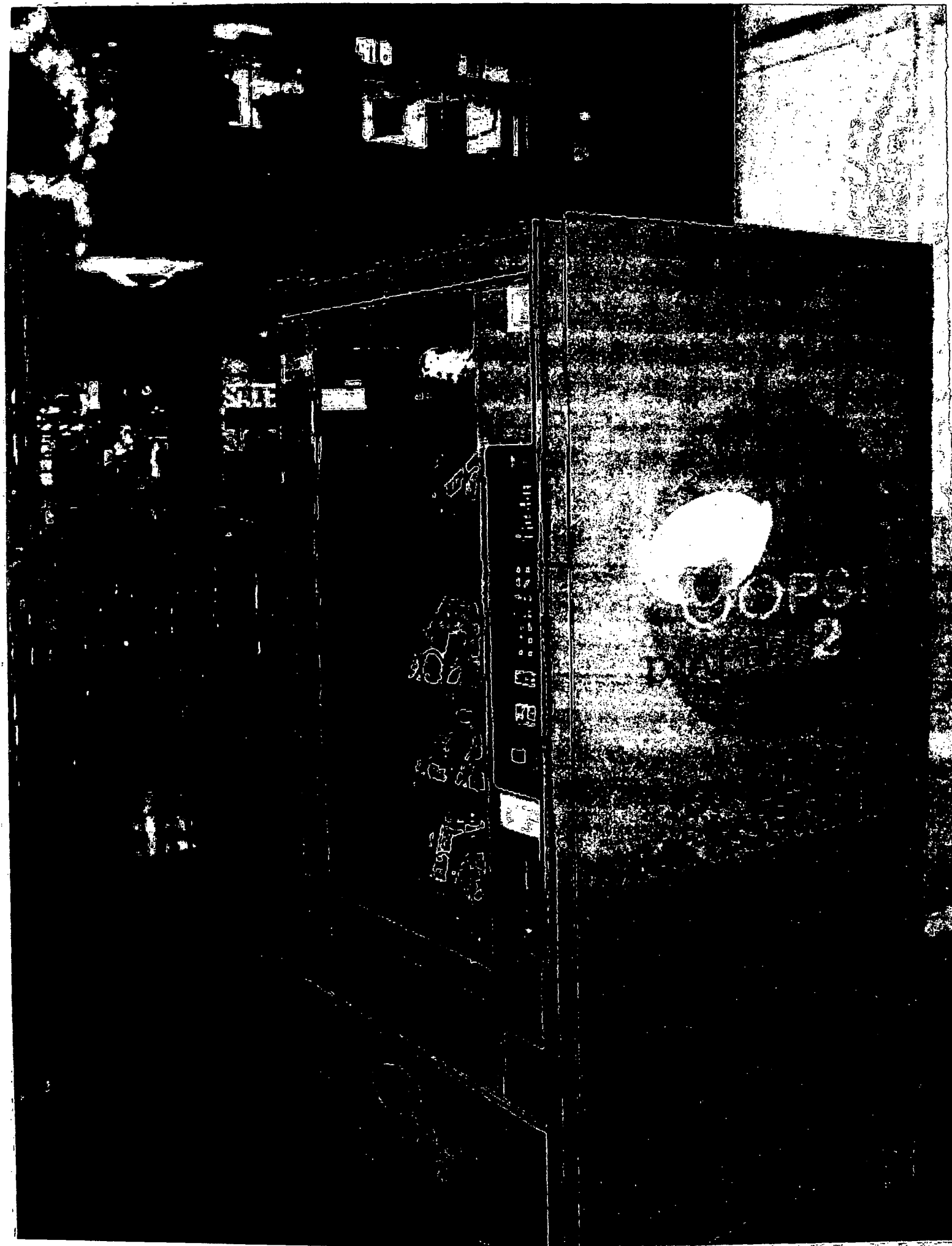
Terminal 1 Lower Level baggage area

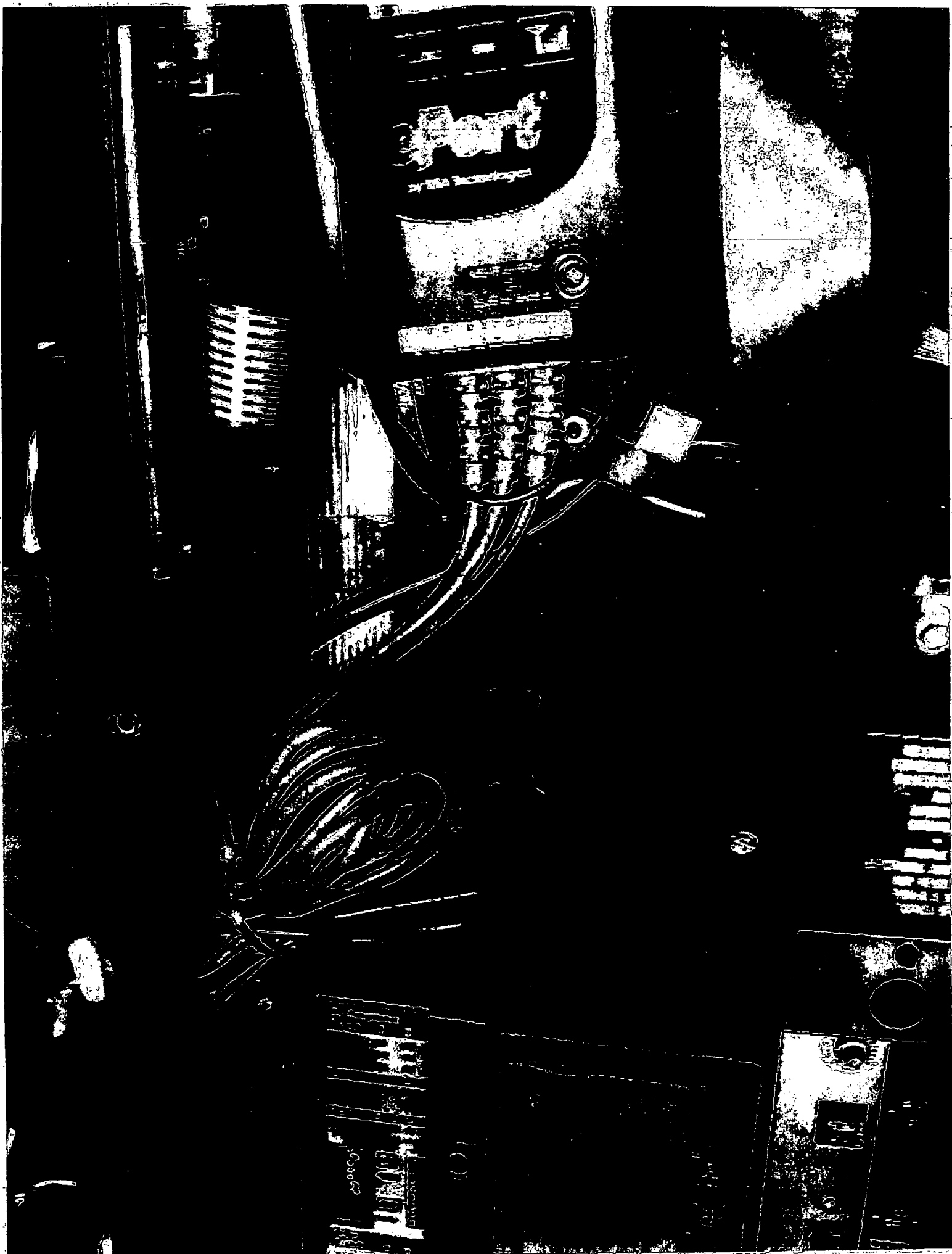
Terminal 3 Gate H1 near Starbucks

Terminal 3 Gate G11 near Chili's

Below are descriptions of our vending machines which consist of a unique design and overall mechanical structure.

(images of both interior and exterior included)



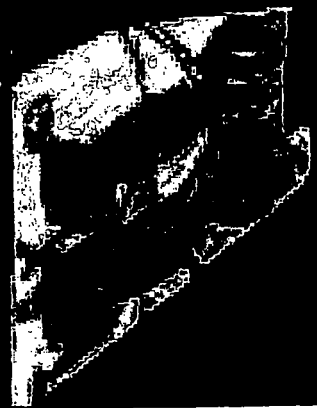




12.00.11



12.15.11



12.00.11

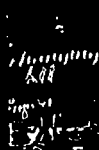


12.00.11



12.15.11

12.50.11



1 A0



1 A2



1 A4



1 A6



1 A8



1 B2



1 B4



1 B6



1 B8



1 C2



1 C4



1 C6



1 C8



1 D2



1 D4



1 D6



1 D8



1 E2



1 E4



1 E6

1 A0

1 A2

1 A4

1 A6

1 A8

1 B2

1 B4

1 B6

1 B8

1 C2

1 C4

1 C6

1 C8

1 D2

1 D4

1 D6

1 D8

1 E2

1 E4

1 E6

1 E8

**Vending Machine National 147 Model  
(operational systems)**

sales are monitored with  
USA E-Port Technology

UCB touchless keypad for  
Iphone/Android users  
(to be installed)

Accepts credit card and  
touchless credit card

Each machine has a product  
capacity of 33 items

**Vending Machine National 147 Model  
(Design/Structure)**

Approximately  
72 inches in height

weighs approximately  
626 lbs.

Uses 220 electrical outlet

Custom graphic mounted  
styrene panels

measures:  
32 inches width  
35 inches depth



**Products:**

Our source of merchandise is mainly convenience items for infant and toddlers.

We use a number of vendors to supply the products we desire as a company.

Below is a list of some but not limited to the many items we offer:

**Non Food Items:**

Baby bottles, pacifiers, training cups and sippy cups etc.

Price Ranges: \$5.00 to \$8.00

Baby wipes, disposable diapers, toddler changing kits (consist of underwear and pants), and onesies etc. Price Ranges: \$5.00 to \$8.50

**Covid-19**

mask adult and children and hand sanitizer, mini first aid kits etc.:

Price Ranges \$5.00 to \$10.00

**Seasonal Items** baby sunscreen, boogie wipes, little swimmers pull ups, light weight blankets sunglasses, goggles, bandages etc.

Price Ranges: \$4.00 to \$10.00

**Food Items:** Goldfish crackers, animal crackers, Go-Go Squeeze applesauce, juice boxes, Apple crisp freeze dried fruit, finger puffs, infant formula, fruit snacks, water, etc.

Price Ranges: \$4.00 to \$12.00

## **Marketing methods**

Building a community of followers is an on- going venture. We will continue this process by engaging with our followers in discussions of current trends and issues. We will stay abreast with new products entering into the marketplace and make available to our customers. We will monitor our customers opinions regarding product offered in our vending machine. to build our community of followers and engage them with discussions regarding our company.

Company Website

Facebook

Facebook live

Mom oriented (private Facebook groups)

Instagram

Twitter

Blogs

LinkedIn

YouTube

## **Proposed Project Schedule**

Installation of the vending machines within 30 days of proposal approval.

Machine will go live immediately via USA Technology E-port systems. We are installing an additional component (UCB touchless keypad) to our devices to address COVID-19 concerns which is currently on a 30-day delay.

**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**

**Products:**

Our source of merchandise is mainly convenience items for infant and toddlers.

We use a number of vendors to supply the products we desire as a company.

Below is a list of some but not limited to the many items we offer:

**Non Food Items:**

Baby bottles, pacifiers, training cups and sippy cups etc.

Price Ranges: \$5.00 to \$8.00

Baby wipes, disposable diapers, toddler changing kits(consist of underwear and pants), and onesies etc. Price Ranges: \$5.00 to \$8.50

**Covid-19**

mask adult and children and hand sanitizer, mini first aid kits etc.:

Price Ranges \$5.00 to \$10.00

**Seasonal Items** baby sunscreen, boogie wipes, little swimmers pull ups, light weight blankets sunglasses, goggles, bandages etc.

Price Ranges: \$4.00 to \$10.00

**Food Items:** Goldfish crackers, animal crackers, Go-Go Squeeze applesauce, juice boxes, Apple crisp freeze dried fruit, finger puffs, infant formula, fruit snacks, water, etc.

Price Ranges: \$4.00 to \$12.00

**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*  
(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20

Chicago Department of Aviation  
Chicago's O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_."

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BY: \_\_\_\_\_  
Its: Commissioner of Aviation



**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**

## **EXHIBIT 6**

### **INSURANCE REQUIREMENTS** **Chicago Department of Aviation**

#### **Automated Retail License Agreement** **Food, beverage, retail products gifts and vending merchandise at O'Hare** **(Vending Machines)**

#### **A. INSURANCE REQUIRED**

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

1) **Workers Compensation and Employers Liability (Primary and Umbrella)**

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) **Commercial General Liability (Primary and Umbrella)**

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Licensee with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Property

The Licensee must maintain All Risk Property Insurance for the licensed space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Licensee is responsible for all loss or damage to personal property including equipment, fixtures, contents, materials and supplies.

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) **Builders Risk**

When Licensee undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Licensee must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Licensee is responsible for all loss or damage to City of Chicago property at full replacement cost.

**B. Additional Requirements**

**Evidence of Insurance.** Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

**Failure to Maintain Insurance.** Failure of the Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

**Notice of Material Change, Cancellation or Non-Renewal.** Licensee must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

**Waiver of Subrogation.** Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

herein for any loss arising from or relating to this Agreement. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

Licensee's Insurance Primary. All insurance required of Licensee under this Agreement must be endorsed to state that Licensee's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Licensee under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Licensee maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A, as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")



was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation is in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBES**

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives.

### **C. REPORTING**

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

### **D. MONITORING**

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

## **VI. GOOD FAITH EFFORTS**

### **A. EXAMPLES**

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

#### B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders/proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making



the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**

A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

B. NON-COMPLIANCE WITH ACDBE AGREEMENT

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.

**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

**SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION  
CONTRACTS**

**I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

**Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%  
WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.



1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

- H. If the MBE or WBE subcontracts out any of its work:
1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
  3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**V. Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

**A. Schedule B: MBE/WBE Affidavit of Joint Venture**

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

**B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier**

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed

original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

D. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

F. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

## **VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
  - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  - 2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  - 3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - 4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  - 5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  - 6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  - 7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  - 8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740



of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

**EXHIBIT 9**  
**ECONOMIC DISCLOSURE STATEMENTS AND**  
**AFFIDAVITS**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Oops Diapers 2Go Inc.

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: \_\_\_\_\_  
\_\_\_\_\_

C. Telephone: 219 803 1130 Fax: \_\_\_\_\_ Email: lmartin@oopsdiapers2go.com

D. Name of contact person: LaVenita Martin

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Retail Food and Service Vending Units RFP

G. Which City agency or department is requesting this EDS? Chicago Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

#### 1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

#### 2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

#### 3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
LaVenita Martin	President
LaVenita Martin	Secretary
LaVenita Martin	Treasurer

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
LaVenita Martin		100%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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Quentin Land Jr.	Retained	4401 W 95th St. Ste 1100 Chicago Il	Accountant	Estimate 700.00
John Ambrogi	Anticipated	55 West Monroe STE 1100 Chicago,Il	Attorney	Estimate 500.00

(Add sheets if necessary)

☐ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such



contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

---

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

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None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

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None

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### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)  
[ ] is [x] is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

None

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII – FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Oops Diapers 2Go Inc.

(Print or type exact legal name of Disclosing Party)

By: LaVenita Martin  
(Sign here)

LaVenita Martin

(Print or type name of person signing)

President

(Print or type title of person signing)

Signed and sworn to before me on (date) June 17, 2021,

at Cook County, Illinois (state).

Ethel M. Le Flore  
Notary Public

ETHEL M. LE FLORE  
OFFICIAL SEAL

Notary Public - State of Illinois

My Commission Expires Nov 05, 2024

Commission expires

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes                      ☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes                      ☐ No                      ☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☒ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**EXHIBIT 10**  
**AIRPORT CONCESSIONS PROGRAM**  
**HANDBOOK**

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*

# **AIRPORT CONCESSION PROGRAM HANDBOOK**



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### CDA UNIT FUNCTIONS

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.



## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS

## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Monthly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?



**Merchandise/Product**

Are Merchandise/Product Levels Adequate?

**Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

**Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

**Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

**Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## **APPENDIX 3**

### **FINANCIAL AUDIT STANDARDS:**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

### Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### General Airport Guidelines

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### Laws and Ordinances

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### Default Notices

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.



## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

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**APPENDIX 6**

**KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905 
Yolanda Woodruff Director of Retail Operations	(773) 894-5463 (
Dorine Litman Property Manager / ORD	(773) 894-3908 
Patricia Grzyb Property Manager / MDW	(773) 838-0733 
Sungjin Choi Construction and Design Manager	(773) 686-7606 

## **APPENDIX 7**

### **RULES AND REGULATIONS:**

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

**EXHIBIT 11**

**LIQUIDATED DAMAGES**

**EXHIBIT 11**  
**LIQUIDATED**  
**DAMAGES**



## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<b>Infraction</b>	<b>1<sup>st</sup> Violation</b>	<b>2<sup>nd</sup> Violation</b>	<b>3<sup>rd</sup> Violation</b>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

(Initial Here)

**EXHIBIT 12**

**UTILITY USAGE FEE**

**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## **EXHIBIT B-6**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**TFG Swyft Ventures**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT**

**CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]

## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

The City owns and, through CDA, operates Chicago O'Hare International Airport ("**O'Hare**" or the "**Airport**"). O'Hare includes an international terminal, three domestic terminals, a multimodal facility and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

The City and Licensee acknowledge that the continued operation of the Airport as safe, convenient, and attractive facility is vital to the economic health and welfare of the City of Chicago, and that the City's right to supervise performance under this Agreement by Licensee is a valuable right incapable of quantification.

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

2.1 Incorporation of Background. The background set forth above is incorporated by reference as if fully set forth here.

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE\WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

"Affiliate" means, except where otherwise defined, any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Licensee.

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

"Airport Concession Program Handbook" means the handbook developed by CDA to govern the uniform operation of the concessions' programs at the Airport. The Airport Concession Program Handbook is available on the CDA website and may be amended from time to time by CDA. Any amendment of the Airport Concession Program Handbook by CDA during the Term of this Agreement will be binding on Licensee without need for amendment of this Agreement, provided that the amendment of Airport Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissioner" means the head of the Department and any City officer or employee authorized to act on the Commissioner's behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where such person is expressly authorized to do so.

"Common Areas" means those areas of the Terminals that are not leased, licensed, or otherwise designated or made available by the Department for exclusive or preferential use by specific party or parties.

"Comptroller" means the head of the Department of Finance of the City and any City officer or employee authorized to act on the Comptroller's behalf.

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

The DBO shall be confirmed in writing by the parties, and such written "Confirmation of DBO" shall thereafter be attached to Exhibit I of this Agreement without need for a formal amendment of this Agreement.

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.

§6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

“Event of Default” has the meaning set forth in Article 9.

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the

Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

"Products" means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Licensee is permitted to sell in its Licensed Retail Space and maintain in inventory in its Storage Space, if any, under the terms of this Agreement, as set forth by category or item in Exhibit 4. Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4 unless otherwise agreed in writing by the Commissioner.

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail



vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

41 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

42 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43     Products.

(a)     General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)     Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written a written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)     Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44     Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five- day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first- class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix I of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

4.7 Operation of Concession.

(a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

(b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management



and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

55 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

- (i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.
- (ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

## 6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

(d) Year End True Up. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year exceeds the amount of all payments made by Licensee to the City for the License Year in question, then Licensee must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year is less than the amount of all License Fee payments made by Licensee to the City for the period in question, but the Percentage Fee still exceeds the MAG for that License Year, then Licensee will receive a credit against the next License Fee payment due under this Agreement for the amount by which the License Fee actually paid by Licensee exceeded the Percentage Fee attributable to the period.

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

#### 6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)



dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

(i) Licensee must also furnish to Commissioner no later than March 1 of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Licensee, showing in reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Concessions during the preceding License Year, copies of all returns and other information filed with respect to Illinois sales and use taxes, and as such other financial and statistical reports as the Commissioner may, from time to time, reasonably require by written notice to Licensee.

(ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$ \_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

(b) Losses. "Losses" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Licensee, its employees, agents, subtenants, and Subcontractors.

(c) Defense of Suits. At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Agreement. Licensee must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involves the Airport.

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

(b) Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately vacate some or all of the Licensed Spaces until the Letter of Credit is in place and effective.

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

(d) Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

## ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION

9.1 Events of Default. Each of the following (a) through (n) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed thirty (30) days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within forty-five (45) days from delivery of the notice, Licensee will have the additional time, not in any event to exceed forty-five (45) days, to cure the failure.

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by



the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## ARTICLE 10. SPECIAL CONDITIONS

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

(a) Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

(b) Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

- (i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or
- (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

(d) There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.

(e) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

(f) No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

(g) Licensee has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

(i) Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

(j) Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

(a) Authorization to do Business. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

(b) Economic Disclosure Statement. Licensee has provided the Commissioner with an EDS for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within thirty (30) days of any event or change in circumstance that

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

103 City's Right to Assign. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**")), is subject to the consent of:

- a. City Council, in its sole discretion, if the Change in Ownership involves

a 100% Change in Ownership of Licensee, or

- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the

Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgment.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

(b) It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2-55 of the Municipal Code, respectively. Licensee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractors as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

(c) Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must surrender the Licensed Space to the City free from the presence and contamination of any hazardous substances.

(d) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):



7-28-390 Dumping on public way—Violation—Penalty; 7-  
28-440 Dumping on real estate without permit;  
11-4-1410 Disposal in waters prohibited;  
11-4-1420 Ballast tank, bilge tank or other discharge; 11-  
4-1450 Gas manufacturing residue;  
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-  
1530 Compliance with rules and regulations required; 11-4-  
1550 Operational requirements;  
11-4-1560 Screening requirements; and  
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Licensee's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect Licensee's eligibility for future City agreements.

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

(f) Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):

(i) Licensee agrees that Licensee, any person or entity who directly or indirectly has an ownership or beneficial interest in Licensee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Licensee's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Licensee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this bid, proposal or Agreement by Licensee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Licensee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

(ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

(iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.

i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

(g) Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a “business relationship” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

- (i) Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "**Artwork**") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 et seq.) (the "**Copyright Act**"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and sublicensees, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

106 Airport Security.

(a) This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Licensee is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Licensee must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Licensee must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum-security enhancement. Any drawings, plans, and specifications provided by Licensee under this Agreement must comply with those guidelines for airport security developed by the City, the

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

(c) Gates and doors located on the Licensed Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Licensee until the malfunction is remedied.

(d) In connection with the implementation of its security program, Licensee may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Licensee acknowledges that all such knowledge and information is of a highly confidential nature. Licensee covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Licensee further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

(e) Licensee understands that fines and/or penalties may be assessed by the TSA or FAA for Licensee's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Licensee's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Licensee, or any party for which Licensee is liable under this Agreement, is responsible for all or part of the fine or penalty, Licensee shall pay said amount of the fine or penalty as Additional Fees.

#### 107 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the furnishing of services in the Licensed Spaces, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the License in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

(b) It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the License, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(f) Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Licensee of Licensee's obligations under this Agreement relative to nondiscrimination.

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

(h) Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.



109 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

10.10 Avigation Easement. There is reserved to the City, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Licensed Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Licensee by accepting this License agrees for itself, its successors, and assigns that it will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Licensed Space and cause the abatement of the interference at the expense of Licensee.

10.11 National Emergency. This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.12 2014 Hiring Prohibitions.

(a) The City is subject to the June 16, 2014, "City of Chicago Hiring Plan" (the "**2014 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a sublicensee, and from directing Licensee to hire an individual as an employee or as a sublicensee. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Licensee in connection with this License are employees or sublicensees of Licensee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer- employee relationship of any kind between the City and any personnel of Licensee.

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Licensee by a City employee or City official in violation of this Section, or advocating a violation of this Section above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

## **ARTICLE 11. GENERAL CONDITIONS**

11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the grant and use of the License and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

11.2 Counterparts. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be

interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Chicago Department of Aviation  
City of Chicago  
O'Hare International Airport  
10510 W. Zemke Rd Chicago,  
Illinois 60666

and with a copy to:  
Deputy Commissioner of Concessions at the same address.

If the notice or communication relates to payment of Fees or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller  
City of Chicago  
City Hall - Room 501 121  
N. LaSalle Street  
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section 2  
North LaSalle Street, Suite 540  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

(a) This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

(c) To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs (a) and (b) above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs (a) and (b).

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee. Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 Estoppel Certificate. From time to time upon not less than fifteen (15) days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 No Personal Liability. Licensee, or any sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 Joint and Several Liability. If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Licensee is the joint and several obligations or undertaking of each such individual or other legal entity.

11.18 Non-Recordation. Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure event*"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within twenty (20) days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than sixty (60) days due to a *force majeure* event, without the express written consent of the Commissioner.

**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**



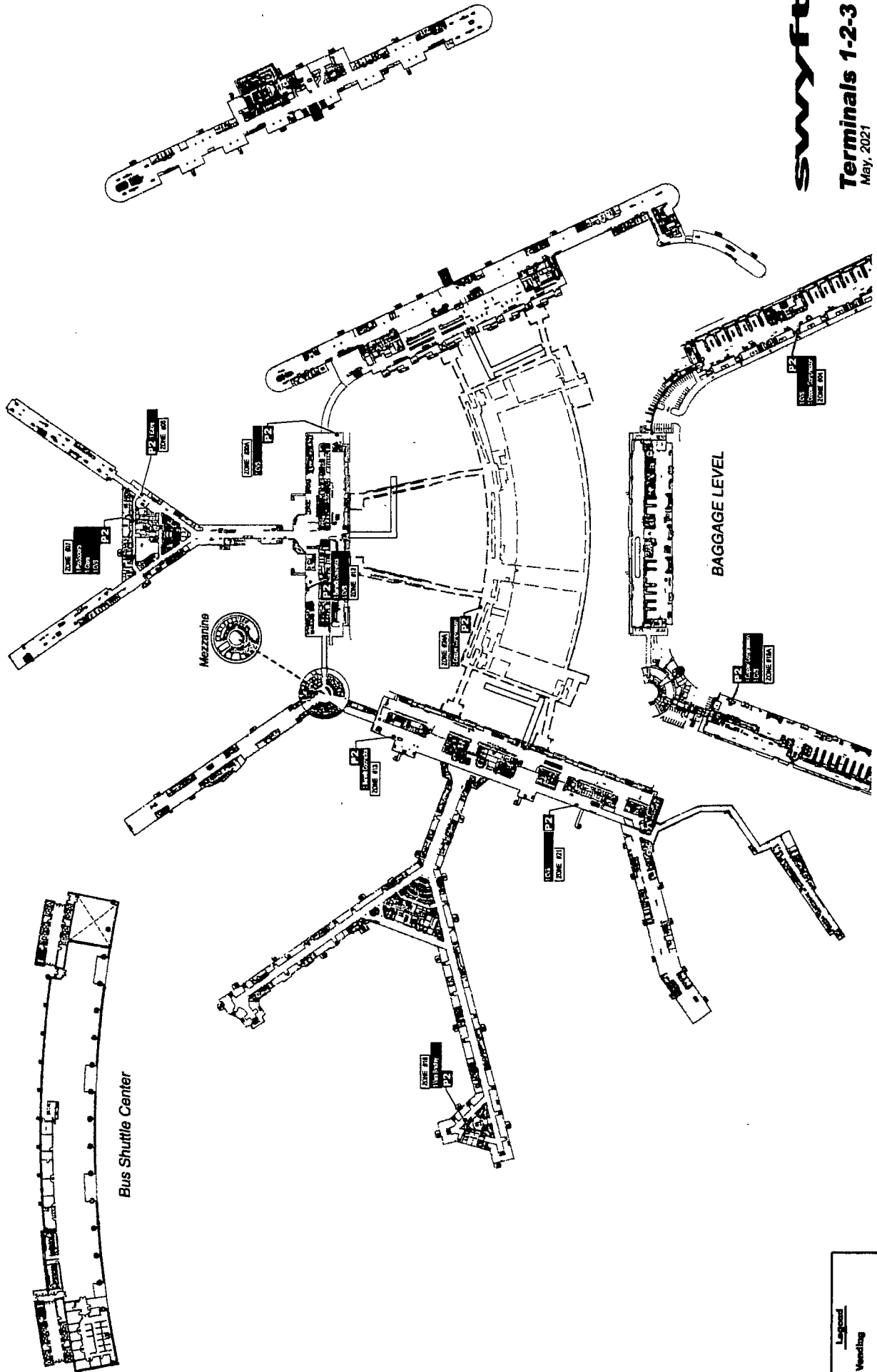
EXHIBIT 1  
LICENSED SPACE  
(INCLUDING CONFIRMATION OF DBO)

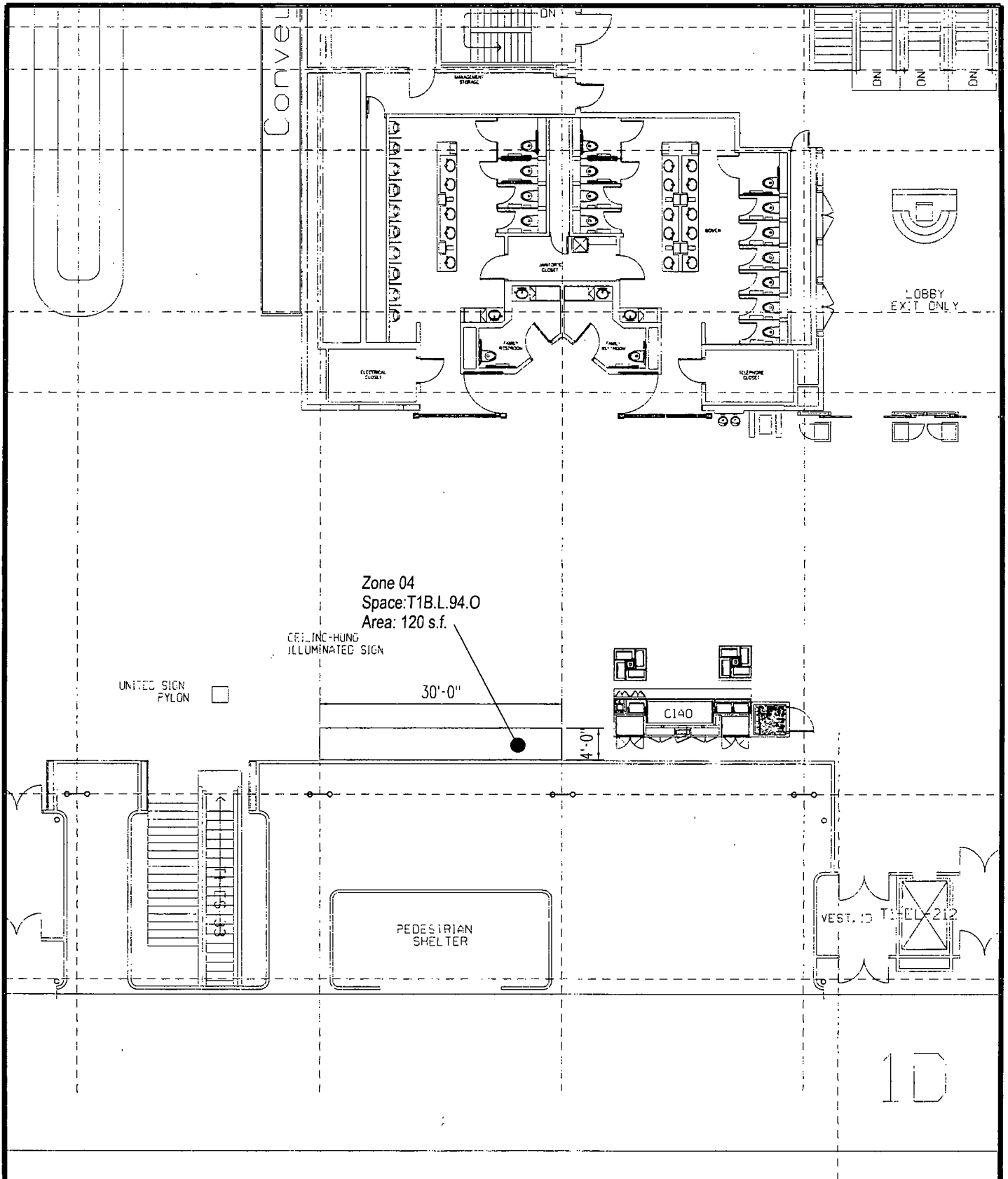
The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	n/a	T1B.U.107.B
2	n/a	T1B.U.12.B
3	n/a	T1B.U.73.M
4	CVS iStore	T1B.L.94.O
5A	n/a	T1C.T.G.C
5B	n/a	T1B.THH.V
6	iStore	T2E.U.39.A
7	Benefit Cosmetics iStore CVS	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	n/a	T2E.U.48.A
10	n/a	T2.L.10.6
11	n/a	T2EF.U.16.D
12	Benefit Cosmetics CVS	T2.U.45.J
13	Benefit Cosmetics	T3.U.8C.D
14	n/a	T3G.U.33.C
15	n/a	T3H.U.30.E
16	Vera Bradley	T3K.9Ma.A

17	n/a	T3K.U.75.L
18A	Benefit Cosmetics CVS	T3.L.8Y.C
18B	n/a	T3.L.8Y.C
19	n/a	CTA Pedway
20A	n/a	T2.U.4A.D
20B	CVS	T2.U.4C.E
21	CVS	T3.U.8AA.F
22	n/a	T3HK.U.9R.E
23	n/a	L Stinger.U.2.3.A
24A	Benefit Cosmetics	T2 CTA Pedway
24B	n/a	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD





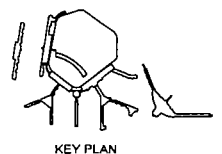
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

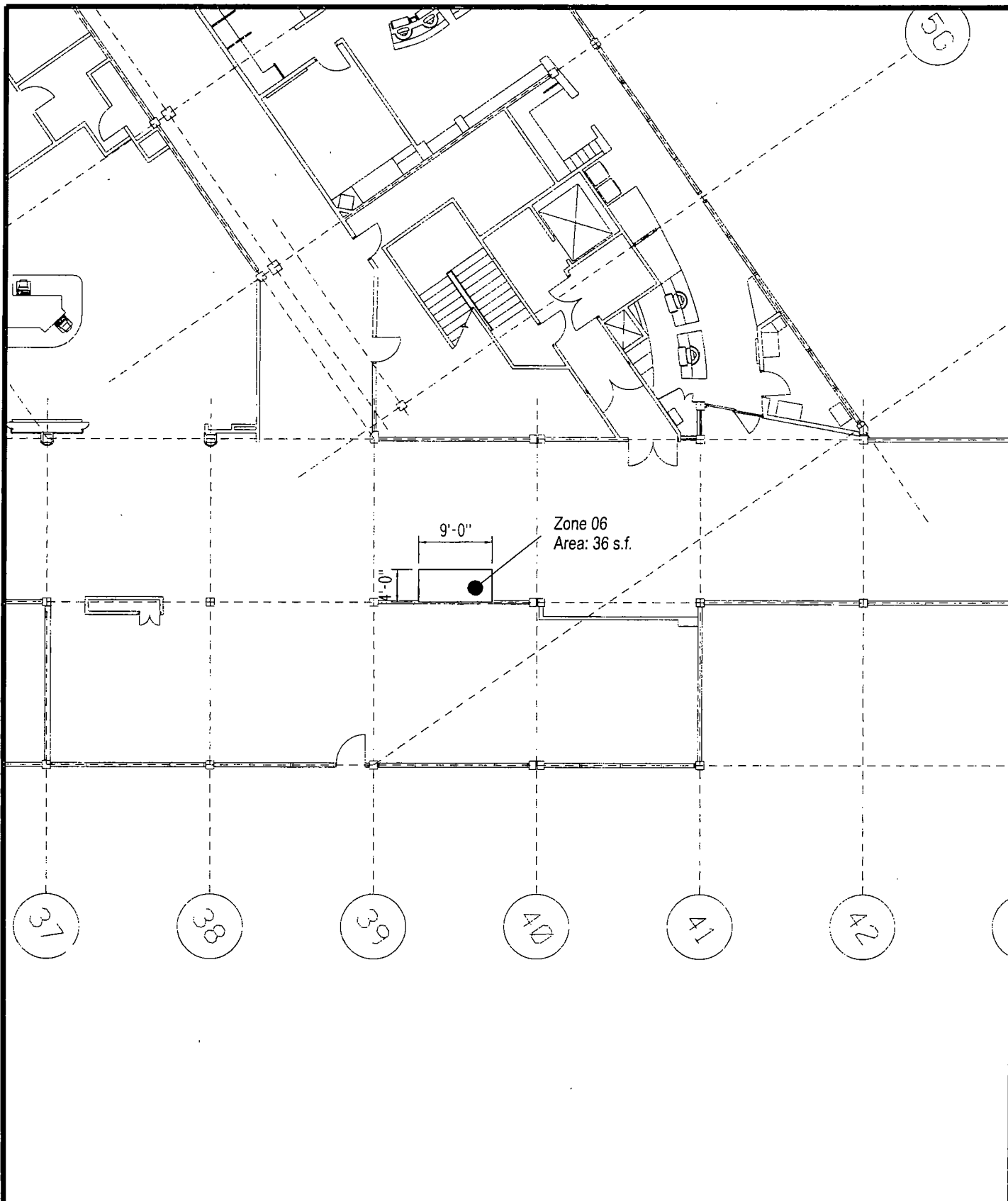
Terminal 1 Lower Level

Automated Retail  
Zone #04 (T1B.L.94.O)



Date: May, 2021

Created by CADO Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

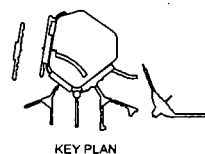
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2/Concourse EF Upper Level

Automated Retail  
Zone #06 (T2E.U.39.A)

Scale: 1/16" = 1'-0"

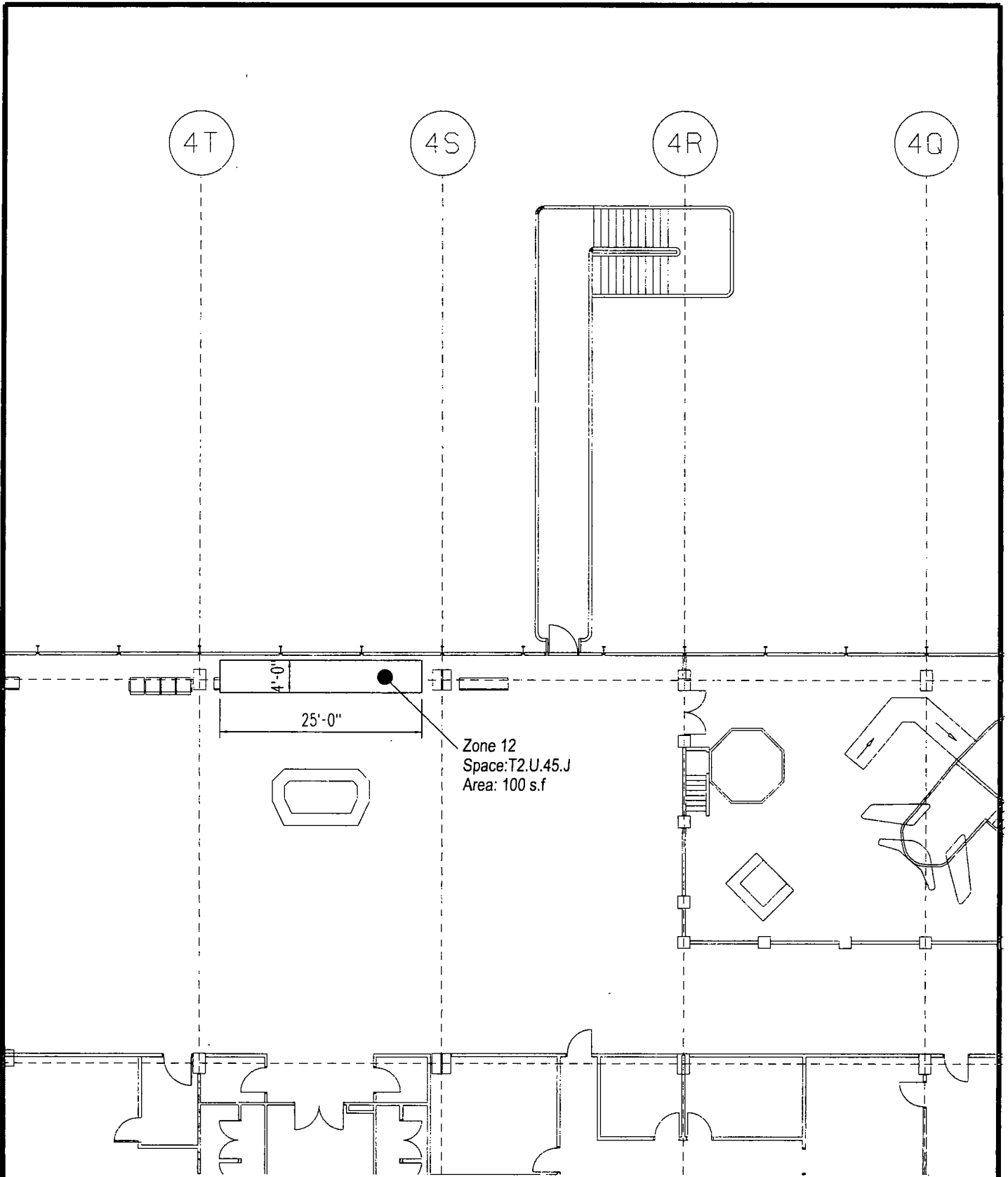


KEY PLAN

Date: May, 2021

Created by CADJ Services





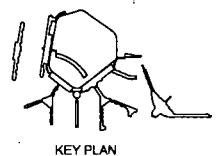
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Terminal 2 Upper Level

Automated Retail  
Zone #12 (T2.U.45.J)

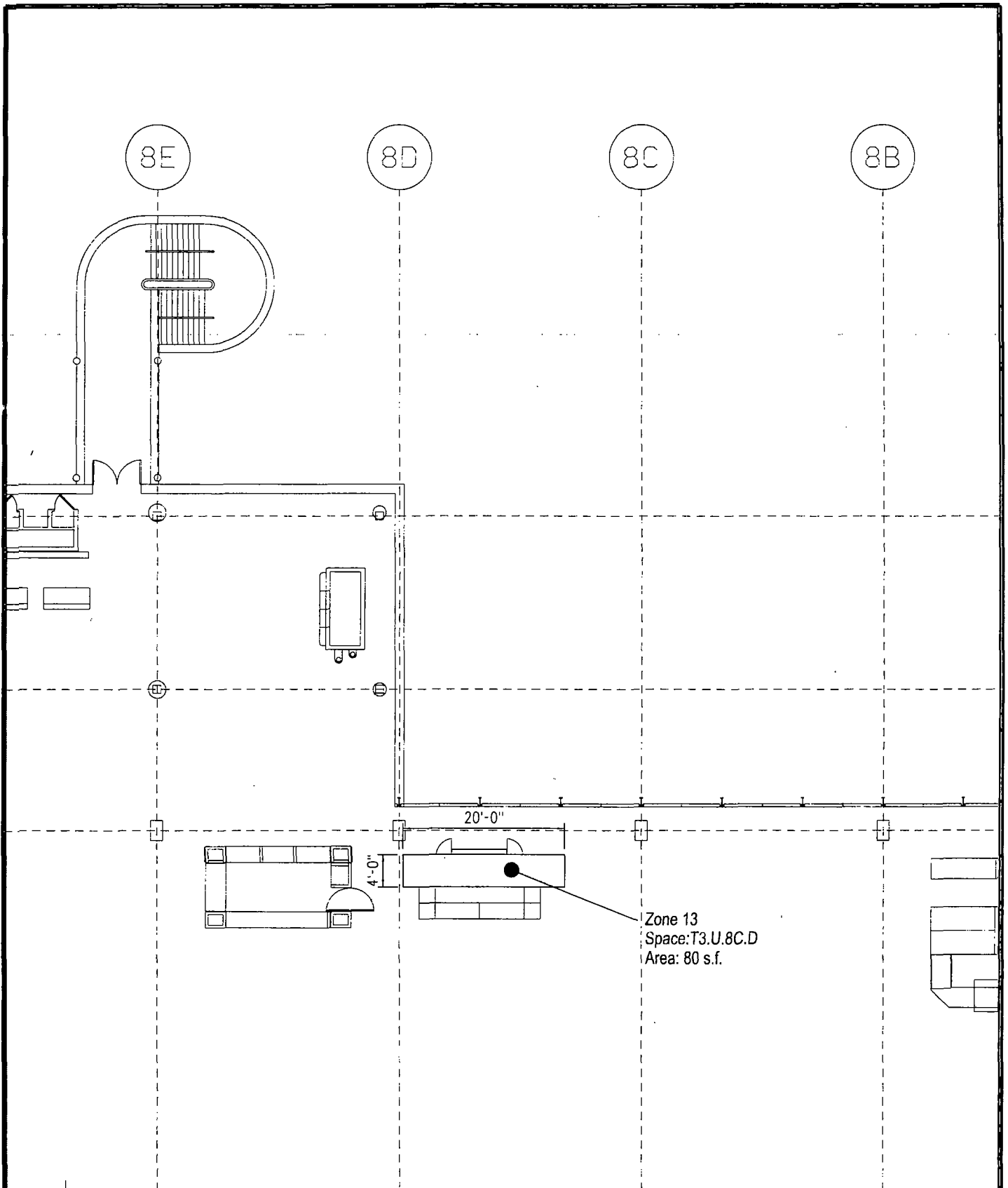
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KEY PLAN

Date: May, 2021

Created by CAD0 Services



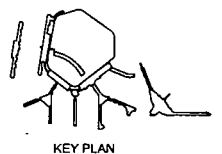
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 Upper Level

Automated Retail  
Zone #13 (T3.U.8C.D)

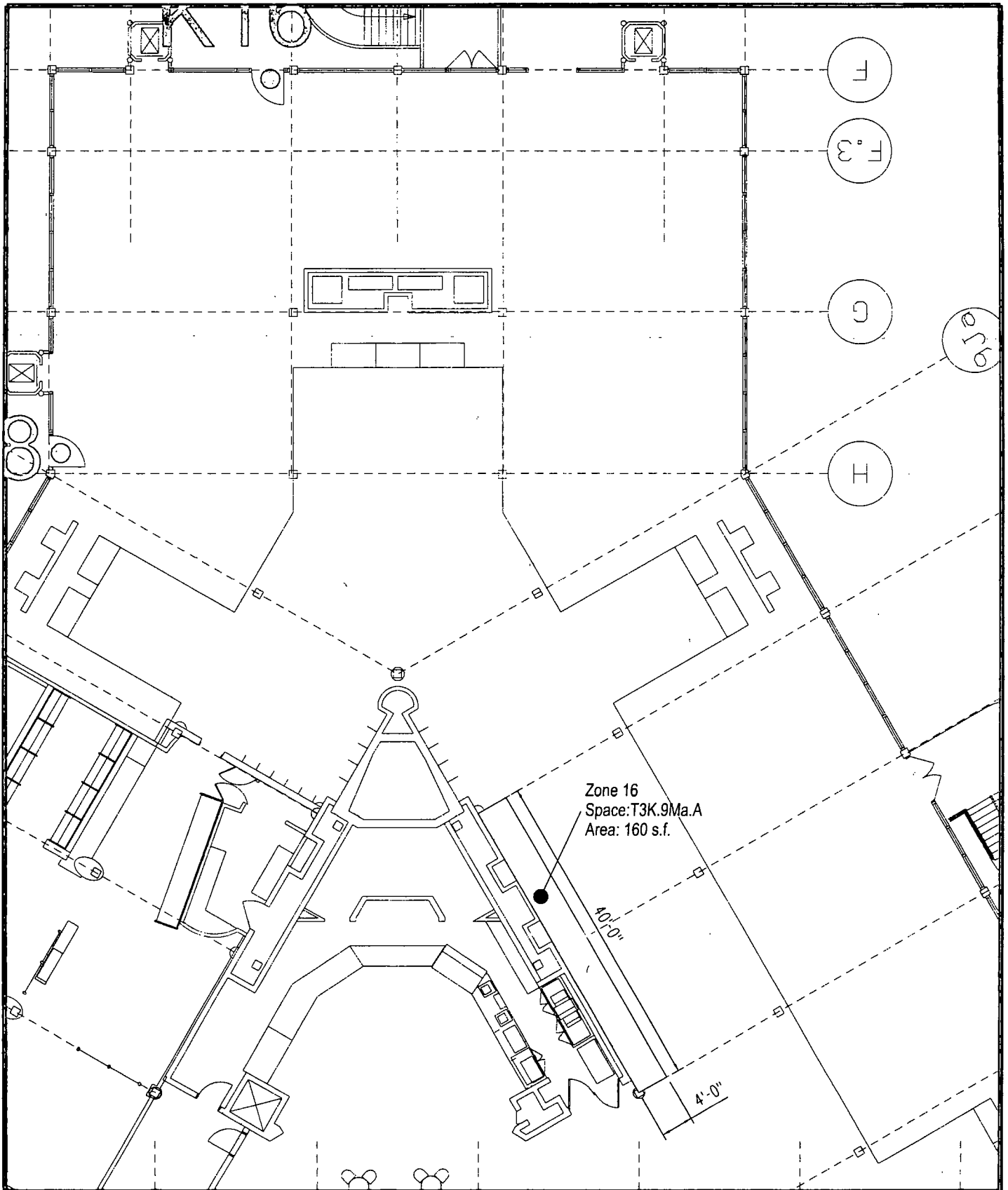


KEY PLAN

Date: May, 2021

Created by CAD Services





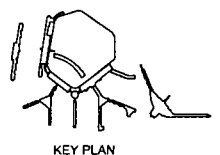
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 /Concourse HK Upper Level

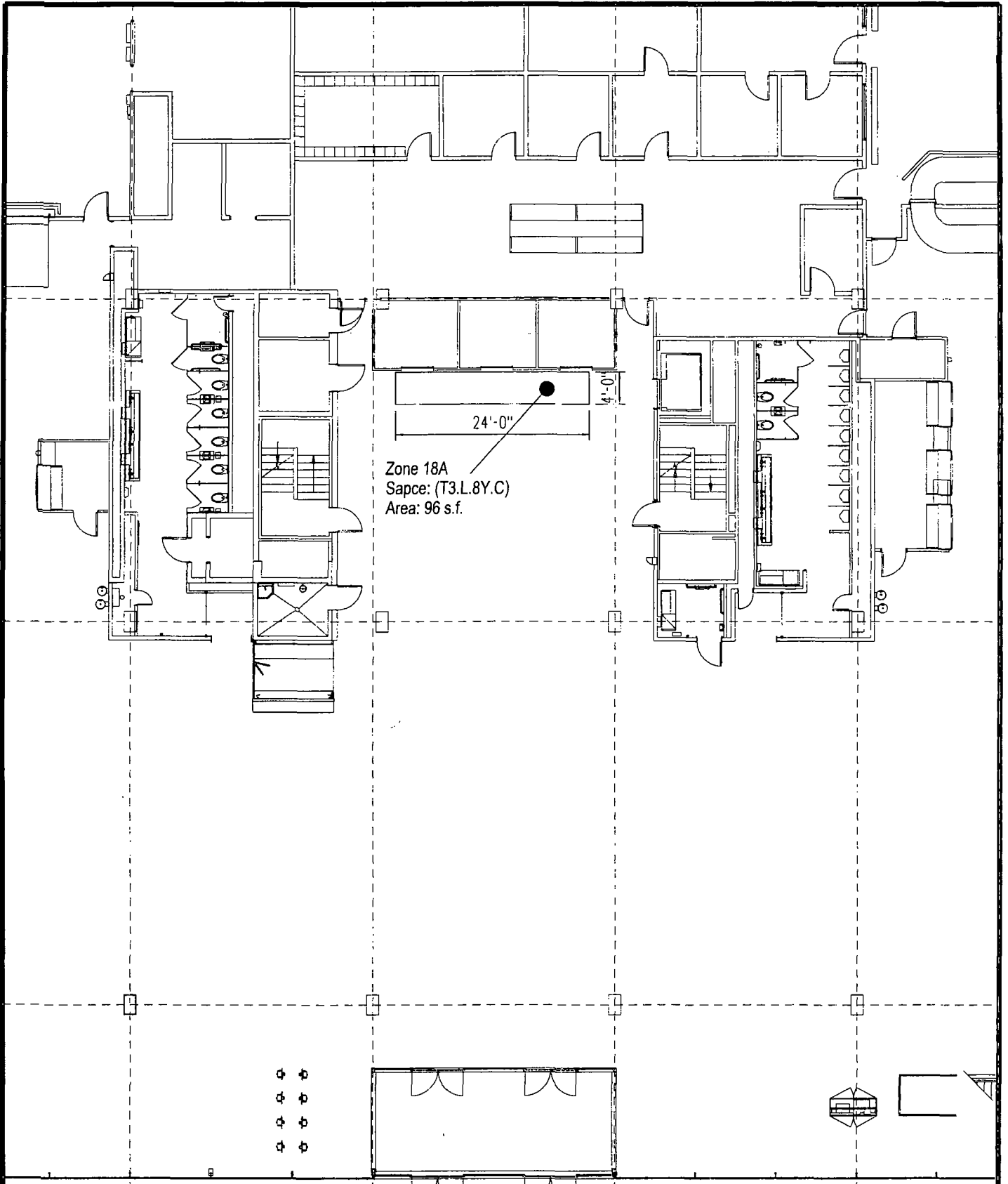
Automated Retail  
Zone #16 (T3K.9Ma.A)



KEY PLAN

Date: May, 2021

Created by CADD Services



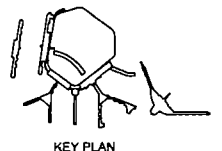
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

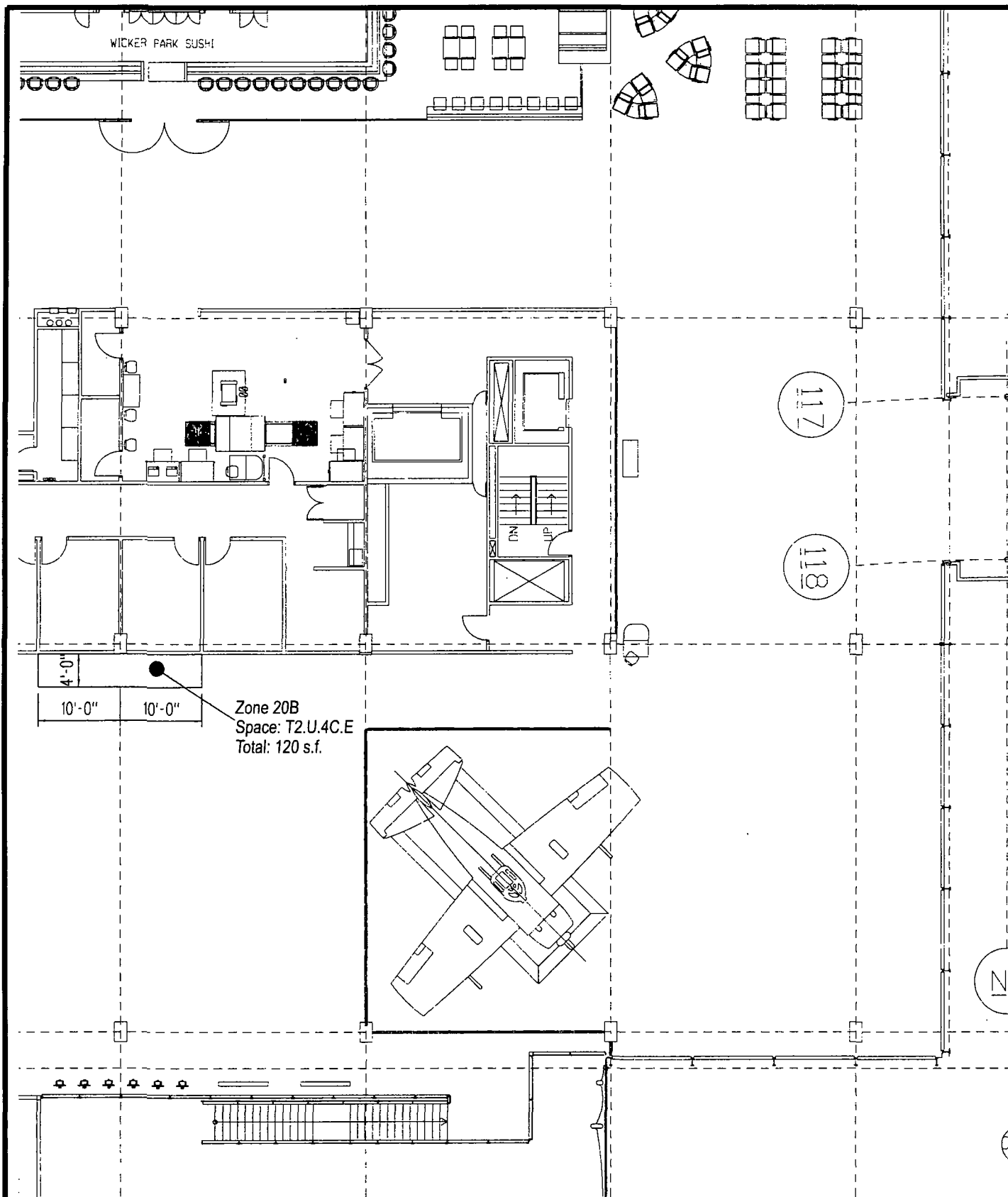
Terminal 3 Lower Level

Automated Retail  
Zone #18A (T3.L.8Y.C)



Date: May, 2021

Created by CADDO Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

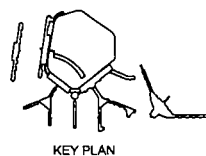
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

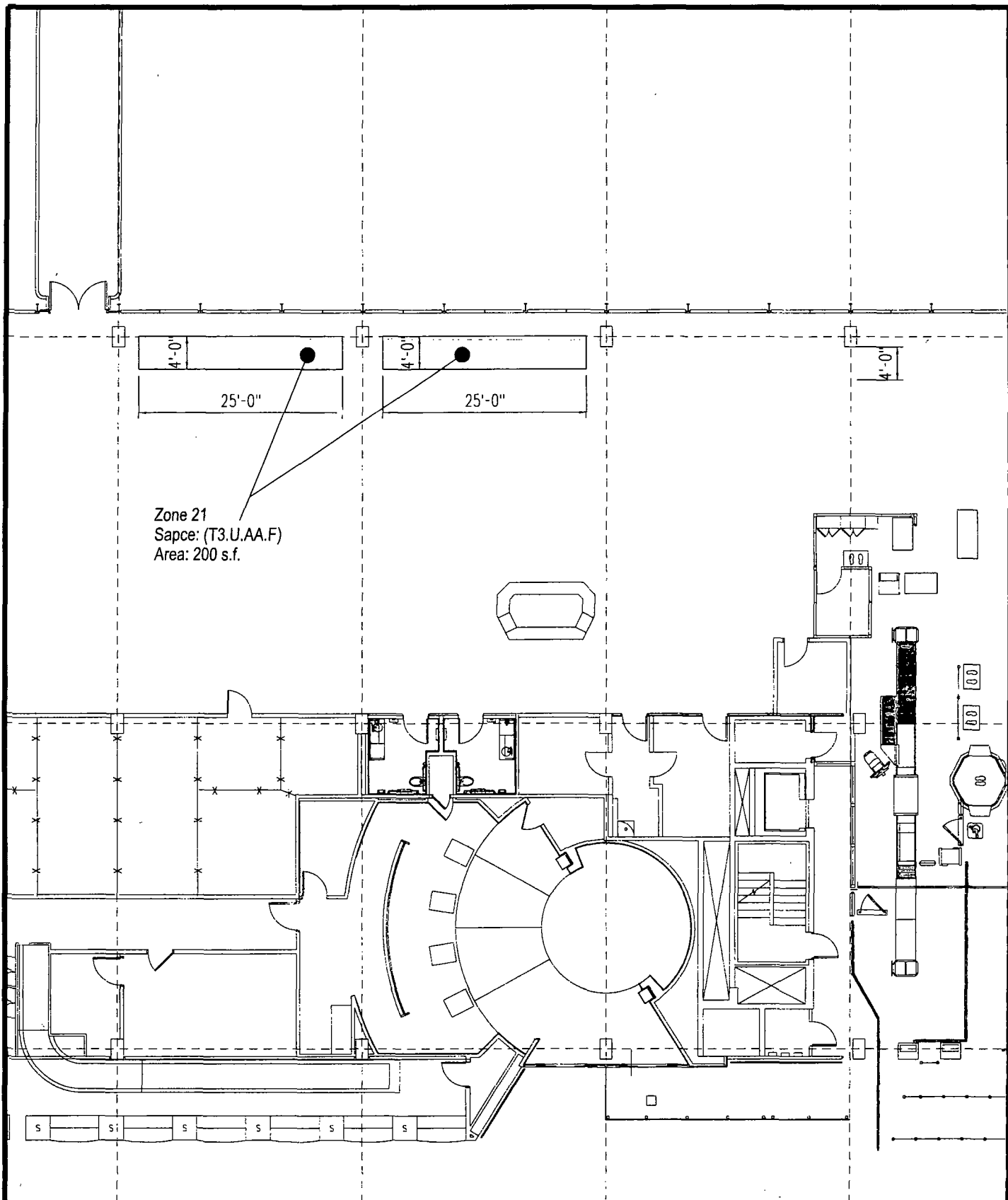
Automated Retail  
Zone # 20B (T2.U.4C.E)

Scale: 1/16" = 1'-0"



Date: May, 2021

Created by CADD Services



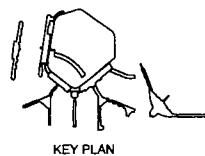
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
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UNISON RETAIL MANAGEMENT

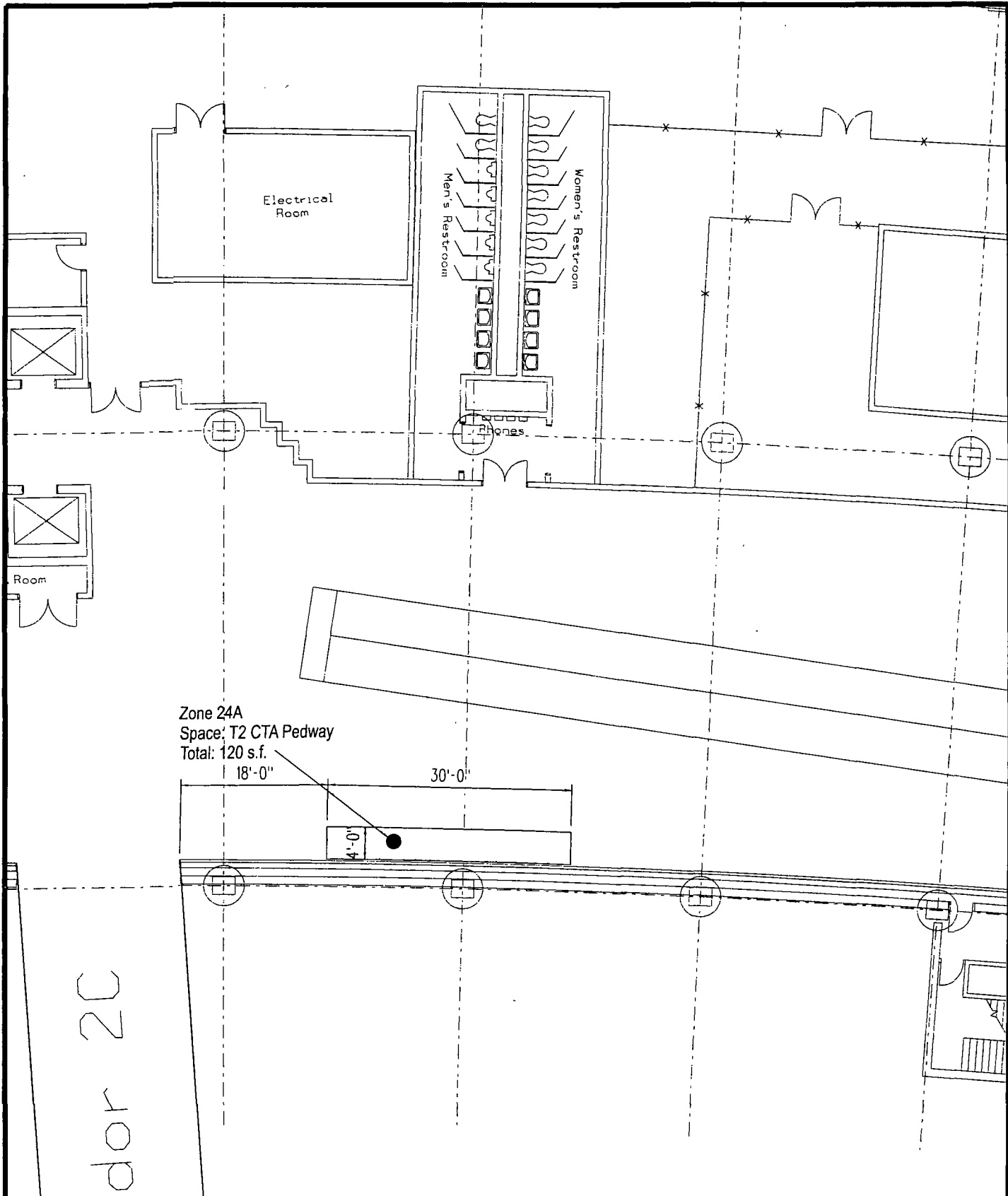
Terminal 3 Upper Level

Automated Retail  
Zone #21 (T3.U.8AA.F)



Date: May, 2021

Created by CADO Services



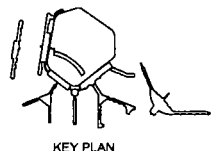
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 CTA Pedestrian Tunnel

Automated Retail  
Zone #24A T2 CTA Pedway



Date: May, 2021

Created by CADDO Services

**EXHIBIT 2**

**FEEES**

## **EXHIBIT 2**

### **FEES**

1. Percentage Fee: Zoom/Swyft

Concession Type	Gross Revenues	Percentage Fee
Consumer Electronics	All	10.0%
Beauty & Cosmetics	All	12.0%
Pharmacy & Travel Essentials	All	12.0%
Specialty Retail	All	12.0%
Personal Protective Equipment (PPE)	All	12.0%

2. There is no “Minimum Annual Guarantee” or “MAG” for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

**EXHIBIT 3**  
**DEVELOPMENT PLAN**



# *Section 4*

## **Proposed Concepts and Brands**

## 1. Proposed Concepts and Products

### Brand Symmetry for the ORD Retail Program

ZoomSystems and its partners is proposing to offer global brand partners to compliment an award-winning airport retail experience, and to more importantly, meet and exceed the expectation of the finest retail offerings for ORD passengers.

**iStore** will provide a global consumer electronic offering to the passengers of ORD whereby they will have access to all the latest technologies including Apple products and other top brands such as Bose and Sony that are not always readily available in the airport retail landscape. Local and visiting consumers can have confidence in purchasing high-end consumer electronics from a giant within this space.

With beauty counters within brick-and-mortar stores throughout the Chicago area, **Benefit Cosmetics** is the fastest growing prestige cosmetics brand in the U.S. and a unique offering to the traveling consumer.

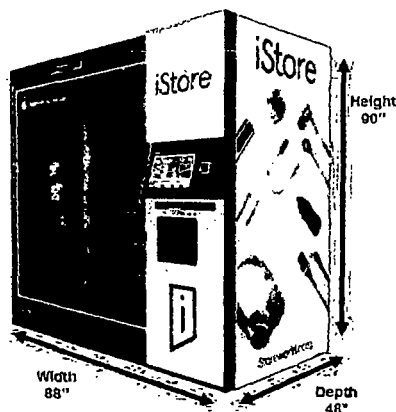
**CVS** offers unrivaled convenience and health essential items from leading national brands. As the largest pharmacy chain in the United States, CVS ensures trust while purchasing sensitive items for both locals and visitors.

In summation, within the automated retail space, ZoomSystems is unmatched in our ability to offer international brand partners that passengers feel connected to and will be comfortable with at Point of Purchase.

### iStore

As ZoomSystems' newest brand partner, iStore has a deep understanding and appreciation of how to deliver the best consumer electronics experience at airports across the country. Founded in 2007, iStore currently operates CE stores in 14 airports in the US. iStore takes a unique fashion approach to selecting high quality products, delivering you a dynamic selection of the latest digital solutions. Through key strategic partnerships with top product vendors, retail licensees and global sources, iStore delivers branded lifestyle accessories marketed through Boutique iStore retail locations and automated retail stores alongside other leading international brands through micro-shop concepts.

# iStore

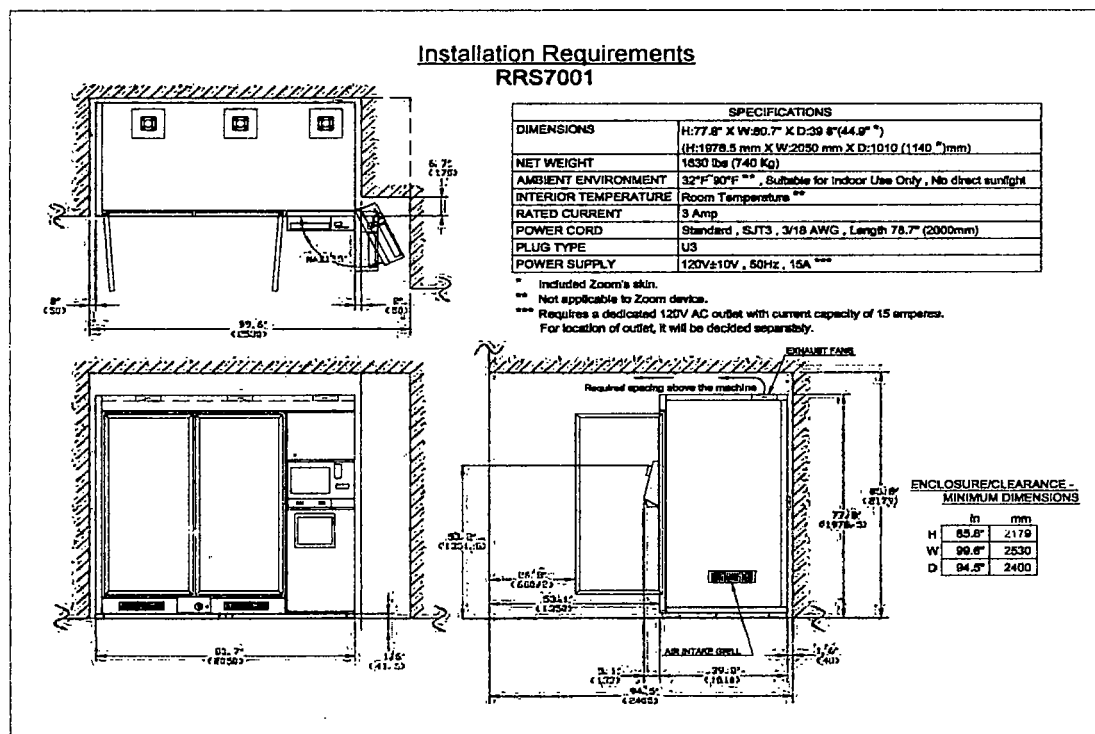


### ***iStore: Multi-channel Giant in Consumer Electronics***

iStore has unparalleled access to brands and products that cannot be replicated by other airport automated retail concessionaires. Specifically, after only the brick-and-mortar Apple Stores, iStore is the first retailer in the automated retail space to have access to all of the latest Apple products and technologies. Within this realm, iStore is also one of the few companies in the airport concessions space to offer an expansive line of Apple products and the latest version of products from other brands such as Bose, Sony, JLab, HyperGear and the iStore line of products. Consequently, the revenue generated through the iStore kiosks is unmatched in the automated retail space and no other consumer electronics automated retail concept will be able to match these revenues.

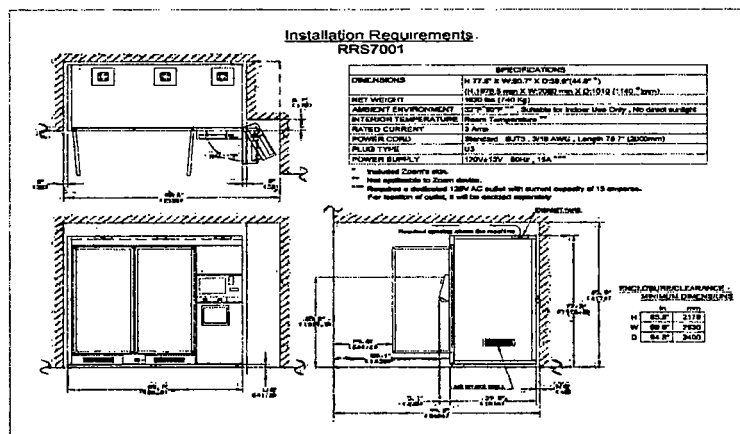
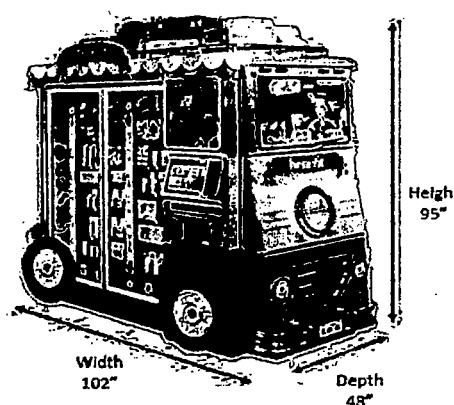
### ***iStore: A Trusted Airport Shopping Experience***

With approximately fourteen (14) existing traditional airport stores in the United States and Canada, the iStore brand is one that passengers trust and value, with proven success at airports such as SFO, BOS, JFK, DFW, HOU, and BDL among others. While shopping at one of our iStore ZoomShops, customers are will be confident that they will be receiving the same level of service and commitment to excellence that iStore is known for across the country.



Brand	Description	Airport MSRP
AM labs	AM Labs Mist Spray & Microfiber Cloth, Grey	\$14.99
Apple	Apple AirPods Pro, White	\$299.99
Apple	Apple EarPods Lightning, White	\$49.99
Apple	Apple Lightning to 3.5 mm Headphone Jack Adapter, White	\$19.99
Apple	Apple Watch Magnetic Charging Cable, (3.3 ft.)	\$39.99
Apple	Apple USB-C Charge Cable, (1 m)	\$29.99
Apple	Apple AirPods (2nd Gen), White	\$179.99
Apple	Apple 60W MagSafe, 2 Power Adapter (MacBook Pro with 13-inch Retina Display)	\$99.99
Beats	Beats Solo Pro Wireless On-Ear ANC, Black	\$299.99
Beats	Beats urBeats 3 In-Ear Lightning, Black	\$69.99
Beats	Beats Powerbeats Pro Totally Wireless In-ear, Black	\$249.99
Beats	Beats Powerbeats 2020 Wireless In-ear, Black	\$149.99
Bose	Bose SoundSport Free True Wireless Black	\$199.99
Bose	Bose QC35 wireless headphones II (Black)	\$349.99
Bose	Bose NC 700 Triple Black	\$399.99
Bose	Bose Frames Alto Audio Sunglasses	\$199.99
Naztech	Naztech Braided 3-in-1 Hybrid USB Cable, Silver	\$34.99
Hypergear	HyperGear 10000mAh Dual USB + USB-C Power Bank with Digital Battery Indicator	\$49.99
Hypergear	HyperGear Pocket Boost 5200mAh Portable Battery	\$29.99
Hypergear	HyperGear ChargePad Pro Wireless Fast Charger, Black	\$39.99
Naztech	Naztech Elite Series USB-C Charge & Sync Cable (4.0 ft), Black	\$29.99
Ventev	Ventev Global Charging Hub 300, Grey	\$34.99
iStore	iStore Classic Fit Earbuds w/Mic 3.5mm, Matte White	\$21.99
iStore	iStore Power Cube Duo 24W 2 ports, foldable prongs Charger, White Matte	\$24.99
iStore	iStore Headphones Splitter, Black	\$17.99
iStore	iStore Lightning Charge cable, (3.3 ft.), White	\$24.99
iStore	iStore Lightning Charge cable, (6.6 ft.), White	\$29.99
iStore	iStore Classic Fit Earbuds w/Mic 3.5mm, Matte Black	\$21.99
iStore	iStore Charging Set 5W Charger & Twin Head USB-C & Micro USB (3.3 ft.), Black	\$29.99
iStore	iStore USB-C to Lightning Cable 1m	\$29.99
iStore	iStore Multi-Port Power Cube 30W USB-C PD Charger 1 USB-A Port, White	\$44.99
iStore	iStore Charging Set 5W Charger & Lightning cable (3.3 ft.), White	\$34.99
iStore	iStore Classic Fit Wireless Earbuds w/Mic, Matte White	\$39.99
iStore	iStore Classic Fit Lightning Earbuds w/Mic, Matte Black	\$39.99
iStore	iStore Classic Fit Lightning Earbuds w/Mic, Dusty Rose	\$39.99
JBL	JBL Kids Onear Headphones, Red	\$29.99
Kenu	Kenu Air Frame Plus Car Mount	\$29.99
KeySmart	KeySmart CleanKey Brass Hand Tool	\$19.99
Kingston	Kingston Canvas Select Plus microSD 128GB	\$39.99
Moshi	Moshi USB-C to HDMI Cable 6.6 ft (2 m) - White	\$49.99
Moshi	Moshi USB-C to Dual USB-A Adapter, Space Grey	\$29.99
Moshi	Moshi ProGeo USB-C Laptop Charger (65 W, US)	\$79.99
Moshi	Moshi ProGeo USB-C Wall Charger (42 W, US), White	\$49.99
Moshi	Moshi Mythro C USB Type-C In-Ear, Gunmetal Grey	\$49.99
Moshi	Moshi AirPods Case - Black	\$27.99
Moshi	Moshi Pebblo Case AirPods Pro, Black	\$29.99
My Tagalongs	My Tagalongs Earbud Case, Black	\$11.99
My Tagalongs	My Tagalongs Earbud Case, Vixen Pink	\$11.99
Popsocket	Popsocket Phone Stand, Black	\$12.99
Popsocket	Popsocket PopMirror, Pink Blossom	\$19.99
Twelve South	Twelve South AirFly Duo Bluetooth Transmitter, White	\$54.99
Urbanista	Urbanista Paris In-Ear TW, Black	\$99.99
Urbanista	Urbanista Paris In-Ear TW, Rose Gold	\$99.99
ZAGG	ZAGG InvisibleShield Disinfecting Wipes, 25 Pack	\$8.99

Benefit Cosmetics Glam Up & Away ZoomShops are uniquely designed to resemble vintage pink beauty buses complete with fun slogans, fuzzy dice and several other of Benefit's famous ornate touches. As part of the Louis Vuitton Moët Hennessy (LVMH) family, the world's leader in luxury brands, Benefit's products can be found at over four thousand (4,000) counters in more than thirty-five (35) countries making it an instantly recognizable favorite of the traveling consumer.



### **Benefit Cosmetics: Success in Chicago**

The success garnered in the Chicago market will certainly translate to success for our Benefit ZoomShops at Chicago O'Hare International Airport. Along with this success being captured in regional sales, it is also being captured with a tremendous social media presence. Overall, Benefit Cosmetics has 9.1M followers on US Instagram and 15M globally while the #flybenefit hashtag created specifically for our ZoomShops has made 144.3M Instagram impressions.

In 2015, Benefit launched the Bold is Beautiful philanthropy program to help empower women and girls throughout the world and give back to local communities through donation proceeds coming from brow waxes. In 2018, Benefit raised over \$5.5M for Bold is Beautiful, donating to thirty-five (35) charity partners in total. Since the launch of the program in 2015, Benefit has raised more than \$16.5M. The US currently partners with programs such as Dress for Success, Girls Inc., Look Good Feel Better, The Princess Project, and Step Up.

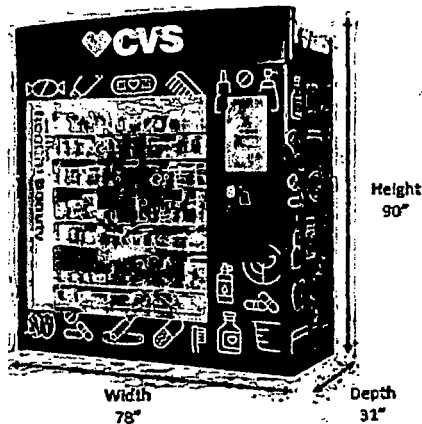


# Merchandise Services List

Eyebrows			
Product	Price	Product	Price
Ka-Brow – Eye Brow Cream/Gel	\$24.00	Gimme Brow Volumizing Brow Gel	\$24.00
Precisely, My Brown – Eye Brow Pencil	\$24.00	Gimme Brow Volumizing Brow Gel (Mini)	\$12.00
Goof Proof – Eye Brow Pencil	\$24.00	3-D Browtones – Eye Brow Enhancer	\$24.00
Goof Proof – Eye Brow Pencil (Mini)	\$12.00	High Brow – Eye Brow Highlighter	\$22.00
Cheeks			
Product	Price	Product	Price
Dandelion Finishing Powder	\$29.00	Hoola – Powder Bronzer	\$29.00
Dandelion Finishing Powder (mini)	\$15.00	Hoola – Powder Bronzer (Mini)	\$15.00
Rockateur – Powder Blush	\$29.00	Dew the Hoola – Liquid Bronzer	\$28.00
California – Powder Blush	\$29.00	Cheeky Party – Finishing Powder/Blush Kit	\$30.00
High Beam – Liquid Highlighter	\$26.00	1 <sup>st</sup> Prize Highlighters – Highlighter Kit	\$18.00
Watt's Up – Cream Highlighter	\$30.00	Benetint – Cheek/Lip Stain	\$30.00
Face			
Product	Price	Product	Price
the POREfessional – Pore Minimizer/Face Primer	\$31.00	POREfessional Matte Rescue	\$28.00
the POREfessional (Mini)	\$12.00	POREfessional Matte Rescue (Mini)	\$12.00
Agent Zero Shine – Shine Minimizing Powder	\$30.00	Team POREfessional – Face Kit	\$33.00
Boi-ing – Full Coverage Concealer	\$20.00	Falseup – Concealer	\$24.00
Hello Flawless Powder – Powder Foundation	\$34.00	Hello Flawless – Liquid Foundation	\$30.00
Eyes			
Product	Price	Product	Price
Puff Off! – Under Eye Gel	\$29.00	Stay Don't Stray – Eye Shadow Primer	\$26.00
They're Real! – Mascara	\$24.00	Roller Lash – Mascara	\$24.00
They're Real! – Mascara (Mini)	\$12.00	Roller Lash – Mascara (Mini)	\$12.00
They're Real! Primer – Tinted Mascara Primer	\$24.00	BadGal Lash – Mascara	\$19.00
They're Real! Primer – Tinted Mascara Primer (Mini)	\$12.00	BadGal Lash – Mascara (Mini)	\$10.00
They're Real! Liner – Eyeliner	\$24.00	BadGal Liner – Waterproof Eyeliner	\$20.00
They're Real! Liner – Eyeliner (Mini)	\$12.00	Big Beautiful Eyes – Eye Makeup Kit	\$32.00
Real Tease – Mascara and Eyeliner Kit (Mini)	\$22.00	They're Real! Big Sexy Eye – Eye Shadow Kit	\$36.00
Lips			
Product	Price	Product	Price
They're Real Big Sexy Lip Kit – Lipstick/Liner Kit	\$29.00	Tints to Tease – Tinted Lip Balm Kit	\$18.00
Benetint – Tinted Lip Balm	\$18.00	Positint – Tinted Lip Balm	\$18.00
Kits			
Product	Price	Product	Price
First Class Faves – Travel Sized Best Sellers Kit	\$27.00	B.Right 6 Pack – Travel Sized Skin Care Kit	\$24.00

## **CVS Pharmacy**

Launched in 2018, CVS branded ZoomShops allow customers to quickly and easily access the health products they need from a provider they trust. Providing a wide array of health essentials and key convenience items across all categories, CVS ZoomShops offer the best of CVS Pharmacy's thirty thousand (30,000) items. With over 9,800 retail locations, CVS is the largest pharmacy in the United States with over forty-five (45) million households using CVS products and sixty-two (62) million consumers actively engaged in the CVS extra care loyalty program while having over five (5) million customers shop at a CVS store every day. In today's pandemic landscape, passengers will be searching for these health/wellness items at an affordable cost from a trusted brand!



CVS automated retail stores are designed to improve the experience of travelers by offering ninety (90) unrivaled convenience and health essential items from leading national brands and CVS Store Brands. The CVS Store Brand items encompass 1.9 million products sold every day and around 90% of the products featured in our ZoomShops are CVS branded and backed with a 100% money back guarantee.

CVS products help bring life to the homes of millions of people. Their innovative products of uncompromising quality are created to meet their customers' unique needs and help them feel their best and live life to the fullest. CVS takes immense pride in providing brands that are trusted by their customers to care for themselves and their loved ones.

### **Unrivaled in the Airport Environment**

The CVS branded ZoomShops provide a healthcare and wellness product assortment to passengers that is currently not available in any traditional airport retail venues. The CVS ZoomShop offers full-sized product assortments compared to single-dosage options that often may be found at other airport retailers.

Recent statistics show that healthcare product earnings only incorporate less than seven percent (5%) of annual sales in other airport retail venues. The market for the CVS ZoomShop, in an accessible location in airports is truly unrivaled and necessary to accommodate the needs of passengers, especially as we move into a post-pandemic environment.

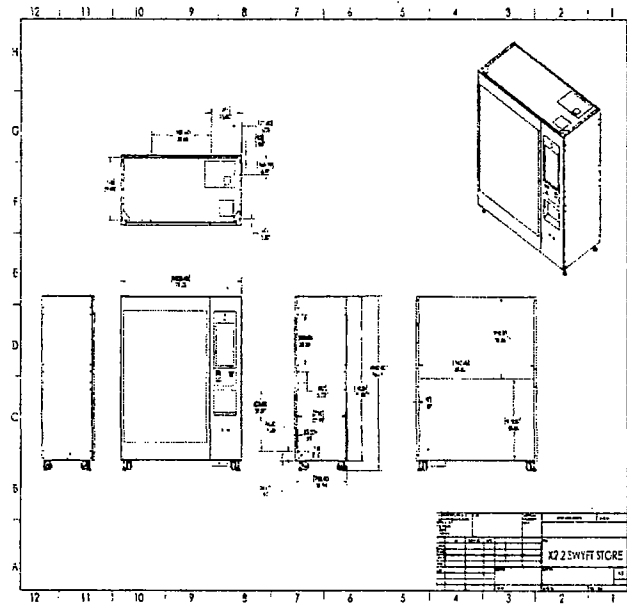


### Merchandise Services List

Product	Price	Product	Price
<b>Cold Remedies</b>			
CVS Health Decongestant Tablets	\$4.89	CVS Health Menthol Eucalyptus	\$1.99
Mucinex 600Mg Expectorant Extended Release	\$15.99	Abreva Cold Sore Treatment	\$21.99
CVS Health Max Strength Sinus Day/Night	\$11.79	Ricola Natural Herb Cough Droops	\$3.19
CVS Health Nasal Mist	\$6.99	Airborne Gummies	\$17.99
CVS Health Honey Lemon Cough Drops	\$1.99	Zicam Cold Remedy	\$14.49
<b>Pain Relievers</b>			
CVS Health Extra Strength Non-Aspirin Caplets	\$4.69	CVS Health Low Dose Aspirin	\$2.79
CVS Health Ibuprofen Tablets	\$3.79	CVS Health Children's Ibuprofen	\$6.99
CVS Health Extra Strength Headache Relief	\$4.99	CVS Health Children's Pain & Fever	\$6.99
<b>Digestive Health</b>			
Pepto-Bismol Original Liquid	\$3.99	CVS Health Motion Sickness Tablets	\$7.99
Pepto-Bismol Chewable Tablets	\$7.29	CVS Health Extra Strength Gas Relief	\$6.99
CVS Health Antacid Tablets	\$5.39	CVS Health 24-Hour Acid Reducer	\$21.99
CVS Health Max Strength Acid Reducer	\$6.99	CVS Health Anti-Diarrheal Soft Gels	\$7.99
<b>Allergy Remedies</b>			
CVS Health Fluticasone Nasal Spray	\$13.29	CVS Health Cetirizine Hydrochloride Tablets	\$18.99
CVS Health Loratadine Tablets	\$15.79	CVS Health Diphenhydramine Hydrochloride	\$4.99
<b>Sleep Aids</b>			
ZzzQuil Nighttime Sleep-Aid Liquicaps	\$7.19	CVS Health Ibuprofen PM Caplets	\$4.69
CVS Health Nighttime Sleep Aid	\$5.29	CVS Health Melatonin Capsules	\$12.29
<b>First Aid</b>			
CVS Health Blister Cushions Toe and Heel	\$6.29	CVS Original Strength Antibiotic Ointment	\$4.99
CVS Health Flexible Fabric Anti-Bac Bandages	\$4.09		
<b>Oral Hygiene</b>			
CVS Health Mouthwash & Gargle Mint	\$1.99	CVS Health Travel Sonic Tooth Brush	\$15.29
Crest 3D White Whitening Toothpaste	\$1.49	Colgate Maxfresh Travel Toothbrush	\$2.09
<b>Personal Care</b>			
Secret Women's Invisible Solid Antiperspirant & Deodorant Original Powder Fresh Scent	\$3.59	Old Spice High Endurance Invisible Solid Men's Anti-Perspirant & Deodorant	\$3.99
Gillette Venus Close & Clean in 1-Stroke Razor	\$8.99	Gillette-TGS Series Shave Gel Sensitive Skin	\$2.09
Gillette Fusion Men's Razor	\$9.99	TRESemme Hair Styling Gel	\$2.29
TRESemme Extra Hold Non Aerosol Hair Spray	\$2.49	TRESemme Moisture Rich Shampoo	\$1.99
Not Your Mothers Refreshing Dry Shampoo	\$3.29	Tampax Compact Plastic Tampons Regular	\$1.79
Tampax Compact Plastic Tampons Super	\$6.29	CVS Health Thin Pantliners Unscented	\$1.39
CVS Health Ultra Thin Pads Regular With Wings	\$3.59	Burt's Bees Lip Balm Blister Pack	\$6.29
CVS Health Chap-Block Lip Moisturizer	\$3.19	Beauty 360 Compact Clipper With File	\$2.19
Beauty 360 Makeup Remover Towelettes	\$6.49	Maybelline Great Lash Waterproof Mascara	\$5.99
CVS Ultra Sheer Broad Spectrum Sunscreen	\$8.49	Durex Real Feel Non-Latex Condoms	\$7.29
Durex Invisible Premium Condoms	\$7.29	CVS Health Max Redness Relief Eye Drops	\$4.89
CVS Health Multi-Purpose Solution Contact Lenses	\$5.39	CVS Health Contact Lens Case Deluxe 2 Pack	\$3.99
Downy Wrinkle Releaser	\$2.79	Tide To Go Instant Stain Remover Pen	\$4.09



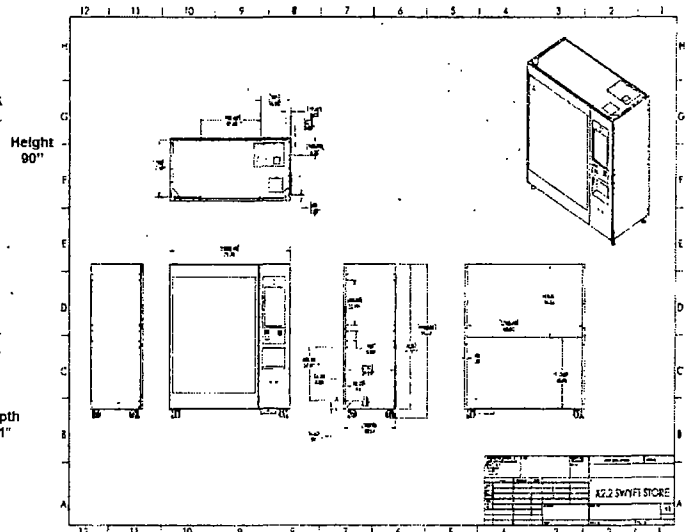
## CVS Pharmacy Cut Sheet



## Vera Bradley

ZoomSystems launched the Vera Bradley automated retail program in 2020, debuting the iconic brand's top selling handbags and accessories that have been a staple for Vera Bradley since its inception in 1982. In their own words, "We're obsessed with pattern and color, fun and function... and adding a little extra to every day." Known for their energetic and joyful, charming and feminine prints, Vera Bradley is an award-winning brand, and has grown to the #2 bag brand, #1 duffel bag brand, #2 women's cosmetics brand, and #3 backpack brand. Vera Bradley believes in a sustainable design, creating one (1) yard of fabric from sixteen (16) plastic bottles. Vera Bradley is truly a trusted partner, as the brand has teamed with top brands like Starbucks, Crocs, and Venus to creating new and unique product lines.

Vera Bradley



Vera Bradley automated retail stores are designed to provide passengers with the energetic, happy and joyful shopping experience that the brand continually achieves. The Vera Bradley products included within the machine offer selections from its top Signature Cotton, Microfiber, Reactive and Performance Twill bag lines.

The Vera Bradley customer following is unparalleled in its category with over 2.5 million active followers and fans on social media, 1.3 million blog page views annually and over 140 million average monthly media impressions.

### **Experience in the Airport Environment**

The idea for this brand started 35 years ago in Atlanta-Hartsfield International Airport, where the founders observed how all of the luggage that they saw rolling around the concourse were dull and boring.

Vera Bradley has been successful within traditional airport retail venues, with boutiques located within the likes of Philadelphia International Airport and Indianapolis International Airport. The Vera Bradley ZoomShop allows the brand to expand with the airport channel where they have excelled, bringing their bright and recognizable products to millions of more travelers.

### **Vera Bradley: Making a Difference in its Communities**

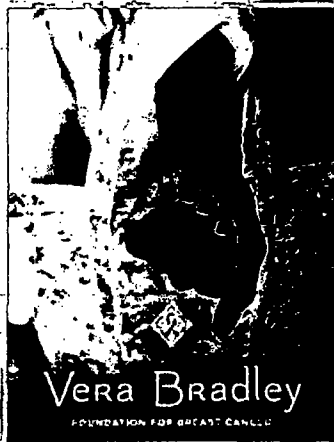


At Vera Bradley, we love to make women's lives better. This common thread drives our purpose and fuels our passion, from the products we design to how we give back.



#### **BLESSINGS IN A BACKPACK**

Mobilizing communities to provide food on the weekends for elementary school children across America.



#### **Vera Bradley**

FOUNDATION FOR BREAST CANCER

Raising funds — more than \$36.4 million since 1999 — to support critical breast cancer research.



#### **NEW HOPE GIRLS**

Providing light and life to girls and women arising from dark and difficult circumstances.



# Vera Bradley

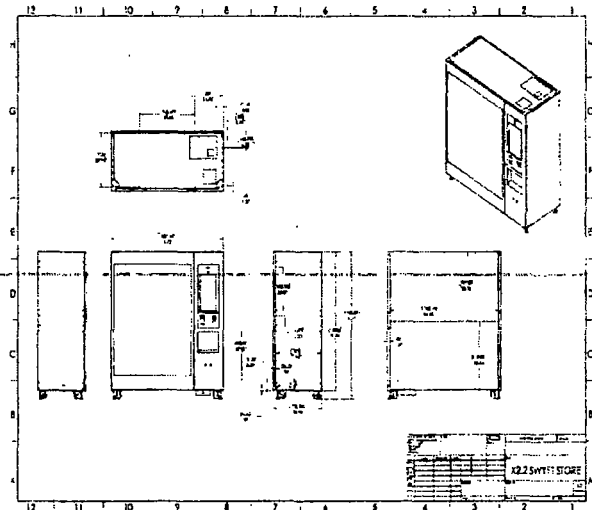
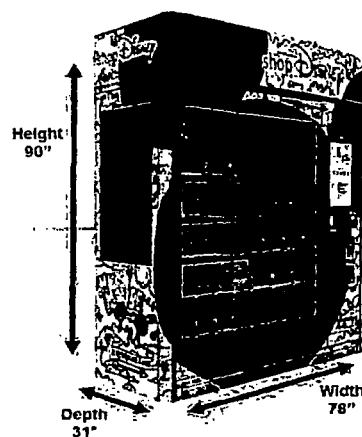
## Merchandise Services List

Product	Price	Product	Price
Iconic Compact Hanging Organizer Classic Black	\$70.00	Mini Travel Umbrella Rosy Garden Picnic	\$30.00
Iconic Curling & Flat Iron Cover Classic Black	\$30.00	Surgical Masks - 5 Pack	\$10.00
Iconic RFID All In One Crossbody Classic Black	\$85.00	Cotton Face Mask (Non-Medical)	\$8.00
Iconic Zip ID Case Classic Black	\$20.00	Mask Filter - 10 Pack	\$18.00
Packable Backpack Garden Grove	\$50.00	Iconic RFID All-In-One Crossbody Itsy Ditsy	\$65.00
Packable Backpack Strawberry Grand Garden	\$50.00	Iconic RFID All In One Crossbody Classic Navy	\$85.00
Packable Tote Garden Grove	\$50.00	Iconic RFID All In One Crossbody French Paisley	\$65.00
Packable Tote Strawberry Grand Garden	\$50.00	Iconic RFID Smartphone Wristlet Bonbon Medallion	\$50.00
Packable Duffel Bag Garden Grove	\$60.00	Iconic RFID Smartphone Wristlet French Paisley	\$50.00
Packable Duffel Bag Strawberry Grand Garden	\$60.00	Iconic RFID Smartphone Wristlet Classic Black	\$70.00
Travel Takes Passport Cover Fruit Grove	\$25.00	Iconic RFID Accordion Wristlet French Paisley	\$60.00
Travel Takes Eye Mask Fruit Grove	\$15.00	Iconic RFID Accordion Wristlet Classic Black	\$80.00
Mini Travel Umbrella Strawberry Grand Garden	\$30.00	Iconic Zip ID Case Itsy Ditsy	\$15.00
Iconic Curling & Flat Iron Cover Classic Black	\$70.00	Iconic Zip ID Case French Paisley	\$15.00
Iconic Lanyard Bonbon Medallion	\$15.00	Iconic Luggage Tag French Paisley	\$15.00
Iconic Lanyard Itsy Ditsy	\$15.00	Carson Cellphone Crossbody French Paisley	\$30.00
Iconic Lanyard French Paisley	\$15.00	Carson Cellphone Crossbody Itsy Ditsy	\$30.00
Iconic Travel Pill Case Itsy Ditsy	\$20.00	Carson Cellphone Crossbody Bonbon Medallion	\$35.00
Iconic Travel Pill Case French Paisley	\$20.00	Iconic Curling & Flat Iron Cover French Paisley	\$25.00
Iconic Travel Pill Case Bonbon Medallion	\$20.00	Iconic Curling & Flat Iron Cover Itsy Ditsy	\$25.00
Travel Takes Passport Cover Floating Garden	\$25.00	Iconic Compact Hanging Organizer Bonbon Medallion	\$50.00
Travel Takes Eye Mask Floating Garden	\$15.00	Iconic Compact Hanging Organizer French Paisley	\$50.00
Iconic Luggage Tag Bonbon Medallion	\$15.00	Iconic Luggage Tag Floating Garden	\$15.00

## Disney

The Disney branded ZoomShop is one of the newest brands within the ZoomSystems portfolio. The Walt Disney Company needs no introduction as it has grown into a multinational conglomerate, diversified within live-action film production, television, media, theme parks and retail, among other emerging channels. Disney is one of the top 10 brands in the world and is known as one of the most recognizable brands in history. The Disney Store subsidiary was created in 1987 as an entertainment store, selling only Disney related items, many of them exclusive, under its own name and Disney Outlet. Today the giant owns/licenses over 700 stores. In 1999, Disney opened its second flagship store in Chicago on the Magnificent Mile. The "Blues Mickey" quickly became the Chicago-specific toy and since then, has been beloved by all Chicagoans.

shop **Disney**



The Disney automated retail stores are designed to transform the Chicago O'Hare airport shopping experience into the happiest place on earth. The Disney ZoomShop appeals to children, adults and everyone in the family, featuring children's clothing, toys, and plush as well as a selection of adult merchandise. The product selection comprises of those classic Disney items that bring back priceless memories cherished from the past. In addition to Disney branded items, our store offers the hugely popular Marvel and Star Wars items, which are all under the Disney umbrella.

Disney products bring joy to the homes of millions of people, and passengers flying through ORD will be ecstatic to bring their loved ones those meaningful Disney gifts from their travels. Families will be thankful for a solution to lessen the challenges of flying with children.

### Disney: Born in Chicago

Chicago has always been close to the heart of Disney, as Walt Disney himself was born in the Hermosa neighborhood of Chicago. Today the Disney brand has a strong presence within the community with eight (8) stores in and around the city. The Disney ZoomShops are a perfect fit for ORD in growing the brands long-standing presence in the city that means so much to Disney.

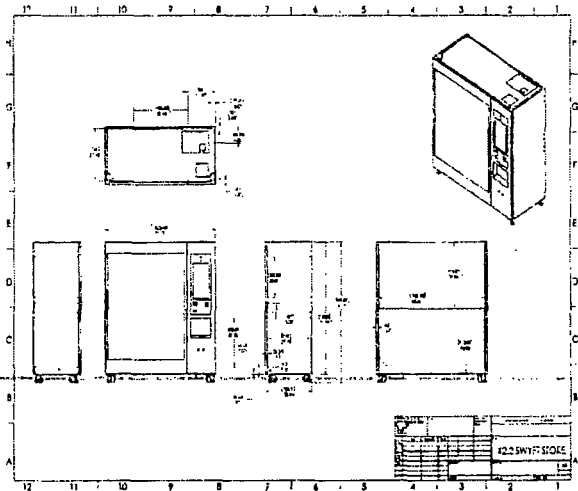
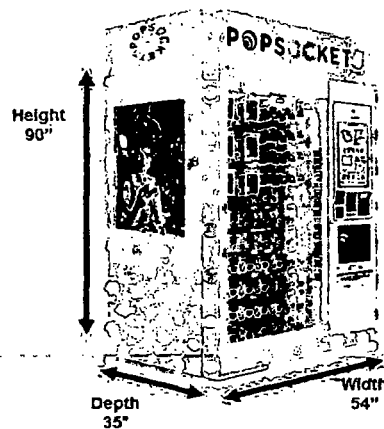
**shop Disney**  
Merchandise Services List

Product	Price	Product	Price
Mickey Mouse and Pluto Action Figure Set – Disney	\$12.95	Disney Animators' Collection Littles Snow White	\$12.99
Mickey Mouse Plush – Mini Bean Bag – 9"	\$9.95	Disney Animators' Collection Littles Wendy Set	\$12.99
Minnie Mouse Plush – Red – Mini Bean Bag – 9 1/2"	\$9.95	Sulley Action Figure – PIXAR Toybox	\$14.95
Stitch Plush – Mini Bean Bag – 6"	\$9.95	Frozen 2 Zip-Up Stationery Kit	\$16.95
Winnie the Pooh Plush – Mini Bean Bag	\$9.95	Minnie Mouse Zip-Up Stationery Kit	\$16.95
Tigger Plush – Winnie the Pooh – Mini Bean Bag	\$9.95	The Mickey Mouse Club Mouseketeer Canvas Tote	\$34.99
Olaf Plush – Frozen 2 – Mini Bean Bag – 6 1/2"	\$11.95	Mickey Mouse Walt Disney Studios Baseball Cap for	\$24.95
Disney Animators' Collection Elsa Mini Doll Set	\$19.99	Minnie Ears Earrings	\$19.95
Disney Animators' Collection Anna Mini Doll Set	\$19.99	Minnie Bow Earrings	\$19.95
Forky Interactive Talking Action Figure	\$19.95	Princess Crown Necklace	\$39.95
Bo Peep Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Princess Castle Necklace	\$19.95
Bullseye Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Minnie Mouse Fuzzy Bag Charm	\$16.99
Jessie Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Mickey Mouse Fuzzy Bag Charm	\$16.99
Buzz Lightyear Action Figure – Toy Story 4 – PIXAR	\$12.95	Mickey Mouse "Original Mouseketeer" PJ PALS	\$17.99
Woody Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Mickey Mouse "Original Mouseketeer" PJ PALS	\$17.99
Cars "Old-Gen" Racers Pullback Die Cast Set	\$19.95	Mickey Mouse "Original Mouseketeer" PJ PALS	\$17.99
Lightning McQueen Rocket Racer Pull 'N' Race Die C	\$7.99	Mickey Mouse Packable Rain Jacket and Bag	\$34.95
Jackson Storm Rocket Racer Pull 'N' Race Die Cast	\$7.95	Mickey Mouse Packable Rain Jacket and Bag	\$34.95
Disney Animators' Collection Littles Cinderella	\$12.99	Mickey Mouse Packable Rain Jacket and Bag	\$34.95
Disney Gift Card	\$1.00	The Mickey Mouse Club Mouseketeer Ringer T-Shirt	\$24.99
The Mickey Mouse Club Mouseketeer Travel Pack	\$19.99	The Mickey Mouse Club Mouseketeer Ringer T-Shirt	\$24.99

### PopSockets

PopSockets is one of our new, creative, popular and in demand brand offerings. In 2018, PopSockets took the #2 spot on Inc. Magazine's list of the 5000 Fastest Growing Companies. The PopSockets ZoomShop offers some of the company's most popular products including the PopGrip, PopTop, PopWallet, and PopMirror, which are all designed to increase the functionality of digital devices we use daily.

**POPSOCKETS**



### Colorful, Functional and Ingenious – A Perfect Match

PopSockets is a brand that will peak the interests of all at ORD. The colorful pop that the company is known for will attract passengers to the store, and will provide an attractive, functional product for everyone, from Chicago sports teams to dazzling bejeweled themed products. This unique product offering is sure to be an instant hit!

### PopSockets: Unwaivering Generosity

PopSockets is a company that believes in giving back to the communities it serves. The company is known for its involvement in charities specific to the support of animals, the arts, environmental protection, education, health, human services, international aid, and women and children advocates. PopSockets has also recently launched an initiative that donates 100% of its proceeds of certain product lines to charity partners directly responding to the COVID-19 pandemic. Further, PopSockets has also launched a program called Poptivism. Poptivism is designed with a single purpose - to make the world better. As the company states, "It's easy to become a Poptivist. Just submit a PopGrip design or purchase a Poptivism product that you like. 50% of the sale will go to the non-profit assigned to it. It's activism at your fingertips." Lastly, PopSockets has become an active advocate for the black community. "Our mission is to advance the liberation and well-being of Black and Brown communities through education, self-empowerment, mass-mobilization and the creation of new systems that elevate the next generation of change leaders." as stated on their website.

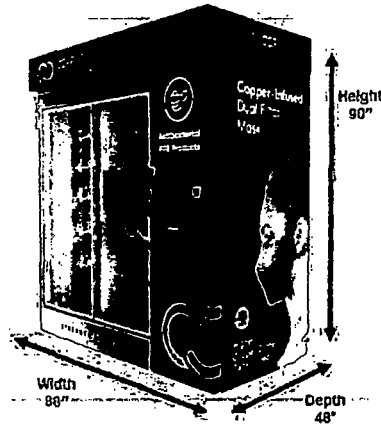
# POPSOCKETS

## Merchandise Services List

Product	Price	Product	Price
Black Car Vent Mount	\$14.99	Rose Quartz	\$29.99
Car Vent Glow in the Dark	\$14.99	Shark Bites Enamel	\$14.99
Black Multi-Surface Mount	\$9.99	Solar Flare Enamel	\$14.99
Black Car Dash & Windshield Mount	\$29.99	Pressed Flower Larkspur Purple	\$14.99
Black Car Dash & Windshield Mount	\$29.99	Sparkle Rose	\$14.99
PopGrip Airpods Holder Black	\$19.99	Rose Gold Metallic Diamond	\$14.99
PopGrip Airpods Holder Iris Purple	\$19.99	Backspin 45 RPM	\$19.99
PopWallet+ Saffiano Rose Gold	\$29.99	Opal	\$9.99
PopWallet+ Black	\$24.99	Magenta Nebula	\$9.99
PopWallet+ Blush Pink	\$24.99	Checker Black	\$9.99
PopWallet+ Sea Green	\$24.99	Moon	\$9.99
PopWallet+ Rose Gold Lutz Marble	\$24.99	The Child Cup	\$14.99
PopGrip Lips So Vanilla	\$14.99	Deathly Hallows	\$14.99
PopGrips Lips Strawberry Feels	\$14.99	Mickey Classic	\$14.99
Acetate Pearl White	\$19.99	Chicago Bears	\$14.99
Paua Abalone	\$29.99	Chicago Cubs/WhiteSox	\$14.99
Acetate Classic Tortoise	\$19.99	Black	\$9.99
Tidepool Rose	\$19.99	PopThirst Can Holder Wild Retro Rose	\$14.99
Tidepool Halo White	\$19.99	PopThirst Can Holder Checker Red	\$14.99
PopGrip Mirror Pink Blossom	\$19.99	PopThirst Cup Sleeve Wild Rose	\$14.99
PopGrip Mirror Black	\$19.99	PopThirst Cup Sleeve Black	\$14.99
Black Aluminum	\$14.99	PopChain Premium Chromatic	\$9.99
Black Car Vent Mount	\$14.99		

### **Copper Compression Personal Protective Equipment (PPE)**

In response to the COVID-19 pandemic, ZoomSystems prioritized its resources to developing a personal protective equipment (PPE) concept and to team with a national brand, like its other partners to provide these essentials for our partners. Copper Compression was a perfect fit, in that their mission was to provide customers with a reliable, safe and proven product that included their anti-microbial technology.



The Copper Compression PPE ZoomShop will offer passengers of ORD with an option to purchase a premium mask in three different colors utilizing their copper infused technology. Copper is a powerful anti-microbial agent and scientifically proven to stop and kill 99% of bacteria. The Copper-Infused Face Mask features a four-layer 3D structure with a dual-filter that blocks more than >95% of fine particulate matter. They are comfortable for all day use and are both reusable and washable. In addition to their copper infused masks, Copper Compression will also be adding other PPE essentials as supplies become available.

### **Copper Compression: The Brand You Can Trust**

For the last 5 years, Copper Compression has been designing and manufacturing some of the highest-rated wellness solutions on the market. The company has won the American Business Award for Consumer Product of the year for its Copper-Infused Dual Filter Face Mask. They are a top-200 Amazon seller and #1 in Healthcare and personal care anti-microbial wearables.

### **Merchandise List**

Product	Price
Copper Infused Face Mask- Black - Single Pack	\$13.00
Copper Infused Face Mask- White - Single Pack	\$13.00
Copper Infused Face Mask- Grey - Single Pack	\$13.00



## 2. Project Schedule

Upon contract execution, ZoomSystems will ship, deliver, install and stock each new unit at ORD within four (4) to six (6) weeks. ZoomSystems will work with airport staff and will install a minimum of two (2) machines per evening, when passenger flow is minimal. In any case, ZoomSystems is flexible and sensitive to work within ORD's installation requirements. ZoomSystems fully expects to install all machines by contract start date.

## 3. Compensation to the City – Form G

Automated Retail Categories	Proposed Category Percentage Fee Rate
Consumer Electronics  (iStore)	10%
Beauty & Cosmetics  (Benefit Cosmetics)	12%
Pharmacy & Travel Essentials  (CVS)	12%
Specialty Retail  (Disney, PopSockets, Vera Bradley)	12%
Personal Protective Equipment  (Copper Compression)	12%

#### 4. Projected Sales, Net Income, and Cash Flow – Form C (Assuming 80% of CY 2019 Enplanements Yr 1)

Concession Type	Proposed Brand	Location	Anticipated Opening Date	2021	2022	2023	2024	2025	2026
Automated Retail	iStore	#1 T1/B12	January 1, 2021	\$196,000	\$205,800	\$209,916	\$214,114	\$218,396	\$222,764
Automated Retail	Benefit Cosmetics	#1 T1/B12	January 1, 2021	\$82,000	\$83,640	\$85,313	\$87,019	\$88,759	\$90,534
Automated Retail	CVS Pharmacy	#2 T1/C11	January 1, 2021	\$60,000	\$61,200	\$62,424	\$63,673	\$64,947	\$66,246
Automated Retail	PopSockets	#2 T1/C11	January 1, 2021	\$78,000	\$79,560	\$81,151	\$82,774	\$84,430	\$86,119
Automated Retail	Vera Bradley	#3 T2/E1	January 1, 2021	\$80,000	\$81,600	\$83,232	\$84,897	\$86,595	\$88,327
Automated Retail	CVS Pharmacy	#4 T1/LL/Bag	January 1, 2021	\$30,000	\$35,000	\$40,000	\$45,000	\$50,000	\$55,000
Automated Retail	CVS Pharmacy	#5 T1/BL/Tunnel	January 1, 2021	\$60,000	\$61,200	\$62,424	\$63,673	\$64,947	\$66,246
Automated Retail	Copper Compression	#5 T1/BL/Tunnel	January 1, 2021	\$30,000	\$30,600	\$31,212	\$31,836	\$32,473	\$33,123
Automated Retail	iStore	#6 T2/E6	January 1, 2021	\$196,000	\$205,800	\$209,916	\$214,114	\$218,396	\$222,764
Automated Retail	Disney	#6 T2/E6	January 1, 2021	\$100,000	\$102,000	\$104,040	\$106,121	\$108,243	\$110,408
Automated Retail	CVS Pharmacy	#7 T2/McDonalds	January 1, 2021	\$60,000	\$61,200	\$62,424	\$63,673	\$64,947	\$66,246
Automated Retail	Benefit Cosmetics	#7 T2/McDonalds	January 1, 2021	\$82,000	\$83,640	\$85,313	\$87,019	\$88,759	\$90,534
Automated Retail	iStore	#8 T2/F12	January 1, 2021	\$196,000	\$205,800	\$209,916	\$214,114	\$218,396	\$222,764
Automated Retail	Vera Bradley	#8 T2/F12	January 1, 2021	\$80,000	\$81,600	\$83,232	\$84,897	\$86,595	\$88,327
Automated Retail	PopSockets	#9 T2/E8	January 1, 2021	\$78,000	\$79,560	\$81,151	\$82,774	\$84,430	\$86,119
Automated Retail	iStore	#10 T2/E1	January 1, 2021	\$196,000	\$205,800	\$209,916	\$214,114	\$218,396	\$222,764
Automated Retail	Benefit Cosmetics	#11 T2/E3	January 1, 2021	\$82,000	\$83,640	\$85,313	\$87,019	\$88,759	\$90,534
Automated Retail	CVS Pharmacy	#11 T2/E3	January 1, 2021	\$60,000	\$61,200	\$62,424	\$63,673	\$64,947	\$66,246
Automated Retail	iStore	#12 T2/T3 Bridge	January 1, 2021	\$135,000	\$137,700	\$140,454	\$143,263	\$146,128	\$149,051
Automated Retail	CVS Pharmacy	#12 T2/T3 Bridge	January 1, 2021	\$60,000	\$61,200	\$62,424	\$63,673	\$64,947	\$66,246
Automated Retail	Disney	#13 T3/H1	January 1, 2021	\$100,000	\$102,000	\$104,040	\$106,121	\$108,243	\$110,408
Automated Retail	Benefit Cosm.	#13 T3/H1	January 1, 2021	\$82,000	\$83,640	\$85,313	\$87,019	\$88,759	\$90,534
Automated Retail	Vera Bradley	#14 T3/G11	January 1, 2021	\$80,000	\$81,600	\$83,232	\$84,897	\$86,595	\$88,327
Automated Retail	CVS Pharmacy	#14 T3/G11	January 1, 2021	\$60,000	\$61,200	\$62,424	\$63,673	\$64,947	\$66,246
Automated Retail	iStore	#15 T3/H3	January 1, 2021	\$196,000	\$205,800	\$209,916	\$214,114	\$218,396	\$222,764
Automated Retail	PopSockets	#15 T3/H3	January 1, 2021	\$78,000	\$79,560	\$81,151	\$82,774	\$84,430	\$86,119
Automated Retail	Benefit Cosmetics	#16 T3/K18	January 1, 2021	\$82,000	\$83,640	\$85,313	\$87,019	\$88,759	\$90,534
Automated Retail	iStore	#16 T3/K18	January 1, 2021	\$196,000	\$205,800	\$209,916	\$214,114	\$218,396	\$222,764
Automated Retail	CVS Pharmacy	#17 T3/K19	January 1, 2021	\$60,000	\$61,200	\$62,424	\$63,673	\$64,947	\$66,246
Automated Retail	PopSockets	#17 T3/K19	January 1, 2021	\$78,000	\$79,560	\$81,151	\$82,774	\$84,430	\$86,119
Automated Retail	CVS Pharmacy	#18 T3/LL/Bag	January 1, 2021	\$30,000	\$35,000	\$40,000	\$45,000	\$50,000	\$55,000
Automated Retail	Copper Compression	#19 T3/CTA pass	January 1, 2021	\$30,000	\$30,600	\$31,212	\$31,836	\$32,473	\$33,123

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**5. Capital Investment and Financing Plan (Investment per unit) – Form D**

Proposed Brand	Proposed Capital Investment	Amount:	Source:
iStore			All costs fully funded by Zoom capital (cash)
	Fixture	\$600	
	Machine	\$8,500	
	Modem/POS/PC	\$1,200	
	Signage	\$100	
	Outlet Installation Location #8,10,15	\$5,000	
	Machine Installation	\$3,000	
Benefit Cosmetics			All costs fully funded by Benefit Cosmetics
	Fixture	\$15,000	
	Machine	\$17,500	
	Modem/POS/PC	N/A	
	Signage	\$800	
	Outlet Installation Location#7,11,16	\$6,250	
	Machine Installation	\$3,000	
CVS Pharmacy			All costs fully funded by CVS
	Fixture	\$900	
	Machine	\$15,750	
	Modem/POS/PC	\$800	
	Signage	\$1,700	
	Outlet Installation Location #7,18	\$3,750	
	Machine Installation	\$3,000	
Vera Bradley			All costs fully funded by Vera Bradley
	Fixture	\$3,100	
	Machine	\$15,750	
	Modem/POS/PC		
	Signage	\$345	
	Outlet Installation Location # - N/A	N/A	
	Machine Installation	\$3,000	
Disney			All costs fully funded by Disney
	Fixture	\$3,324	

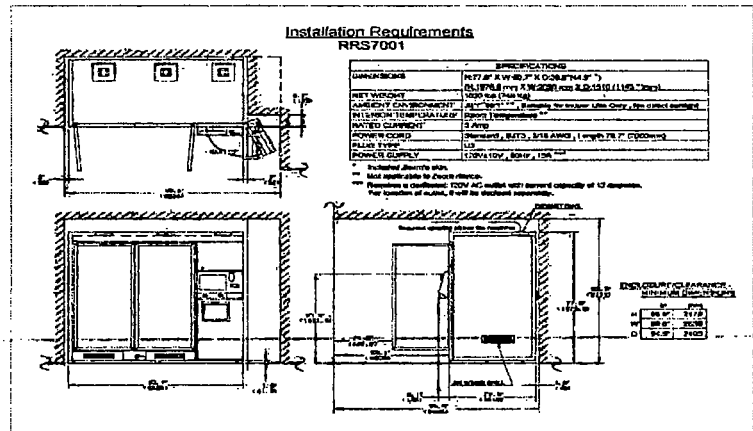
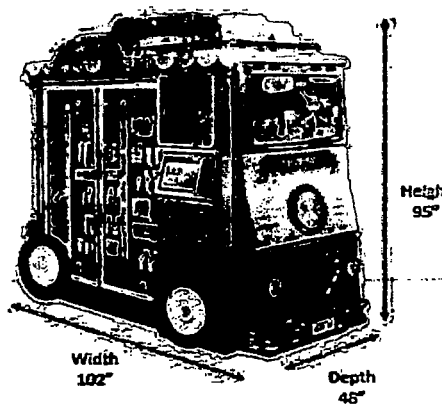
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	Machine	\$15,750	
	Modem/POS/PC	\$800	
	Signage	\$300	
	Outlet Installation Location # - N/A	N/A	
	Machine Installation	\$3,000	
PopSockets			All costs fully funded by PopSockets
	Fixture	\$3,000	
	Machine	\$17,163	
	Modem/POS/PC	N/A	
	Signage	\$500	
	Outlet Installation Location #17	\$2,500	
	Machine Installation	\$3,000	
Copper Compression			All costs fully funded by Copper Compression
	Fixture	\$2,000	
	Machine	\$8,500	
	Modem/POS/PC	\$1,200	
	Signage	\$300	
	Outlet Installation Location # - N/A	N/A	
	Machine Installation	\$3,000	

**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**

Brand	Description	Airport MSRP
AM labs	AM Labs Mist Spray & Microfiber Cloth, Grey	\$14.99
Apple	Apple AirPods Pro, White	\$299.99
Apple	Apple EarPods Lightning, White	\$49.99
Apple	Apple Lightning to 3.5 mm Headphone Jack Adapter, White	\$19.99
Apple	Apple Watch Magnetic Charging Cable, (3.3 ft.)	\$39.99
Apple	Apple USB-C Charge Cable, (1 m)	\$29.99
Apple	Apple AirPods (2nd Gen), White	\$179.99
Apple	Apple 60W MagSafe, 2 Power Adapter (MacBook Pro with 13-inch Retina Display)	\$99.99
Beats	Beats Solo Pro Wireless On-Ear ANC, Black	\$299.99
Beats	Beats urBeats 3 In-Ear Lightning, Black	\$69.99
Beats	Beats Powerbeats Pro Totally-Wireless In-ear, Black	\$249.99
Beats	Beats Powerbeats 2020 Wireless In-ear, Black	\$149.99
Bose	Bose SoundSport Free True Wireless Black	\$199.99
Bose	Bose QC35 wireless headphones II (Black)	\$349.99
Bose	Bose NC 700 Triple Black	\$399.99
Bose	Bose Frames Alto Audio Sunglasses	\$199.99
Naztech	Naztech Braided 3-in-1 Hybrid USB Cable, Silver	\$34.99
Hypergear	HyperGear 10000mAh Dual USB + USB-C Power Bank with Digital Battery Indicator	\$49.99
Hypergear	HyperGear Pocket Boost 5200mAh Portable Battery	\$29.99
Hypergear	HyperGear ChargePad Pro Wireless Fast Charger, Black	\$39.99
Naztech	Naztech Elite Series USB-C Charge & Sync Cable (4.0 ft), Black	\$29.99
Ventev	Ventev Global Charging Hub 300, Grey	\$34.99
iStore	iStore Classic Fit Earbuds w/Mic 3.5mm, Matte White	\$21.99
iStore	iStore Power Cube Duo 24W 2 ports, foldable prongs Charger, White Matte	\$24.99
iStore	iStore Headphones Splitter, Black	\$17.99
iStore	iStore Lightning Charge cable, (3.3 ft.), White	\$24.99
iStore	iStore Lightning Charge cable, (6.6 ft.), White	\$29.99
iStore	iStore Classic Fit Earbuds w/Mic 3.5mm, Matte Black	\$21.99
iStore	iStore Charging Set 5W Charger & Twin Head USB-C & Micro USB (3.3 ft.), Black	\$29.99
iStore	iStore USB-C to Lightning Cable 1m	\$29.99
iStore	iStore Multi-Port Power Cube 30W USB-C PD Charger 1 USB-A Port, White	\$44.99
iStore	iStore Charging Set 5W Charger & Lightning cable (3.3 ft.), White	\$34.99
iStore	iStore Classic Fit Wireless Earbuds w/Mic, Matte White	\$39.99
iStore	iStore Classic Fit Lightning Earbuds w/Mic, Matte Black	\$39.99
iStore	iStore Classic Fit Lightning Earbuds w/Mic, Dusty Rose	\$39.99
JBL	JBL Kids Onear Headphones, Red	\$29.99
Kenu	Kenu Air Frame Plus Car Mount	\$29.99
KeySmart	KeySmart CleanKey Brass Hand Tool	\$19.99
Kingston	Kingston Canvas Select Plus microSD 128GB	\$39.99
Moshi	Moshi USB-C to HDMI Cable 6.6 ft (2 m) - White	\$49.99
Moshi	Moshi USB-C to Dual USB-A Adapter, Space Grey	\$29.99
Moshi	Moshi ProGeo USB-C Laptop Charger (65 W, US)	\$79.99
Moshi	Moshi ProGeo USB-C Wall Charger (42 W, US), White	\$49.99
Moshi	Moshi Mythro C USB Type-C In-Ear, Gunmetal Grey	\$49.99
Moshi	Moshi AirPods Case - Black	\$27.99
Moshi	Moshi Pebbo Case AirPods Pro, Black	\$29.99
My Tagalongs	My Tagalongs Earbud Case, Black	\$11.99
My Tagalongs	My Tagalongs Earbud Case, Vixen Pink	\$11.99
Popsocket	Popsocket Phone Stand, Black	\$12.99
Popsocket	Popsocket PopMirror, Pink Blossom	\$19.99
Twelve South	Twelve South AirFly Duo Bluetooth Transmitter, White	\$54.99
Urbanista	Urbanista Paris In-Ear TW, Black	\$99.99
Urbanista	Urbanista Paris In-Ear TW, Rose Gold	\$99.99
ZAGG	ZAGG InvisibleShield Disinfecting Wipes, 25 Pack	\$8.99

Benefit Cosmetics Glam Up & Away ZoomShops are uniquely designed to resemble vintage pink beauty buses complete with fun slogans, fuzzy dice and several other of Benefit's famous ornate touches. As part of the Louis Vuitton Moët Hennessy (LVMH) family, the world's leader in luxury brands, Benefit's products can be found at over four thousand (4,000) counters in more than thirty-five (35) countries making it an instantly recognizable favorite of the traveling consumer.



Hand-in-hand, both the Benefit Cosmetics brand as well as our Benefit ZoomShops continue to thrive and expand across the United States. Benefit is the second fastest-growing prestige makeup brand in the US among the Top 10, with sales up 10% year-to-date. Among other accolades, Benefit is the #1 dollar ranked prestige makeup brand in Travel Size in the US, the #1 Brow Brand worldwide, the #1 Mascara Brand in the US, and now the #5 Makeup Brand in the US.

### ***Benefit Cosmetics: Success in Chicago***

**Benefit currently has stores throughout the greater Chicago Area including Sephora, Sephora in JCP, and Ulta.**

The success garnered in the Chicago market will certainly translate to success for our Benefit ZoomShops at Chicago O'Hare International Airport. Along with this success being captured in regional sales, it is also being captured with a tremendous social media presence. Overall, Benefit Cosmetics has 9.1M followers on US Instagram and 15M globally while the #flybenefit hashtag created specifically for our ZoomShops has made 144.3M Instagram impressions.

### ***Benefit Cosmetics: Bold is Beautiful Initiative***

In 2015, Benefit launched the Bold is Beautiful philanthropy program to help empower women and girls throughout the world and give back to local communities through donation proceeds coming from brow waxes. In 2018, Benefit raised over \$5.5M for Bold is Beautiful, donating to thirty-five (35) charity partners in total. Since the launch of the program in 2015, Benefit has raised more than \$16.5M. The US currently partners with programs such as Dress for Success, Girls Inc., Look Good Feel Better, The Princess Project, and Step Up.



Merchandise Services List

**Eyebrows**

Product	Price	Product	Price
Ka-Brow – Eye Brow Cream/Gel	\$24.00	Gimme Brow Volumizing Brow Gel	\$24.00
Precisely, My Brown – Eye Brow Pencil	\$24.00	Gimme Brow Volumizing Brow Gel (Mini)	\$12.00
Goof Proof – Eye Brow Pencil	\$24.00	3-D Browtones – Eye Brow Enhancer	\$24.00
Goof Proof – Eye Brow Pencil (Mini)	\$12.00	High Brow – Eye Brow Highlighter	\$22.00

**Cheeks**

Product	Price	Product	Price
Dandelion Finishing Powder	\$29.00	Hoola – Powder Bronzer	\$29.00
Dandelion Finishing Powder (mini)	\$15.00	Hoola – Powder Bronzer (Mini)	\$15.00
Rockateur – Powder Blush	\$29.00	Dew the Hoola – Liquid Bronzer	\$28.00
Galifornia – Powder Blush	\$29.00	Cheeky Party – Finishing Powder/Blush Kit	\$30.00
High Beam – Liquid Highlighter	\$26.00	1 <sup>st</sup> Prize Highlighters – Highlighter Kit	\$18.00
Watt's Up – Cream Highlighter	\$30.00	Benetint – Cheek/Lip Stain	\$30.00

**Face**

Product	Price	Product	Price
the POREfessional – Pore Minimizer/Face Primer	\$31.00	POREfessional Matte Rescue	\$28.00
the POREfessional (Mini)	\$12.00	POREfessional Matte Rescue (Mini)	\$12.00
Agent Zero Shine – Shine Minimizing Powder	\$30.00	Team POREfessional – Face Kit	\$33.00
Boi-ing – Full Coverage Concealer	\$20.00	Fakeup – Concealer	\$24.00
Hello Flawless Powder – Powder Foundation	\$34.00	Hello Flawless – Liquid Foundation	\$30.00

**Eyes**

Product	Price	Product	Price
Puff Off! – Under Eye Gel	\$29.00	Stay Don't Stray – Eye Shadow Primer	\$26.00
They're Real! – Mascara	\$24.00	Roller Lash – Mascara	\$24.00
They're Real! – Mascara (Mini)	\$12.00	Roller Lash – Mascara (Mini)	\$12.00
They're Real! Primer – Tinted Mascara Primer	\$24.00	BadGal Lash – Mascara	\$19.00
They're Real! Primer – Tinted Mascara Primer (Mini)	\$12.00	BadGal Lash – Mascara (Mini)	\$10.00
They're Real! Liner - Eyeliner	\$24.00	BadGal Liner – Waterproof Eyeliner	\$20.00
They're Real! Liner – Eyeliner (Mini)	\$12.00	Big Beautiful Eyes – Eye Makeup Kit	\$32.00
Real Tease – Mascara and Eyeliner Kit (Mini)	\$22.00	They're Real! Big Sexy Eye – Eye Shadow Kit	\$36.00

**Lips**

Product	Price	Product	Price
They're Real Big Sexy Lip Kit – Lipstick/Liner Kit	\$29.00	Tints to Tease – Tinted Lip Balm Kit	\$18.00
Benetint – Tinted Lip Balm	\$18.00	Positint – Tinted Lip Balm	\$18.00

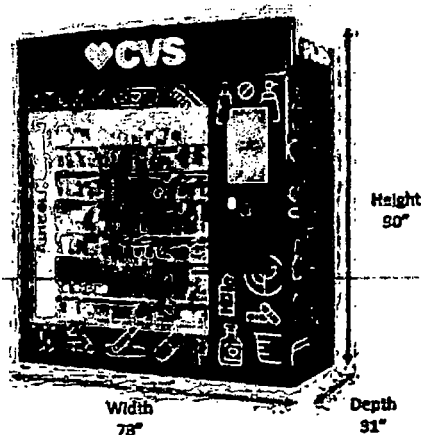
**Kits**

Product	Price	Product	Price
First Class Faves – Travel Sized Best Sellers Kit	\$27.00	B.Right 6 Pack – Travel Sized Skin Care Kit	\$24.00



## CVS Pharmacy

Launched in 2018, CVS branded ZoomShops allow customers to quickly and easily access the health products they need from a provider they trust. Providing a wide array of health essentials and key convenience items across all categories, CVS ZoomShops offer the best of CVS Pharmacy's thirty thousand (30,000) items. With over 9,800 retail locations, CVS is the largest pharmacy in the United States with over forty-five (45) million households using CVS products and sixty-two (62) million consumers actively engaged in the CVS extra care loyalty program while having over five (5) million customers shop at a CVS store every day. In today's pandemic landscape, passengers will be searching for these health/wellness items at an affordable cost from a trusted brand!



CVS automated retail stores are designed to improve the experience of travelers by offering ninety (90) unrivaled convenience and health essential items from leading national brands and CVS Store Brands. The CVS Store Brand items encompass 1.9 million products sold every day and around 90% of the products featured in our ZoomShops are CVS branded and backed with a 100% money back guarantee.

CVS products help bring life to the homes of millions of people. Their innovative products of uncompromising quality are created to meet their customers' unique needs and help them feel their best and live life to the fullest. CVS takes immense pride in providing brands that are trusted by their customers to care for themselves and their loved ones.

### Unrivaled in the Airport Environment

The CVS branded ZoomShops provide a healthcare and wellness product assortment to passengers that is currently not available in any traditional airport retail venues. The CVS ZoomShop offers full-sized product assortments compared to single-dosage options that often may be found at other airport retailers.

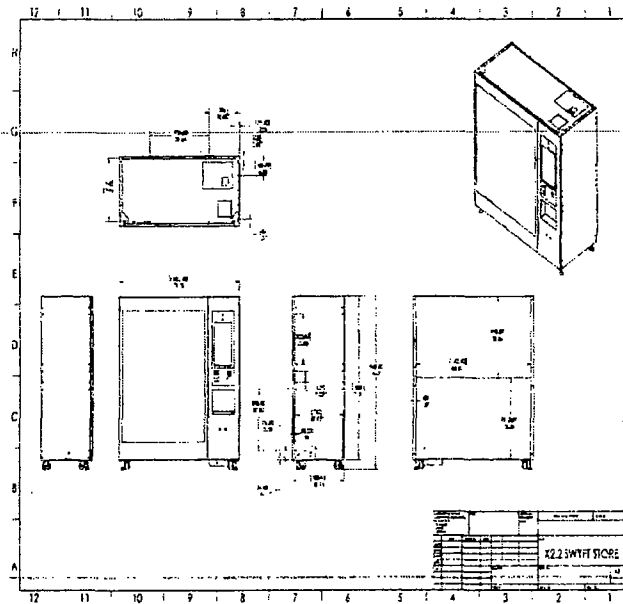
Recent statistics show that healthcare product earnings only incorporate less than seven percent (5%) of annual sales in other airport retail venues. The market for the CVS ZoomShop, in an accessible location in airports is truly unrivaled and necessary to accommodate the needs of passengers, especially as we move into a post-pandemic environment.



### Merchandise Services List

Product	Price	Product	Price
<b>Cold Remedies</b>			
CVS Health Decongestant Tablets	\$4.89	CVS Health Menthol Eucalyptus	\$1.99
Mucinex 600Mg Expectorant Extended Release	\$15.99	Abreva Cold Sore Treatment	\$21.99
CVS Health Max Strength Sinus Day/Night	\$11.79	Ricola Natural Herb Cough Droops	\$3.19
CVS Health Nasal Mist	\$6.99	Airborne Gummies	\$17.99
CVS Health Honey Lemon Cough Drops	\$1.99	Zicam Cold Remedy	\$14.49
<b>Pain Relievers</b>			
CVS Health Extra Strength Non-Aspirin Caplets	\$4.69	CVS Health Low Dose Aspirin	\$2.79
CVS Health Ibuprofen Tablets	\$3.79	CVS Health Children's Ibuprofen	\$6.99
CVS Health Extra Strength Headache Relief	\$4.99	CVS Health Children's Pain & Fever	\$6.99
<b>Digestive Health</b>			
Pepto-Bismol Original Liquid	\$3.99	CVS Health Motion Sickness Tablets	\$7.99
Pepto-Bismol Chewable Tablets	\$7.29	CVS Health Extra Strength Gas Relief	\$6.99
CVS Health Antacid Tablets	\$5.39	CVS Health 24-Hour Acid Reducer	\$21.99
CVS Health Max Strength Acid Reducer	\$6.99	CVS Health Anti-Diarrheal Soft Gels	\$7.99
<b>Allergy Remedies</b>			
CVS Health Fluticasone Nasal Spray	\$13.29	<b>CVS Health Cetirizine Hydrochloride Tablets</b>	\$18.99
CVS Health Loratadine Tablets	\$15.79	CVS Health Diphenhydramine Hydrochloride	\$4.99
<b>Sleep Aids</b>			
ZzzQuil Nighttime Sleep-Aid Liquicaps	\$7.19	CVS Health Ibuprofen PM Caplets	\$4.69
CVS Health Nighttime Sleep Aid	\$5.29	CVS Health Melatonin Capsules	\$12.29
<b>First Aid</b>			
CVS Health Blister Cushions Toe and Heel	\$6.29	CVS Original Strength Antibiotic Ointment	\$4.99
CVS Health Flexible Fabric Anti-Bac Bandages	\$4.09		
<b>Oral Hygiene</b>			
CVS Health Mouthwash & Gargle Mint	\$1.99	CVS Health Travel Sonic Tooth Brush	\$15.29
Crest 3D White Whitening Toothpaste	\$1.49	Colgate Maxfresh Travel Toothbrush	\$2.09
<b>Personal Care</b>			
Secret Women's Invisible Solid Antiperspirant & Deodorant Original Powder Fresh Scent	\$3.59	Old Spice High Endurance Invisible Solid Men's Anti-Perspirant & Deodorant	\$3.99
Gillette Venus Close & Clean in 1 Stroke Razor	\$8.99	Gillette TGS Series Shave Gel Sensitive Skin	\$2.09
Gillette Fusion Men's Razor	\$9.99	TRESemme Hair Styling Gel	\$2.29
TRESemme Extra Hold Non Aerosol Hair Spray	\$2.49	TRESemme Moisture Rich Shampoo	\$1.99
Not Your Mothers Refreshing Dry Shampoo	\$3.29	Tampax Compact Plastic Tampons Regular	\$1.79
Tampax Compact Plastic Tampons Super	\$6.29	CVS Health Thin Pantliners Unscented	\$1.39
CVS Health Ultra Thin Pads Regular With Wings	\$3.59	Burt's Bees Lip Balm Blister Pack	\$6.29
CVS Health Chap-Block Lip Moisturizer	\$3.19	Beauty 360 Compact Clipper With File	\$2.19
Beauty 360 Makeup Remover Towelettes	\$6.49	Maybelline Great Lash Waterproof Mascara	\$5.99
CVS Ultra Sheer Broad Spectrum Sunscreen	\$8.49	Durex Real Feel Non-Latex Condoms	\$7.29
Durex Invisible Premium Condoms	\$7.29	CVS Health Max Redness Relief Eye Drops	\$4.89
CVS Health Multi-Purpose Solution Contact Lenses	\$5.39	CVS Health Contact Lens Case Deluxe 2 Pack	\$3.99
Downy Wrinkle Releaser	\$2.79	Tide To Go Instant Stain Remover Pen	\$4.09

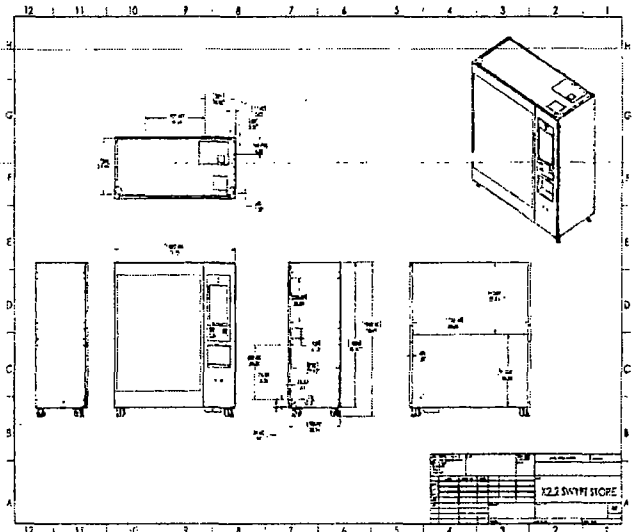
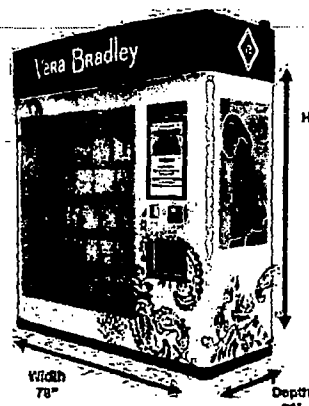
## CVS Pharmacy Cut Sheet



## Vera Bradley

ZoomSystems launched the Vera Bradley automated retail program in 2020, debuting the iconic brand's top selling handbags and accessories that have been a staple for Vera Bradley since its inception in 1982. In their own words, "We're obsessed with pattern and color, fun and function... and adding a little extra to every day." Known for their energetic and joyful, charming and feminine prints, Vera Bradley is an award-winning brand, and has grown to the #2 bag brand, #1 duffel bag brand, #2 women's cosmetics brand, and #3 backpack brand. Vera Bradley believes in a sustainable design, creating one (1) yard of fabric from sixteen (16) plastic bottles. Vera Bradley is truly a trusted partner, as the brand has teamed with top brands like Starbucks, Crocs, and Venus to creating new and unique product lines.

Vera Bradley



Vera Bradley automated retail stores are designed to provide passengers with the energetic, happy and joyful shopping experience that the brand continually achieves. The Vera Bradley products included within the machine offer selections from its top Signature Cotton, Microfiber, Reactive and Performance Twill bag lines.

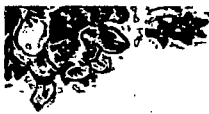
The Vera Bradley customer following is unparalleled in its category with over 2.5 million active followers and fans on social media, 1.3 million blog page views annually and over 140 million average monthly media impressions.

### Experience in the Airport Environment

The idea for this brand started 35 years ago in Atlanta-Hartsfield International Airport, where the founders observed how all of the luggage that they saw rolling around the concourse were dull and boring.

Vera Bradley has been successful within traditional airport retail venues, with boutiques located within the likes of Philadelphia International Airport and Indianapolis International Airport. The Vera Bradley ZoomShop allows the brand to expand with the airport channel where they have excelled, bringing their bright and recognizable products to millions of more travelers.

### Vera Bradley: Making a Difference in its Communities



At Vera Bradley, we love to make women's lives better. This common thread drives our purpose and fuels our passion, from the products we design to how we give back.



#### **BLESSINGS IN A BACKPACK**

Mobilizing communities to provide food on the weekends for elementary school children across America.



Raising funds — more than \$96.4 million since 1993 — to support critical breast cancer research.



#### **NEW HOPE GIRLS**

Providing light and life to girls and women arising from dark and difficult circumstances.



# Vera Bradley

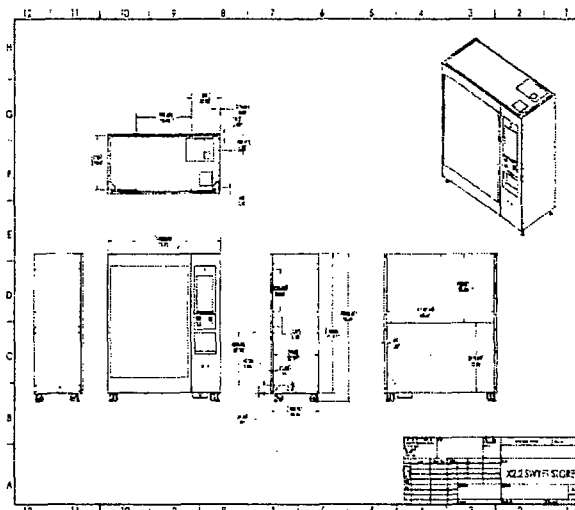
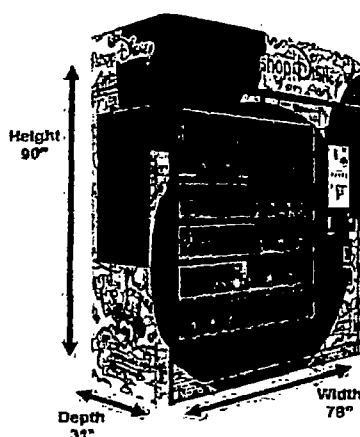
## Merchandise Services List

Product	Price	Product	Price
Iconic Compact Hanging Organizer Classic Black	\$70.00	Mini Travel Umbrella Rosy Garden Picnic	\$30.00
Iconic Curling & Flat Iron Cover Classic Black	\$30.00	Surgical Masks - 5 Pack	\$10.00
Iconic RFID All In One Crossbody Classic Black	\$85.00	Cotton Face Mask (Non-Medical)	\$8.00
Iconic Zip ID Case Classic Black	\$20.00	Mask Filter - 10 Pack	\$18.00
Packable Backpack Garden Grove	\$50.00	Iconic RFID All In One Crossbody Itsy Ditsy	\$65.00
Packable Backpack Strawberry Grand Garden	\$50.00	Iconic RFID All In One Crossbody Classic Navy	\$85.00
Packable Tote Garden Grove	\$50.00	Iconic RFID All In One Crossbody French Paisley	\$65.00
Packable Tote Strawberry Grand Garden	\$50.00	Iconic RFID Smartphone Wristlet Bonbon Medallion	\$50.00
Packable Duffel Bag Garden Grove	\$60.00	Iconic RFID Smartphone Wristlet French Paisley	\$50.00
Packable Duffel Bag Strawberry Grand Garden	\$60.00	Iconic RFID Smartphone Wristlet Classic Black	\$70.00
Travel Takes Passport Cover Fruit Grove	\$25.00	Iconic RFID Accordion Wristlet French Paisley	\$60.00
Travel Takes Eye Mask Fruit Grove	\$15.00	Iconic RFID Accordion Wristlet Classic Black	\$80.00
Mini Travel Umbrella Strawberry Grand Garden	\$30.00	Iconic Zip ID Case Itsy Ditsy	\$15.00
Iconic Curling & Flat Iron Cover Classic Black	\$70.00	Iconic Zip ID Case French Paisley	\$15.00
Iconic Lanyard Bonbon Medallion	\$15.00	Iconic Luggage Tag French Paisley	\$15.00
Iconic Lanyard Itsy Ditsy	\$15.00	Carson Cellphone Crossbody French Paisley	\$30.00
Iconic Lanyard French Paisley	\$15.00	Carson Cellphone Crossbody Itsy Ditsy	\$30.00
Iconic Travel Pill Case Itsy Ditsy	\$20.00	Carson Cellphone Crossbody Bonbon Medallion	\$35.00
Iconic Travel Pill Case French Paisley	\$20.00	Iconic Curling & Flat Iron Cover French Paisley	\$25.00
Iconic Travel Pill Case Bonbon Medallion	\$20.00	Iconic Curling & Flat Iron Cover Itsy Ditsy	\$25.00
Travel Takes Passport Cover Floating Garden	\$25.00	Iconic Compact Hanging Organizer Bonbon Medallion	\$50.00
Travel Takes Eye Mask Floating Garden	\$15.00	Iconic Compact Hanging Organizer French Paisley	\$50.00
Iconic Luggage Tag Bonbon Medallion	\$15.00	Iconic Luggage Tag Floating Garden	\$15.00

## Disney

The Disney branded ZoomShop is one of the newest brands within the ZoomSystems portfolio. The Walt Disney Company needs no introduction as it has grown into a multinational conglomerate, diversified within live-action film production, television, media, theme parks and retail, among other emerging channels. Disney is one of the top 10 brands in the world and is known as one of the most recognizable brands in history. The Disney Store subsidiary was created in 1987 as an entertainment store, selling only Disney related items, many of them exclusive, under its own name and Disney Outlet. Today the giant owns/licenses over 700 stores. In 1999, Disney opened its second flagship store in Chicago on the Magnificent Mile. The "Blues Mickey" quickly became the Chicago-specific toy and since then, has been beloved by all Chicagoans.

shop **Disney**



The Disney automated retail stores are designed to transform the Chicago O'Hare airport shopping experience into the happiest place on earth. The Disney ZoomShop appeals to children, adults and everyone in the family, featuring children's clothing, toys, and plush as well as a selection of adult merchandise. The product selection comprises of those classic Disney items that bring back priceless memories cherished from the past. In addition to Disney branded items, our store offers the hugely popular Marvel and Star Wars items, which are all under the Disney umbrella.

Disney products bring joy to the homes of millions of people, and passengers flying through ORD will be ecstatic to bring their loved ones those meaningful Disney gifts from their travels. Families will be thankful for a solution to lessen the challenges of flying with children.

### Disney: Born in Chicago

Chicago has always been close to the heart of Disney, as Walt Disney himself was born in the Hermosa neighborhood of Chicago. Today the Disney brand has a strong presence within the community with eight (8) stores in and around the city. The Disney ZoomShops are a perfect fit for ORD in growing the brand's long-standing presence in the city that means so much to Disney.

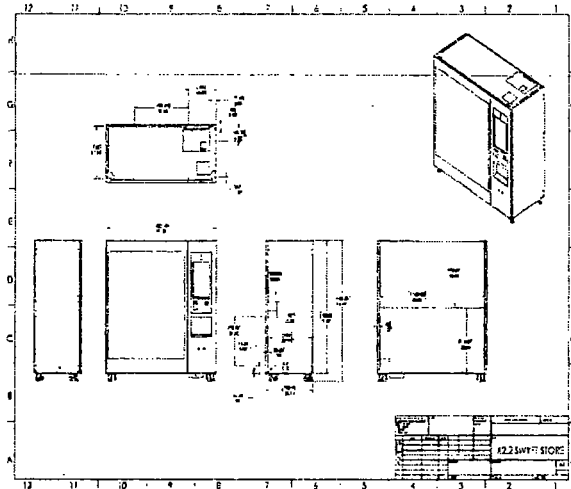
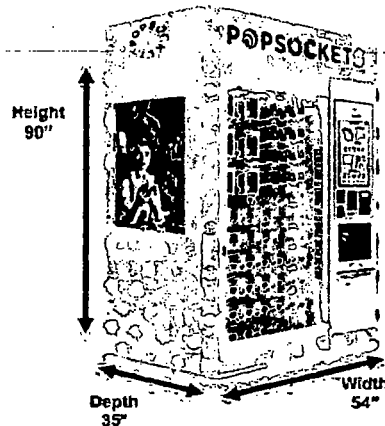
**shop Disney**  
Merchandise Services List

Product	Price	Product	Price
Mickey Mouse and Pluto Action Figure Set – Disney	\$12.95	Disney Animators' Collection Littles Snow White	\$12.99
Mickey Mouse Plush – Mini Bean Bag – 9"	\$9.95	Disney Animators' Collection Littles Wendy Set	\$12.99
Minnie Mouse Plush – Red – Mini Bean Bag – 9 1/2"	\$9.95	Sulley Action Figure – PIXAR Toybox	\$14.95
Stitch Plush – Mini Bean Bag – 6"	\$9.95	Frozen 2 Zip-Up Stationery Kit	\$16.95
Winnie the Pooh Plush – Mini Bean Bag	\$9.95	Minnie Mouse Zip-Up Stationery Kit	\$16.95
Tigger Plush – Winnie the Pooh – Mini Bean Bag	\$9.95	The Mickey Mouse Club Mouseketeer Canvas Tote	\$34.99
Olaf Plush – Frozen 2 – Mini Bean Bag – 6 1/2"	\$11.95	Mickey Mouse Walt Disney Studios Baseball Cap for	\$24.95
Disney Animators' Collection Elsa Mini Doll Set	\$19.99	Minnie Ears Earrings	\$19.95
Disney Animators' Collection Anna Mini Doll Set	\$19.99	Minnie Bow Earrings	\$19.95
Forky Interactive Talking Action Figure	\$19.95	Princess Crown Necklace	\$39.95
Bo Peep Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Princess Castle Necklace	\$19.95
Bullseye Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Minnie Mouse Fuzzy Bag Charm	\$16.99
Jessie Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Mickey Mouse Fuzzy Bag Charm	\$16.99
Buzz Lightyear Action Figure – Toy Story 4 – PIXAR	\$12.95	Mickey Mouse "Original Mouseketeer" PJ PALS	\$17.99
Woody Action Figure – Toy Story 4 – PIXAR Toybox	\$12.95	Mickey Mouse "Original Mouseketeer" PJ PALS	\$17.99
Cars "Old-Gen" Racers Pullback Die Cast Set	\$19.95	Mickey Mouse "Original Mouseketeer" PJ PALS	\$17.99
Lightning McQueen Rocket Racer Pull 'N' Race Die C	\$7.99	Mickey Mouse Packable Rain Jacket and Bag	\$34.95
Jackson Storm Rocket Racer Pull 'N' Race Die Cast	\$7.95	Mickey Mouse Packable Rain Jacket and Bag	\$34.95
Disney Animators' Collection Littles Cinderella	\$12.99	Mickey Mouse Packable Rain Jacket and Bag	\$34.95
Disney Gift Card	\$1.00	The Mickey Mouse Club Mouseketeer Ringer T-Shirt	\$24.99
The Mickey Mouse Club Mouseketeer Travel Pack	\$19.99	The Mickey Mouse Club Mouseketeer Ringer T-Shirt	\$24.99

### PopSockets

PopSockets is one of our new, creative, popular and in demand brand offerings. In 2018, PopSockets took the #2 spot on Inc. Magazine's list of the 5000 Fastest Growing Companies. The PopSockets ZoomShop offers some of the company's most popular products including the PopGrip, PopTop, PopWallet, and PopMirror, which are all designed to increase the functionality of digital devices we use daily.

**POPSOCKETS**



### Colorful, Functional and Ingenious – A Perfect Match

PopSockets is a brand that will peak the interests of all at ORD. The colorful pop that the company is known for will attract passengers to the store, and will provide an attractive, functional product for everyone, from Chicago sports teams to dazzling bejeweled themed products. This unique product offering is sure to be an instant hit!

### PopSockets: Unwaivering Generosity

PopSockets is a company that believes in giving back to the communities it serves. The company is known for its involvement in charities specific to the support of animals, the arts, environmental protection, education, health, human services, international aid, and women and children advocates. PopSockets has also recently launched an initiative that donates 100% of its proceeds of certain product lines to charity partners directly responding to the COVID-19 pandemic. Further, PopSockets has also launched a program called Poptivism. Poptivism is designed with a single purpose - to make the world better. As the company states, "It's easy to become a Poptivist. Just submit a PopGrip design or purchase a Poptivism product that you like. 50% of the sale will go to the non-profit assigned to it. It's activism at your fingertips." Lastly, PopSockets has become an active advocate for the black community. "Our mission is to advance the liberation and well-being of Black and Brown communities through education, self-empowerment, mass-mobilization and the creation of new systems that elevate the next generation of change leaders." as stated on their website.



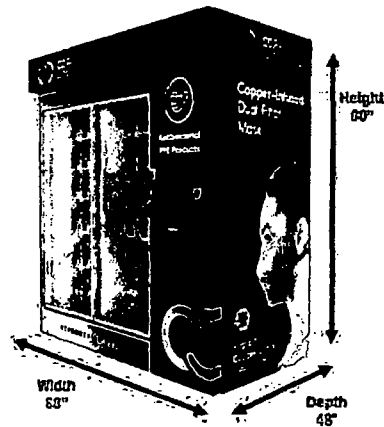
# POPSOCKETS

## Merchandise Services List

Product	Price	Product	Price
Black Car Vent Mount	\$14.99	Rose Quartz	\$29.99
Car Vent Glow in the Dark	\$14.99	Shark Bites Enamel	\$14.99
Black Multi-Surface Mount	\$9.99	Solar Flare Enamel	\$14.99
Black Car Dash & Windshield Mount	\$29.99	Pressed Flower Larkspur Purple	\$14.99
Black Car Dash & Windshield Mount	\$29.99	Sparkle Rose	\$14.99
PopGrip AirPods Holder Black	\$19.99	Rose Gold Metallic Diamond	\$14.99
PopGrip AirPods Holder Iris Purple	\$19.99	Backspin 45 RPM	\$19.99
PopWallet+ Saffiano Rose Gold	\$29.99	Opal	\$9.99
PopWallet+ Black	\$24.99	Magenta Nebula	\$9.99
PopWallet+ Blush Pink	\$24.99	Checker Black	\$9.99
PopWallet+ Sea Green	\$24.99	Moon	\$9.99
PopWallet+ Rose Gold Lutz Marble	\$24.99	The Child Cup	\$14.99
PopGrip Lips So Vanilla	\$14.99	Deathly Hallows	\$14.99
PopGrips Lips Strawberry Feels	\$14.99	Mickey Classic	\$14.99
Acetate Pearl White	\$19.99	Chicago Bears	\$14.99
Paua Abalone	\$29.99	Chicago Cubs/WhiteSox	\$14.99
Acetate Classic Tortoise	\$19.99	Black	\$9.99
Tidepool Rose	\$19.99	PopThirst Can Holder Wild Retro Rose	\$14.99
Tidepool Halo White	\$19.99	PopThirst Can Holder Checker Red	\$14.99
PopGrip Mirror Pink Blossom	\$19.99	PopThirst Cup Sleeve Wild Rose	\$14.99
PopGrip Mirror Black	\$19.99	PopThirst Cup Sleeve Black	\$14.99
Black Aluminum	\$14.99	PopChain Premium Chromatic	\$9.99
Black Car Vent Mount	\$14.99		

### **Copper Compression Personal Protective Equipment (PPE)**

In response to the COVID-19 pandemic, ZoomSystems prioritized its resources to developing a personal protective equipment (PPE) concept and to team with a national brand, like its other partners to provide these essentials for our partners. Copper Compression was a perfect fit, in that their mission was to provide customers with a reliable, safe and proven product that included their anti-microbial technology.



The Copper Compression PPE ZoomShop will offer passengers of ORD with an option to purchase a premium mask in three different colors utilizing their copper infused technology. Copper is a powerful anti-microbial agent and scientifically proven to stop and kill 99% of bacteria. The Copper-Infused Face Mask features a four-layer 3D structure with a dual-filter that blocks more than >95% of fine particulate matter. They are comfortable for all day use and are both reusable and washable. In addition to their copper infused masks, Copper Compression will also be adding other PPE essentials as supplies become available.

### **Copper Compression: The Brand You Can Trust**

For the last 5 years, Copper Compression has been designing and manufacturing some of the highest-rated wellness solutions on the market. The company has won the American Business Award for Consumer Product of the year for its Copper-Infused Dual Filter Face Mask. They are a top-200 Amazon seller and #1 in Healthcare and personal care anti-microbial wearables.

### **Merchandise List**

Product	Price
Copper Infused Face Mask- Black - Single Pack	\$13.00
Copper Infused Face Mask- White - Single Pack	\$13.00
Copper Infused Face Mask- Grey - Single Pack	\$13.00

**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*

(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20

Chicago Department of Aviation  
Chicago's O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_."

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT  
NO. \_\_\_\_\_**

**CERTIFICATE FOR DRAWING**

The undersigned, the Commissioner of the Chicago Department of Aviation, represents, warrants and certifies to \_\_\_\_\_ (the "Bank") with reference to Letter of Credit No. \_\_\_\_\_ issued by the Bank in favor of the City of Chicago (the "Beneficiary") that:

1. A breach of the Lease and License Agreement ("Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, as amended, modified or supplemented, between the City of Chicago ("City") and \_\_\_\_\_, an \_\_\_\_\_, has occurred, or a replacement Letter of Credit in a form and substance satisfactory to the City Comptroller has not been issued to the City by a Financial Institution meeting the requirements set forth in the Agreement. As a result, the City is making demand under the Letter of Credit to pay \_\_\_\_\_ dollars (\$\_\_\_\_\_) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

2. Payment of the draft shall be made by bank wire paid to our account as per our wire instructions below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name of Bank)  
(City & State)  
(ABA No.)  
(Account Name)  
(Account No.)  
(Reference No., if any)

3. All defined terms used but not defined herein shall have the meaning assigned hereto in the Letter of Credit.

In witness hereof, the City has executed this certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF CHICAGO

BY: \_\_\_\_\_  
Its: Commissioner of Aviation

**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**

## EXHIBIT 6

### **INSURANCE REQUIREMENTS** **Chicago Department of Aviation**

#### **Automated Retail License Agreement** **Food, beverage, retail products gifts and vending merchandise at O'Hare** **(Vending Machines)**

#### **A. INSURANCE REQUIRED**

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

- 1) Workers Compensation and Employers Liability (Primary and Umbrella)  
Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 2) Commercial General Liability (Primary and Umbrella)  
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.



3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Licensee with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Property

The Licensee must maintain All Risk Property Insurance for the licensed space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Licensee is responsible for all loss or damage to personal property including equipment, fixtures, contents, materials and supplies.

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) **Builders Risk**

When Licensee undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Licensee must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Licensee is responsible for all loss or damage to City of Chicago property at full replacement cost.

**B. Additional Requirements**

**Evidence of Insurance.** Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

**Failure to Maintain Insurance.** Failure of the Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

**Notice of Material Change, Cancellation or Non-Renewal.** Licensee must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

**Waiver of Subrogation.** Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

~~herein for any loss arising from or relating to this Agreement.~~ Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

Licensee's Insurance Primary. All insurance required of Licensee under this Agreement must be endorsed to state that Licensee's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Licensee under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Licensee maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated



satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs**

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives.

### C. REPORTING

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

### D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

## VI. GOOD FAITH EFFORTS

### A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

#### B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making

the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**

**A. NON-COMPLIANCE GENERALLY**

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

**B. NON-COMPLIANCE WITH ACDBE AGREEMENT**

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.



**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

**SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION  
CONTRACTS**

**I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

**Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%  
WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.

1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

- H. If the MBE or WBE subcontracts out any of its work:
1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
  3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**V. Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

**A. Schedule B: MBE/WBE Affidavit of Joint Venture**

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

**B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier**

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed



original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

**C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization**

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

**D. Letters of Certification**

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

**E. Schedule F: Report of Subcontractor Solicitations**

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

**F. Schedule H: Documentation of Good Faith Efforts**

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

## **VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
  - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  - 2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  - 3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - 4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  - 5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  - 6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  - 7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  - 8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

#### **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740

~~of the Municipal Code of the City of Chicago, within 15 business days of the final determination.~~

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

~~Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.~~

**EXHIBIT 9**

**ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS**



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I – GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

SWYFT, Inc

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: TEG SWYFT VENTURES

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party:

140 Geary St, 7<sup>th</sup> Floor  
San Francisco, CA 94108

C. Telephone: 706 400 1744 Fax: \_\_\_\_\_ Email: ANDREW@SWYFT.COM

D. Name of contact person: ANDREW OLSEN, CFO

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD AUTOMATED RETAIL FOOD and Servicing VENDING UNIT RFP

G. Which City agency or department is requesting this EDS? CITY OF CHICAGO DEPT OF AVIATION

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

#### 1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

#### 2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

DELAWARE

#### 3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☒ Yes ☐ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name

WALTER DAVID Gower Smith

Title

CEO

ANDREW OLSEN

CFO

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
	NONE	

**SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

**SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
--	------------------	--	---

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V – CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☐ No    ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.



## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

NA

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes ☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes ☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes ☐ No ☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes ☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

## SECTION VII – FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

# CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

SWYFT, Inc

(Print or type exact legal name of Disclosing Party)

By: [Signature]

(Sign here)

WALTER DAVID Gower Smith

(Print or type name of person signing)

CEO

(Print or type title of person signing)

Signed and sworn to before me on (date) \_\_\_\_\_

at \_\_\_\_\_ County, \_\_\_\_\_ (state).

\_\_\_\_\_  
Notary Public

Commission expires: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

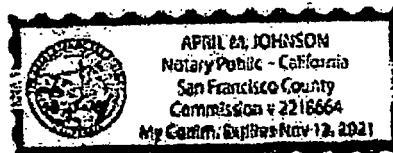
County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this 12th day

of July, 2021, by Walter David Gower Smith

proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature [Signature] (Seal)



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

[ ] Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

TFG SWYFT VENTURES

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party:

140 GEARY ST, 7<sup>th</sup> FLOOR  
SAN FRANCISCO CA 94108

C. Telephone: 716 400 1744 Fax: \_\_\_\_\_ Email: ANDREW@SWYFT.COM

D. Name of contact person: ANDREW OLSEN, CFO

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD AUTOMATED RETAIL, FOOD SERVICING VENDING UNITS RFI  
CITY OF CHICAGO  
G. Which City agency or department is requesting this EDS? DEPARTMENT OF AVIATION

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_



## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>WALTER DAVID GOWER SMITH</u>	<u>CEO</u>
<u>ANDREW OLSEN</u>	<u>CFO</u>

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
SWIFT INC	140 GEARY ST, 7 <sup>th</sup> floor San Francisco, CA 94102	67%
THE FOREST GROUP	1601 VINE ST, floor 6 LOS ANGELES, CA 90028	33%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V – CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☐ No    ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII.** For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

NA

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee



of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII – FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

**CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

TEG SWIFT VENTURES  
(Print or type exact legal name of Disclosing Party)

By: [Signature]  
(Sign here)

Walter David Gower Smith  
(Print or type name of person signing)

CEO  
(Print or type title of person signing)

Signed and sworn to before me on (date) \_\_\_\_\_,

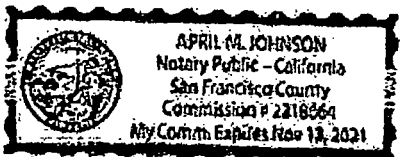
at \_\_\_\_\_ County, \_\_\_\_\_ (state).

\_\_\_\_\_  
Notary Public

Commission expires: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Francisco  
Subscribed and sworn to (or affirmed) before me on this 12th day  
of July, 2024 by Walter David Gower Smith  
Gower Smith, proved to me on the basis  
of satisfactory evidence to be the person(s) who appeared before me.  
Signature [Signature] (Seal)



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☒ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

The Forrest Group, LLC

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant

OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: TFG Swyft Ventures

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: 1601 Vine St Floor 6th, Los Angeles CA 90028

C. Telephone: 619.808.9798 Fax: \_\_\_\_\_ Email: CEO@TFGLA.COM

D. Name of contact person: ALLEN FORREST

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Retail, Food and Service Vending Units RFP.

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:
- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

CALIFORNIA

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☒ Yes ☐ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
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ALLEN FORREST	OWNER
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2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a



limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
ALLEN FORREST	1601 VINE ST FL 6TH LOS ANGELES, CA 90028	100%

### **SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### **SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☒ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

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None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

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None

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

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N/A

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

---

None

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII.** For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes ☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes ☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes ☐ No ☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes ☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

The Forrest Group, LLC

(Print or type exact legal name of Disclosing Party)

By: Allen Forrest

(Sign here)

Allen Forrest

(Print or type name of person signing)

Owner

(Print or type title of person signing)

Signed and sworn to before me on (date) July 9, 2021

at Los Angeles County, California (state).

[Signature]  
Notary Public

Commission expires: Oct. 9, 2024

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 9  
day of July, 2021, by Allen Forrest

proved to me on the basis of satisfactory evidence to be the  
person(~~s~~) who appeared before me.



(Seal)

Signature

A handwritten signature in black ink, appearing to read "Allen Forrest", written over a horizontal line.



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO**  
**ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT**  
**APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**EXHIBIT 10**  
**AIRPORT CONCESSIONS PROGRAM**  
**HANDBOOK**

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*

# **AIRPORT CONCESSION PROGRAM HANDBOOK**



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***



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### **APPENDICES:**

- 1 PHYSICAL INSPECTION STANDARDS
- 2 CONCESSION INSPECTION FORMS
- 3 FINANCIAL AUDIT STANDARDS
- 4 CONCESSIONS OPERATING STANDARDS
- 5 LISTING OF KEY DEPARTMENT OF AVIATION PERSONNEL
- 6 LISTING OF KEY CONCESSIONS MANAGEMENT PERSONNEL
- 7 RULES AND REGULATIONS

## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### CDA UNIT FUNCTIONS

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

### **STAGE 3 - DESIGN APPROVAL**

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### **STAGE 4 - PRE-CONSTRUCTION APPROVAL**

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### **STAGE 5 - CONSTRUCTION**

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### **PHYSICAL INSPECTIONS**

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.



Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

**CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS**

## **F&B Storage**

### **Dishwashing Area**

- Is Dishwashing Area Dry and Clean?
- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Handlers' Certificate Log on-site?
- Is the Food Temp Log on-site?
- Food Temps have not been taken/Temps okay
- Is the Health Department Inspection Report Posted?
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair
- Are Soda and Condiment Stations Clean and Maintained?
- Needs detail cleaning
- Is Cash Register Clean and Maintained?
- Is Grill/Cook Line Equipment Clean?
- Equipment needs detail cleaning
- Is Ice Machine Clean and in Good Repair?
- Leaking/needs repair
- Mold

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?
- Is the Exterior in Good Condition?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Bar Area Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water

- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Monthly F&B**

### **Dishwashing Area**

- Is Dishwashing Area Dry and Clean?
- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Handlers' Certificate Log on-site?
- Is the Food Temp Log on-site?
- Food Temps have not been taken/Temps okay
- Is the Health Department Inspection Report Posted?
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair
- Are Soda and Condiment Stations Clean and Maintained?
- Needs detail cleaning
- Is Cash Register Clean and Maintained?
- Is Grill/Cook Line Equipment Clean?
- Equipment needs detail cleaning
- Is Ice Machine Clean and in Good Repair?
- Leaking/needs repair
- Mold

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?
- Is the Exterior in Good Condition?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Bar Area Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

**Merchandise/Product**

Are Merchandise/Product Levels Adequate?

**Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

**Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

**Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

**Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?



## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## **APPENDIX 3**

### **FINANCIAL AUDIT STANDARDS:**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### **Lease Fees**

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### **Records**

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### **Insurances**

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

Security Deposit/Letter of Credit

\_\_\_\_\_ All concessions must provide a letter of credit or cashier's check per the terms of the \_\_\_\_\_ Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### General Airport Guidelines

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### Laws and Ordinances

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### Default Notices

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

**APPENDIX 6****KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905
Yolanda Woodruff Director of Retail Operations	(773) 894-5463
Dorine Litman Property Manager / ORD	(773) 894-3908
Patricia Grzyb Property Manager / MDW	(773) 838-0733
Sungjin Choi Construction and Design Manager	(773) 686-7606



## APPENDIX 7

### RULES AND REGULATIONS:

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

**EXHIBIT 11**

**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<u>Infraction</u>	<u>1<sup>st</sup> Violation</u>	<u>2<sup>nd</sup> Violation</u>	<u>3<sup>rd</sup> Violation</u>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

(Initial Here).

**EXHIBIT 12**

**UTILITY USAGE FEE**



**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## **EXHIBIT B-7**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**Nuts on Clark, Inc.**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT  
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]

## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

The City owns and, through CDA, operates Chicago O'Hare International Airport ("**O'Hare**" or the "**Airport**"). O'Hare includes an international terminal, three domestic terminals, a multimodal facility and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

The City and Licensee acknowledge that the continued operation of the Airport as safe, convenient, and attractive facility is vital to the economic health and welfare of the City of Chicago, and that the City's right to supervise performance under this Agreement by Licensee is a valuable right incapable of quantification.

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As



provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

2.1 Incorporation of Background. The background set forth above is incorporated by reference as if fully set forth here.

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE\WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

"Affiliate" means, except where otherwise defined, any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Licensee.

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

"Airport Concession Program Handbook" means the handbook developed by CDA to govern the uniform operation of the concessions' programs at the Airport. The Airport Concession Program Handbook is available on the CDA website and may be amended from time to time by CDA. Any amendment of the Airport Concession Program Handbook by CDA during the Term of this Agreement will be binding on Licensee without need for amendment of this Agreement, provided that the amendment of Airport Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissioner" means the head of the Department and any City officer or employee authorized to act on the Commissioner's behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where such person is expressly authorized to do so.

"Common Areas" means those areas of the Terminals that are not leased, licensed, or otherwise designated or made available by the Department for exclusive or preferential use by specific party or parties.

"Comptroller" means the head of the Department of Finance of the City and any City officer or employee authorized to act on the Comptroller's behalf.

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

The DBO shall be confirmed in writing by the parties, and such written "Confirmation of DBO" shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement.

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.

§6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

“Event of Default” has the meaning set forth in Article 9.

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the

Agreement is otherwise terminated.

“Licensed Retail Space” means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee’s automated retail vending machines.

“Licensed Space” means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

“Marketing Fee” means Licensee’s contribution for promotions at the Airport, as set forth in Section 4.09(a).

“Minimum Annual Guarantee” or “MAG” means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

“Monthly Reports” has the meaning set forth in Section 6.04(1).

“Percentage Fee” means the percentage fee(s) set forth in Exhibit 2.

"Products" means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Licensee is permitted to sell in its Licensed Retail Space and maintain in inventory in its Storage Space, if any, under the terms of this Agreement, as set forth by category or item in Exhibit 4. Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4 unless otherwise agreed in writing by the Commissioner.

“Response” means the response to the RFP Licensee submitted to the City.

“Service Schedule” has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

“Storage Space” means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner’s sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

“Term” means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

“Utility Usage Fee” means the fee for utilities used by Licensee’s automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

4.1 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

4.2 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43      Products.

(a)      General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)      Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written a written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)      Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44      Pricing.



(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five- day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first- class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix 1 of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

#### 4.7 Operation of Concession.

##### (a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

##### (b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area (“AOA”) must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards (“PCI Standards”) at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%



MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

55 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

- (i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.
- (ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

## 6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

(d) Year End True Up. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year exceeds the amount of all payments made by Licensee to the City for the License Year in question, then Licensee must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year is less than the amount of all License Fee payments made by Licensee to the City for the period in question, but the Percentage Fee still exceeds the MAG for that License Year, then Licensee will receive a credit against the next License Fee payment due under this Agreement for the amount by which the License Fee actually paid by Licensee exceeded the Percentage Fee attributable to the period.

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

#### 6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

(i) Licensee must also furnish to Commissioner no later than March 1 of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Licensee, showing in reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Concessions during the preceding License Year, copies of all returns and other information filed with respect to Illinois sales and use taxes, and as such other financial and statistical reports as the Commissioner may, from time to time, reasonably require by written notice to Licensee.

(ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$\_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

(b) Losses. "Losses" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Licensee, its employees, agents, subtenants, and Subcontractors.

(c) Defense of Suits. At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Agreement. Licensee must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involves the Airport.

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement



or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

(b) Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately vacate some or all of the Licensed Spaces until the Letter of Credit is in place and effective.

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

(d) Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

## ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION

9.1 Events of Default. Each of the following (a) through (n) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed thirty (30) days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within forty-five (45) days from delivery of the notice, Licensee will have the additional time, not in any event to exceed forty-five (45) days, to cure the failure.

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## **ARTICLE 10. SPECIAL CONDITIONS**

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

(a) Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

(b) Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

(i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or

(ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

(d) There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.

(e) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

(f) No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

(g) Licensee has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

(i) Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;



- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

(j) Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

(a) Authorization to do Business. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

(b) Economic Disclosure Statement. Licensee has provided the Commissioner with an EDS for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within thirty (30) days of any event or change in circumstance that

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

103 City's Right to Assign. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

a. City Council, in its sole discretion, if the Change in Ownership involves

- a 100% Change in Ownership of Licensee, or
- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

(iv) Consent by the City to any Change in Ownership does not relieve Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the

Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgment.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

(b) It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2-55 of the Municipal Code, respectively. Licensee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractors as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

(c) Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must surrender the Licensed Space to the City free from the presence and contamination of any hazardous substances.

(d) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

7-28-390 Dumping on public way—Violation—Penalty; 7-  
28-440 Dumping on real estate without permit;  
11-4-1410 Disposal in waters prohibited;  
11-4-1420 Ballast tank, bilge tank or other discharge; 11-  
4-1450 Gas manufacturing residue;  
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-  
1530 Compliance with rules and regulations required; 11-4-  
1550 Operational requirements;  
11-4-1560 Screening requirements; and  
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Licensee's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect Licensee's eligibility for future City agreements.

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

(f) Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):

(i) Licensee agrees that Licensee, any person or entity who directly or indirectly has an ownership or beneficial interest in Licensee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Licensee's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Licensee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this bid, proposal or Agreement by Licensee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Licensee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

(ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

(iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and



- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

(g) Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a “**business relationship**” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

- (i) Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "**Artwork**") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 *et seq.*) (the "**Copyright Act**"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and sublicensees, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

106 Airport Security.

(a) This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Licensee is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Licensee must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Licensee must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum-security enhancement. Any drawings, plans, and specifications provided by Licensee under this Agreement must comply with those guidelines for airport security developed by the City, the

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

(c) Gates and doors located on the Licensed Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Licensee until the malfunction is remedied.

(d) In connection with the implementation of its security program, Licensee may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Licensee acknowledges that all such knowledge and information is of a highly confidential nature. Licensee covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Licensee further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

(e) Licensee understands that fines and/or penalties may be assessed by the TSA or FAA for Licensee's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Licensee's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Licensee, or any party for which Licensee is liable under this Agreement, is responsible for all or part of the fine or penalty, Licensee shall pay said amount of the fine or penalty as Additional Fees.

#### 10.7 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the furnishing of services in the Licensed Spaces, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the License in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

(b) It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the License, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(f) Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Licensee of Licensee's obligations under this Agreement relative to nondiscrimination.

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

(h) Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

109 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

10.10 Avigation Easement. There is reserved to the City, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Licensed Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Licensee by accepting this License agrees for itself, its successors, and assigns that it will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Licensed Space and cause the abatement of the interference at the expense of Licensee.

10.11 National Emergency. This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.12 2014 Hiring Prohibitions.

(a) The City is subject to the June 16, 2014, "City of Chicago Hiring Plan" (the "**2014 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a sublicensee, and from directing Licensee to hire an individual as an employee or as a sublicensee. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Licensee in connection with this License are employees or sublicensees of Licensee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer- employee relationship of any kind between the City and any personnel of Licensee.

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Licensee by a City employee or City official in violation of this Section, or advocating a violation of this Section above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

## **ARTICLE 11. GENERAL CONDITIONS**

11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the grant and use of the License and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

11.2 Counterparts. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be

interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Chicago Department of Aviation  
City of Chicago  
O'Hare International Airport  
10510 W. Zemke Rd Chicago,  
Illinois 60666

and with a copy to:  
Deputy Commissioner of Concessions at the same address.



If the notice or communication relates to payment of Fees or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller  
City of Chicago  
City Hall - Room 501 121  
N. LaSalle Street  
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section 2  
North LaSalle Street, Suite 540  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

(a) This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

(c) To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs (a) and (b) above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs (a) and (b).

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee. Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 Estoppel Certificate. From time to time upon not less than fifteen (15) days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 No Personal Liability. Licensee, or any sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 Joint and Several Liability. If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Licensee is the joint and several obligations or undertaking of each such individual or other legal entity.

11.18 Non-Recordation. Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure event*"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within twenty (20) days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than sixty (60) days due to a *force majeure* event, without the express written consent of the Commissioner.

**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**

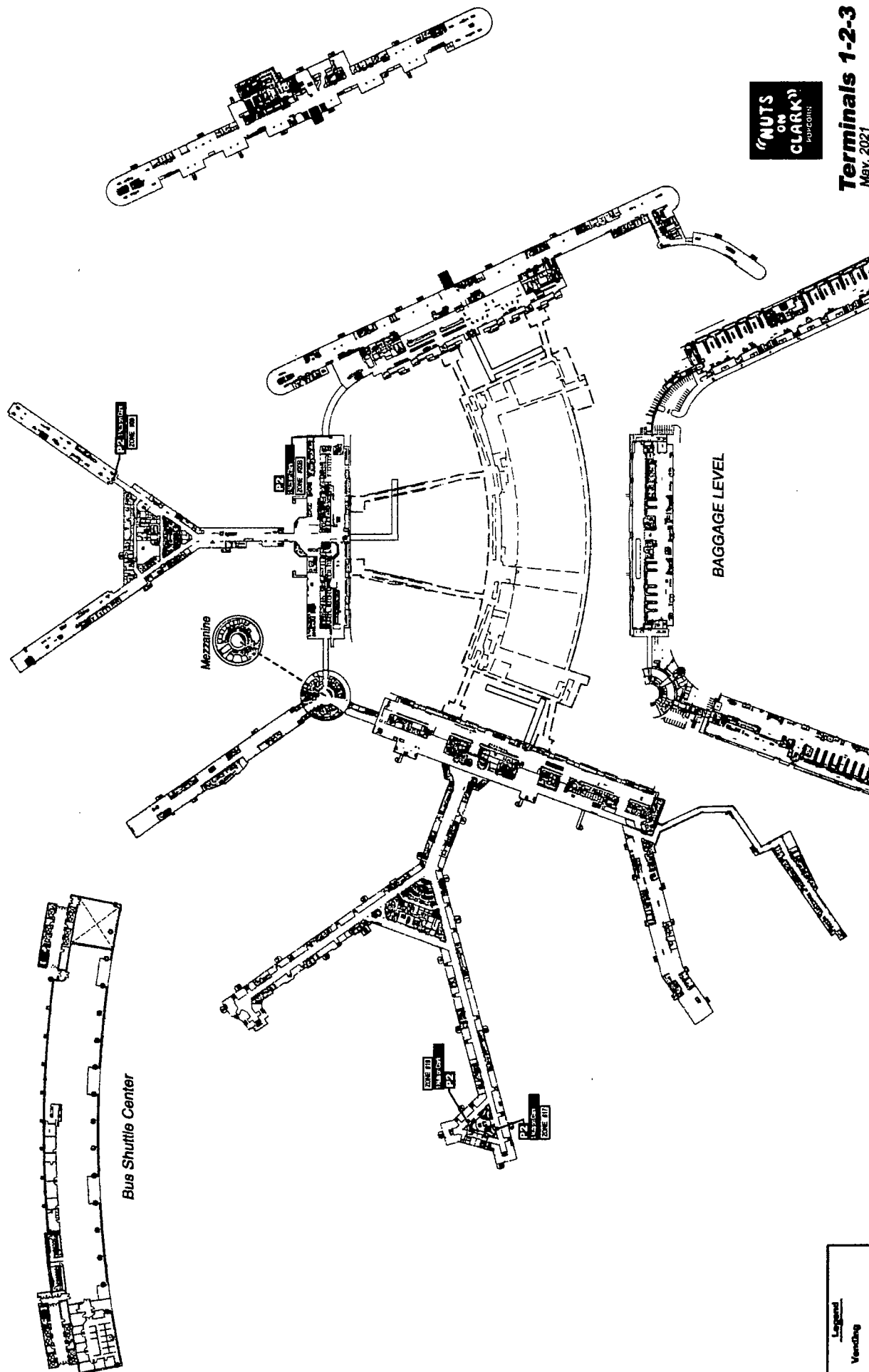
EXHIBIT 1  
LICENSED SPACE  
(INCLUDING CONFIRMATION OF DBO)

The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	n/a	T1B.U.107.B
2	n/a	T1B.U.12.B
3	n/a	T1B.U.73.M
4	n/a	T1B.L.94.O
5A	n/a	T1C.T.G.C
5B	n/a	T1B.THH.V
6	n/a	T2E.U.39.A
7	n/a	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	Nuts on Clark	T2E.U.48.A
10	n/a	T2.L.40.6
11	n/a	T2EF.U.16.D
12	n/a	T2.U.45.J
13	n/a	T3.U.8C.D
14	n/a	T3G.U.33.C
15	n/a	T3H.U.30.E
16	Nuts On Clark	T3K.9Ma.A

17	Nuts on Clark	T3K.U.75.L
18A	n/a	T3.L.8Y.C
18B	n/a	T3.L.8Y.C
19	n/a	CTA Pedway
20A	n/a	T2.U.4A.D
20B	Nuts on Clark	T2.U.4C.E
21	n/a	T3.U.8AA.F
22	n/a	T3HK.U.9R.E
23	n/a	L Stinger.U.2.3.A
24A	n/a	T2 CTA Pedway
24B	n/a	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD

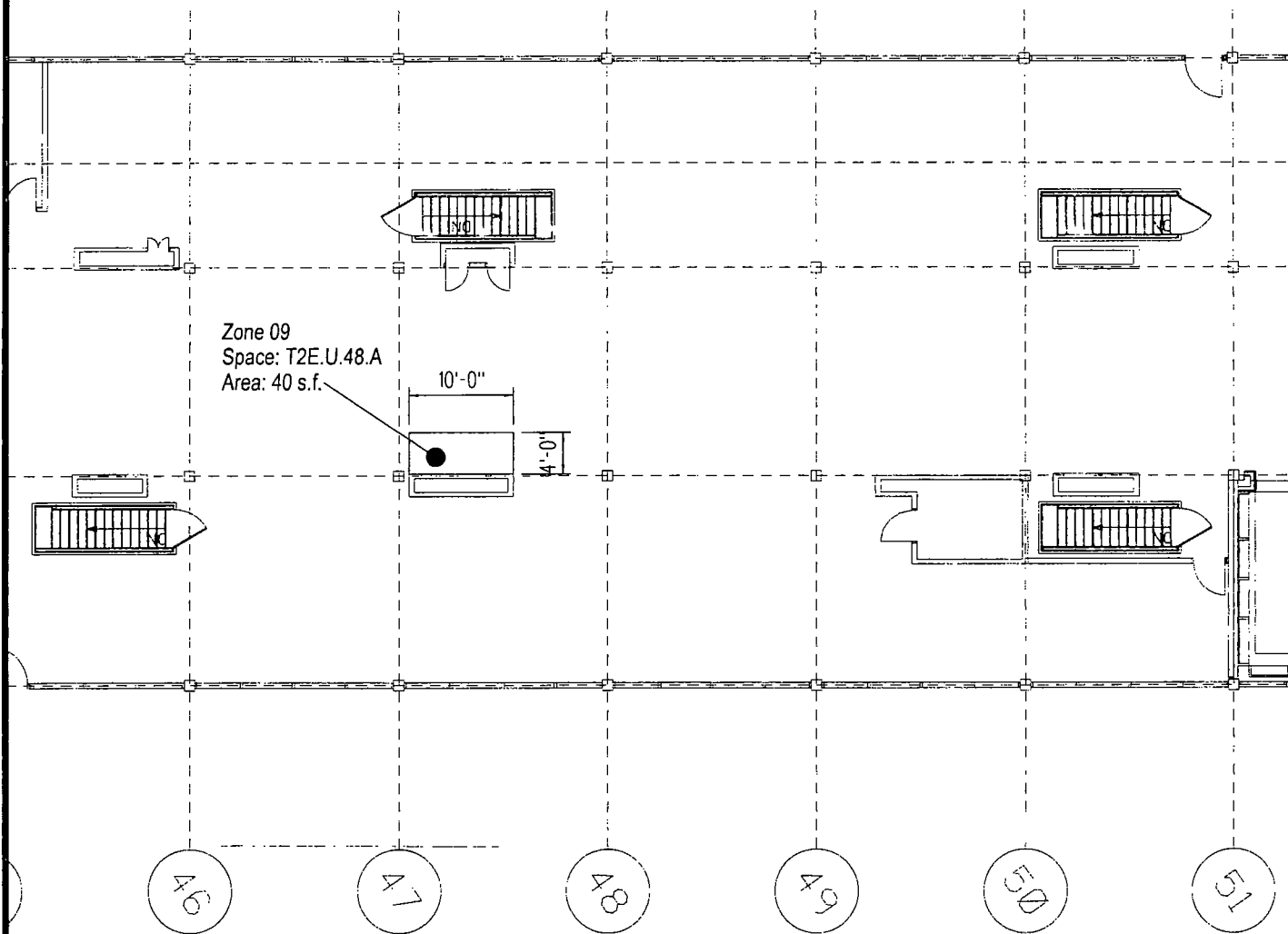


"NUTS  
ON  
CLARK"  
POPCORNS

**Terminals 1-2-3**  
May, 2021

**Legend**  
[P2] Vending





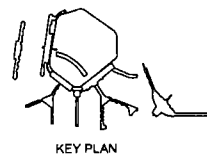
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"  
UNISON RETAIL MANAGEMENT

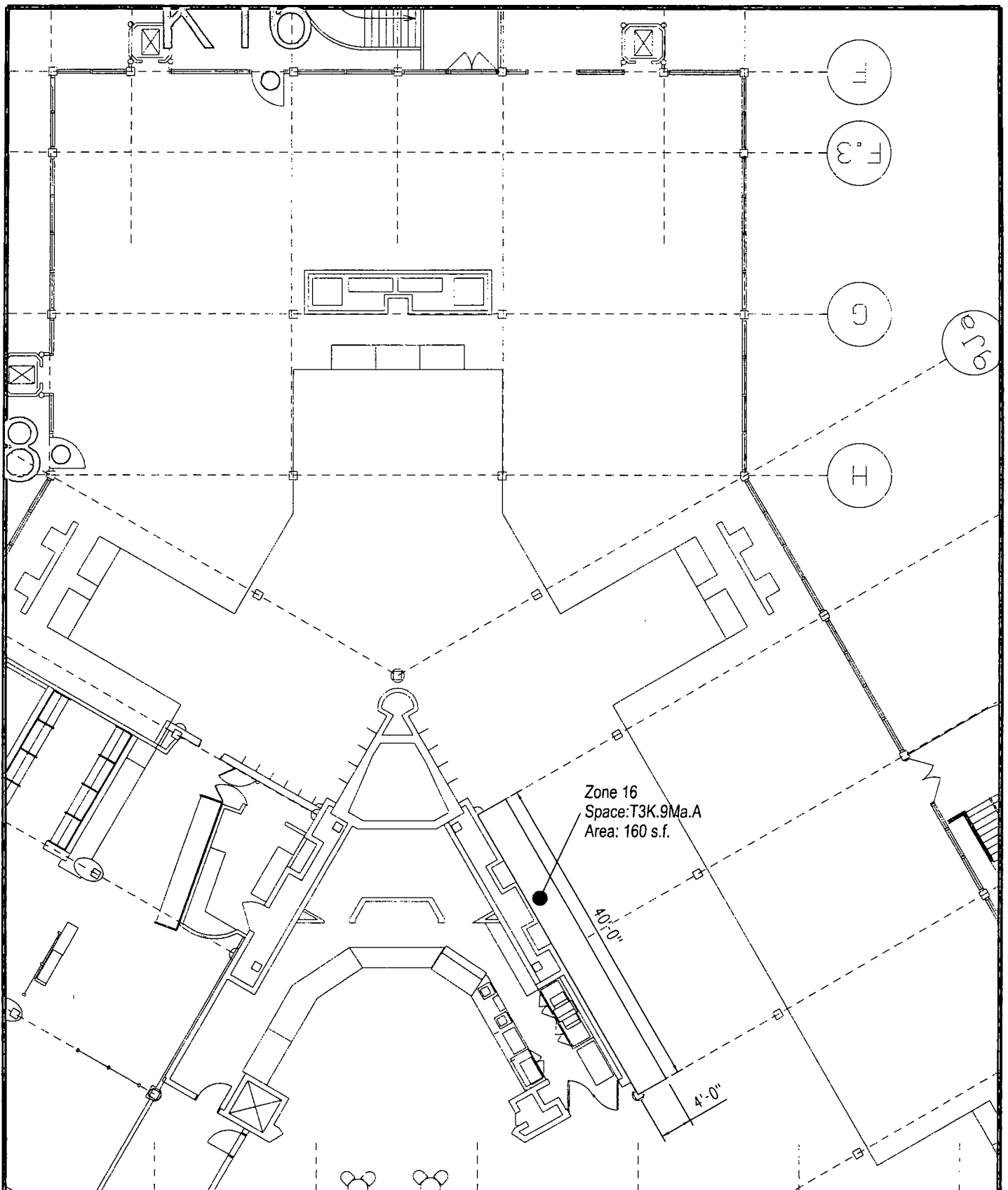
Terminal 2/Concourse EF Upper Level

Automated Retail  
Zone #09 (T2E.U.48.A)



Date: May, 2021

Created by CADD Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

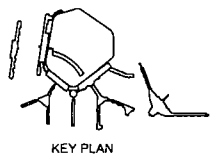
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Scale: 1" = 20'-0"

Terminal 3 / Concourse HK Upper Level

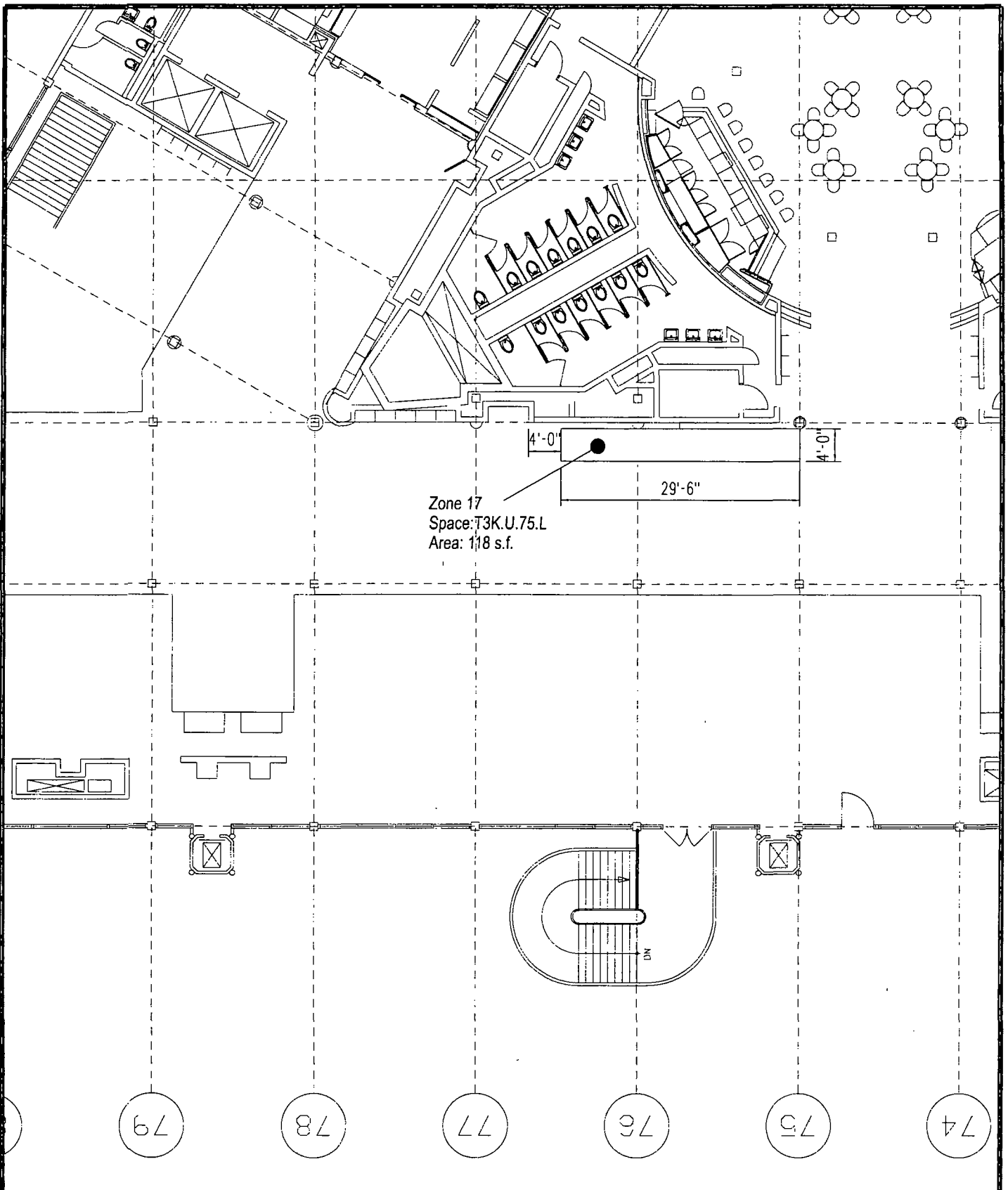
Automated Retail  
Zone #16 (T3K.9Ma.A)



KEY PLAN

Date: May, 2021

Created by CADDO Services



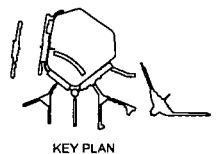
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

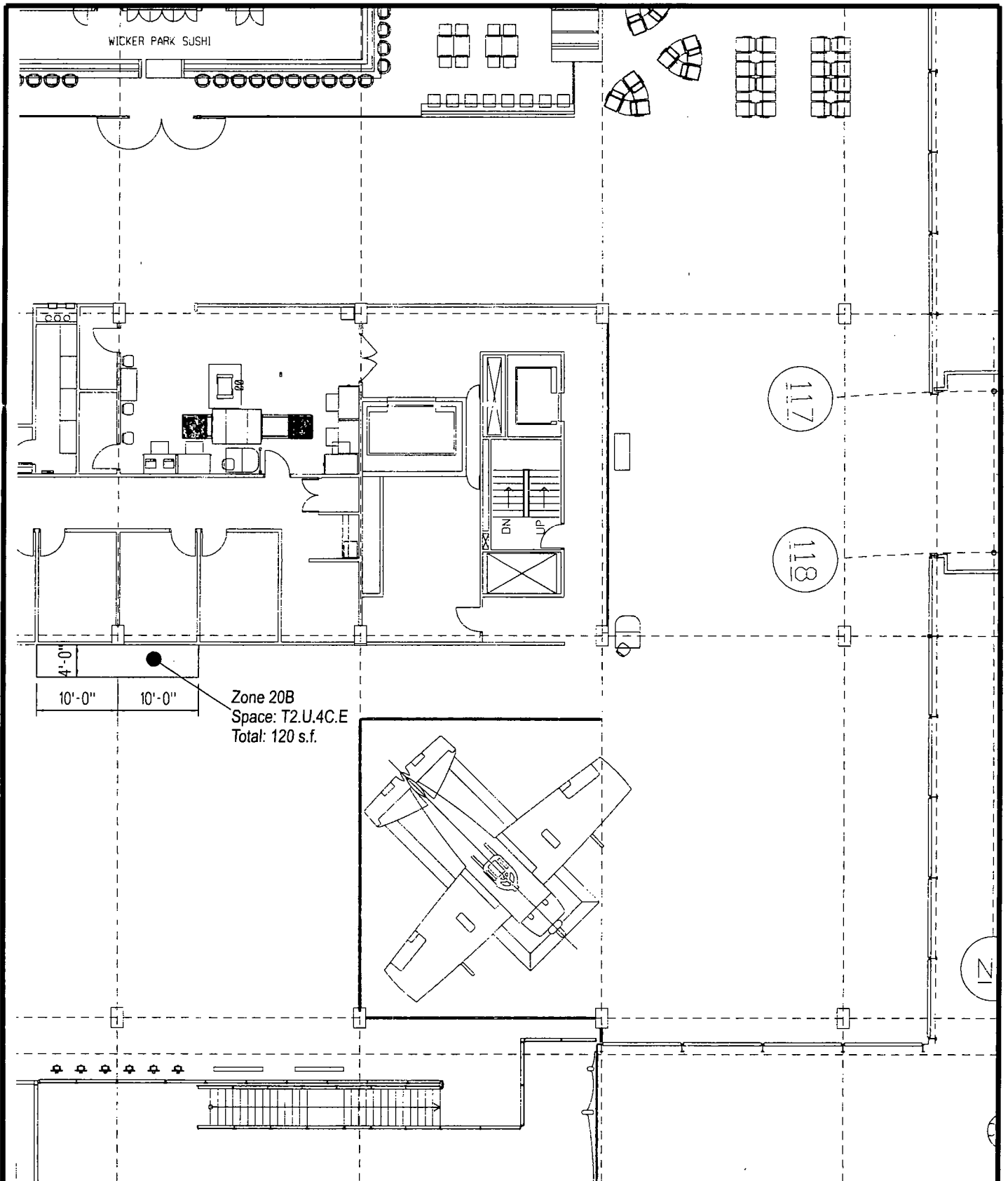
Terminal 3 / Concourse HK Upper Level

Automated Retail  
Zone #17 (T3K.U.75.L)



Date: May, 2021

Created by CADDO Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

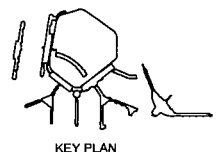
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

Automated Retail  
Zone # 20B (T2.U.4C.E)

Scale: 1/16" = 1'-0"



Date: May, 2021

Created by CADDO Services

**EXHIBIT 2**

**FEEs**

## **EXHIBIT 2**

### **FEES**

1. Percentage Fee: Nuts on Clark

Gross Revenues	Percentage Fee
\$0 - \$1,000,000	15.0%
\$1,000,000 - \$2,000,000	16.0%
Over \$2,000,000	17.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

**EXHIBIT 3**  
**DEVELOPMENT PLAN**

#### 4. Concessions Development Plan

##### **1. Concept/System and theme including why each component is best for ORD**

The Nuts on Clark / Midway Airport, Inc. ("Nuts on Clark") Cashless Vending Machine is a state-of-the-art popcorn vending machine that was specifically designed and created for "Nuts on Clark" to serve popcorn at airports, sports venues, stadiums, and grocery stores throughout the country. "Nuts on Clark" is excited for the opportunity to roll-out this new machine for the first time at O'Hare Airport. While "Nuts on Clark" has offered vending machines in other locations before, the new Cashless Vending Machine improves upon those machines as it takes the versatility of two popcorn self-service station units and integrates it with an innovative touchscreen cashless payment system. "Nuts on Clark" designed this cashless vending machine to fulfill the promise of fresh-popped popcorn for customers to purchase throughout the airport without visiting a store location or to be in contact with an employee. The vending machine will be replenished with fresh batches of popcorn, popped fresh at our airport locations. The Cashless Vending Machine has a door that closes and locks from the inside of the machine after the popcorn is dispensed. The bags for the customers' popcorn will be dispensed from inside the unit, individually from the unit to each customer, only one bag will be permitted per transaction and customer. The Cashless Vending Machine only accepts payment by credit card and cannot accept cash.

There are many benefits to Cashless Vending Machine that will benefit O'Hare Airport and its passengers including but not limited to:

- Easy to use;
- Cashless;
- Consumer friendly touchscreen for ordering and transactions;
- Visual and audio prompts to instruct customers during transactions;
- Accepting of all mobile and NFC payment protocols;
- Swipe, and EMV chip cards, and a fully integrated "back-of-the house" telemetry that allows business data to be reviewed via a mobile app or through a web page.

##### **2. Proposed menu of services and products and the approximate price range for each category.**

The Cashless Vending Machine will offer the much-loved, world-renowned popcorn that has made "Nuts on Clark" famous to O'Hare Airport passengers. On offer will be the two original flavors of "Nuts on Clark" popcorn: our signature butter popcorn and our original "Nuts on Clark" caramelcorn and cheesecorn mix. There will be two available sizes priced at \$5.00 for a medium and \$8.00 for a Large.

##### **3. Sources of merchandise, products, and supplies.**

All merchandise, products, and supplies will be from "Nuts on Clark" locations within the airport (Terminal 1, Terminal 2, Terminal 3, and Terminal 5). Additionally, there will be products available from the "Nuts on Clark" domestic Terminal 1B storage area and Terminal 5 storage area.

##### **4. Narrative description of the proposed capital improvements.**

This Cashless Vending Machine will cost approximately \$11,000 for initial capital investment.



#### 4. Concessions Development Plan

#### **5. Narrative description of the respondent's sustainability initiatives incorporated in the design and construction of the proposed tenant improvements.**

The "Nuts on Clark" Cashless Vending Machine is locally produced and is designed of recyclable materials. All "Nuts on Clark" popcorn is grown and contracted within the United States. "Nuts on Clark" exclusively uses eco-friendly, recyclable popcorn bags for all popcorn products.

#### **6. Preliminary plans in sufficient detail to allow evaluation of the quality and design of the proposed tenant improvements.**

The "Nuts on Clark" Cashless Vending Machine is a state-of-the-art cashless popcorn vending machine. The specifications of the "Nuts on Clark" Cashless Vending Machine include:

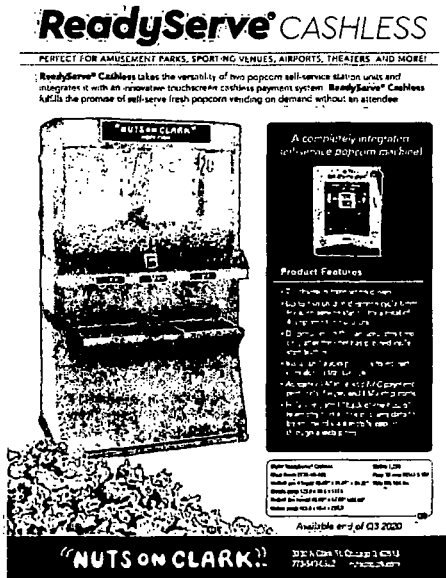
- On four legs: 48.66" Wide, 31.67" Deep, 54.12" High;
- On base: 48.66" Wide, 37.55" Deep, 80.89" High;
- Popcorn dispensing sections (2) measure 6" X 21.5";
- Uses 1,200 Watts;
- Plug: 15amp NEMA 5-15P.

The features of the Ready Serve® Cashless System include:

- Touchscreen transaction driven;
- Up to two unique dispense cycle times for each service station for a total of four dispense time choices;
- Dispense cycle that accumulates time only after the user has pressed cycle start button;
- Visual and audio prompts to instruct user during transaction;
- Accepts all mobile and NFC payment protocols, swipe and EMV chip cards



#### 4. Concessions Development Plan

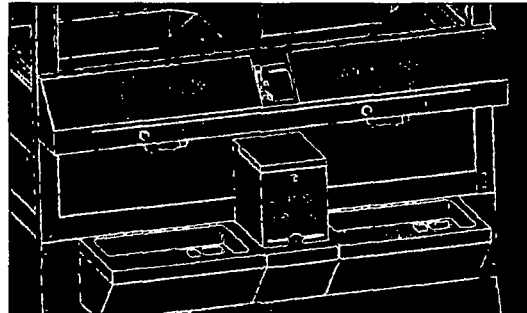


The “Nuts on Clark” Cashless Vending Machine will be serving two sizes and two flavors of “Nuts on Clark” popcorn. The vending machine will be replenished with fresh batches of popcorn, popped fresh at our airport locations. The Cashless Vending Machine has a door that closes and locks from the inside of the machine after the popcorn is dispensed. The bags for the customers’ popcorn will be dispensed from inside the unit, individually from the unit to each customer, only one bag will be permitted per transaction and customer. The Cashless Vending Machine only accepts payment by credit card and cannot accept cash.

The “Nuts on Clark: Cashless Vending Machine will be marketed at all the “Nuts on Clark” locations as another option for purchasing popcorn. “Nuts on Clark” plans to work closely with the Chicago Department of Aviation and Unison’s Marketing team to market the “Nut son Clark” Cashless

Vending Machine to passengers throughout the airport. Additionally, “Nuts on Clark” will be marketing the Cashless Vending Machine on all its social media platforms.

In order to educate the customers how to operate the “Nuts on Clark” Cashless Vending Machine, there will be instruction panels and step-by-step instructions at point of purchase, an audio and visual touchscreen credit card terminal, and an available “Nuts on Clark” ambassador nearby to assist with any questions or concerns. [How would an ambassador be altered to the fact the customer needs assistance?] The device is highly intuitive and we believe that the traveling public will easily understand how the machine is operated.



#### Proposed Project Schedule

The “Nut on Clark” Cashless Vending Machine is produced and available for operation and sales immediately. The testing and go live dates for the “Nuts on Clark” Cashless Vending Machine will be initiated as soon as the proposal is approved and locations are assigned. The installation, testing and go-live is a simple process that can be done in about a day. Once we are given the go-ahead to install the Cashless Vending Machine the machine can be live in the terminal very quickly.

#### Compensation to the City

See Form G.

#### **4. Concessions Development Plan**

##### **Projected Sales, Net Income, and Cash Flow**

See Form C.

##### **Major assumptions used to prepare Form C:**

- O'Hare Airport passenger traffic returns to 2019 levels;
- Vending machine is open from 7:00 AM CST – 9:00 PM CST, 365 days per year.

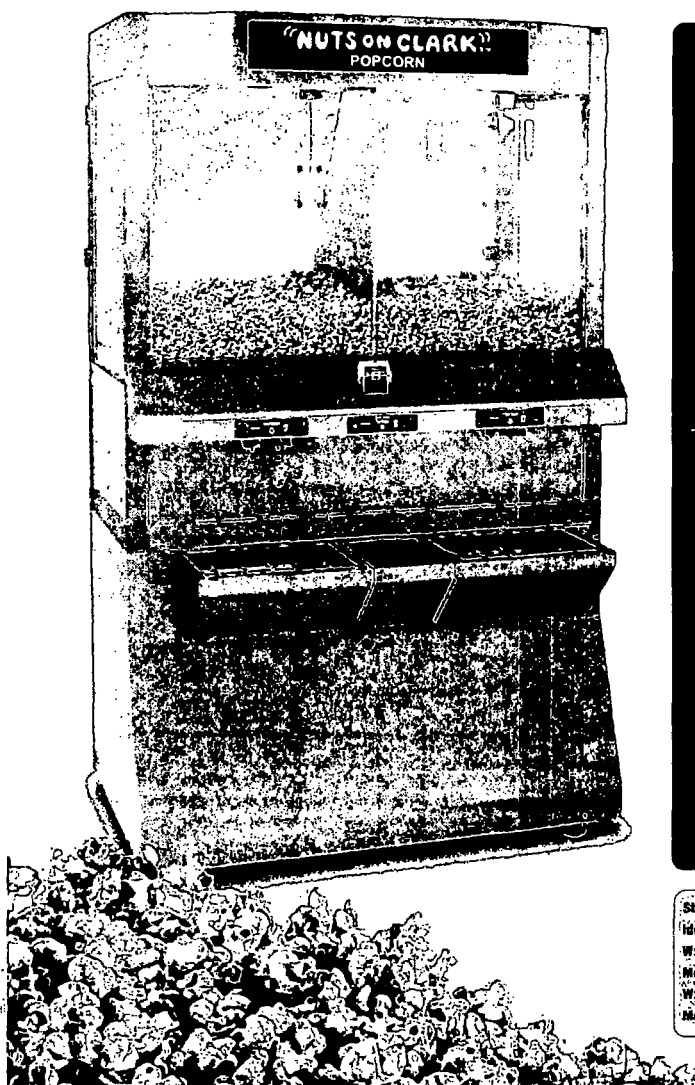
##### **Capital Investment and Financing Plan**

See Form D.

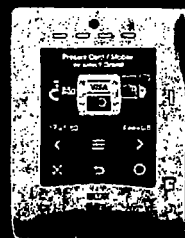
# ReadyServe® CASHLESS

PERFECT FOR AMUSEMENT PARKS, SPORTING VENUES, AIRPORTS, THEATERS, AND MORE!

**ReadyServe® Cashless** takes the versatility of two popcorn self-service station units and integrates it with an innovative touchscreen cashless payment system. **ReadyServe® Cashless** fulfills the promise of self-serve fresh popcorn vending on demand without an attendee.



*A completely integrated  
self-service popcorn machine!*



## Product Features

- Touchscreen transaction driven
- Up to two unique dispense cycle times for each service station for a total of 4 dispense time choices
- Dispense cycle that accumulates time only after the user has pressed cycle start button
- Visual and audio prompts to instruct user during transaction
- Accepts all Mobile and NFC payment protocols, Swipe, and EMV chip cards
- Fully-integrated "back-of-the house" telemetry that allows business data to be reviewed via a mobile app or through a web page

Style: ReadyServe® Cashless  
Ideal Base: 2779-00-000  
WxDxH (on 4 legs): 48.66" x 31.67" x 54.12"  
Metric (cm): 123.6 x 80.5 x 137.5  
WxDxH (on base): 48.66" x 37.55" x 80.89"  
Metric (cm): 123.6 x 95.4 x 205.5

Watts: 1,200

Plug: 15 amp NEMA 5-15P

Ship Wt: 326 lbs



Available end of Q3, 2020

**"NUTS ON CLARK"** © 124

3830 N Clark St, Chicago IL 60613  
773-549-6622 | nuts-on-clark.com

# Proposal Form C

## Projected Gross Receipts by Concession Type

Instructions: Provide a good faith estimate of Gross Receipts for each proposed Concession for the 2020 through 2026 Lease Years. The listing of Proposed Concession on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary. On a separate sheet, provide major assumptions in narrative format.

Respondent:

Nuts on Clark / Midway Airport, Inc.

Proposed Packages:

Package #3

Concession Type	Proposed Concept/Brand	Anticipated Opening Date	XX Months 2020	2021	2022	2023	2024	2025	2026
Package 1	Alternative Mobile Electronic Self-Ordering and Delivery Service								
Package 2	Automated Self-Checkout Micro Marts								
Package 3	Automated Retail, Services and Food	Q1 20201	\$350,000+	\$350,000+	\$350,000+	\$350,000+	\$350,000+	\$350,000+	\$350,000+

Chicago Department of Aviation  
Proposal Form C

July 30, 2020

# Proposal Form D Capital Investment and Financing Sources Plan

Instructions: Provide proposed capital investment and financing sources for each proposed Concession Package. Investment includes leasehold improvements; furniture, fixtures, and equipment; franchise fees. Investment does not include other start-up costs. The listing of Proposed Concessions on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary.

Respondent:

Nuts on Clark / Midway Airport, Inc.

Packages

Proposed: Package #3 - Automated Retail, Services and Food

Concession Location ID	Proposed Capital Investment	Financing Sources (Investor and Debt or Equity) and Amount					
		Source 1	Amount 1	Source 2	Amount 2	Source 3	Amount 3
Alternative Mobile Self-Ordering and Delivery Service							
Automated Self-Checkout Micro Marts							
Automated Retail, Services and Food	\$11,000/Location	All funding will come directly from Nuts on Clark / Midway Airport, Inc. and its subsidiaries.					

## Proposal Form G

### Proposed Concession Fee Rates

*Compensation to the City consists of the Minimum Annual Guarantee Fee ("MAG") and Percentage Fee as described in Section D.2. of the RFP. The City has established the MAG to be paid the City during the Lease Years of the Term. This amount is not "biddable." Any respondent who states a different amount in its proposal will be deemed non-responsive and eliminated from further consideration for award of the offered concession. The City has not established a range of Percentage Fee Rate (s) for each concession category. Respondents must propose a Percentage fee rate(s) for each Package. Any respondent who fails to propose a Percentage Fee Rate(s) will be deemed non-responsive and eliminated from further consideration for award of the offered concession.*

**Respondent:** Nuts on Clark / Midway Airport, Inc.

#### 1) Proposed Percentage Fee Rate:

Concession Category	Percentage Fee Rate Ranges (for product categories)	Sales Tiers	Proposed Percentage Fee Rate
Alternative Mobile Self-Ordering and Delivery Service	N/A	N/A	N/A
Automated Self-Checkout Micro Marts	N/A	N/A	N/A
Automated Retail, Services and Food	15% - 17%	\$0 - \$1 Million \$1,000,001- \$2Million \$2,000,001 & over	15% 16% 17%

*Note: if not proposing on one or more concession categories (packages) indicate with an "n/a" in the corresponding boxes.*

**Proposal Form B**  
**Concept Plan**  
**Package 3**  
**(Automated Retail, Services and Food)**

*Instructions: Provide respondent's proposed concept plan showing the following information for each proposed Concession Location. Use additional copies of this table as necessary. Submit additional information as set forth in the Proposal Requirements following this proposal*

Respondent: Nuts on Clark / Midway Airport, Inc. ("Nuts on Clark")

Concession Location	Location Description	Concession Description	Proposed Equipment/Facility	Proposed Operator	Anticipated Opening Date
<b>Terminal 1</b>					
Location #1 - T1,B12	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #2 - T1,C11	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #4 - T1,LL Baggage	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #5 - T1,BL Tunnel	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
<b>Terminal 2</b>					
Location #3 - T2,E1	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #6 - T2,E6	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #7 - T2 Adjacent to ATM	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #8 - T2,F12	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #9 - T2,E8	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #10 - T2,E1	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #11 - T2,H3	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #12 - T2-T3 Bridge	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
<b>Terminal 3</b>					
Vacant Space T3HK.U.9.H.B	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location # 13 - T3,H1	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #14 - T3,G11	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #15 - T3,H3	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #16 - T3, K18	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location # 17 - T3, K19	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #18 - T3, LL Baggage	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #19 - T3,BL Passageway to CTA	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
<b>Add Additional Proposed Locations Below (insert additional rows as needed)</b>					



**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**

#### 4. Concessions Development Plan

##### **1. Concept/System and theme including why each component is best for ORD**

The Nuts on Clark / Midway Airport, Inc. ("Nuts on Clark") Cashless Vending Machine is a state-of-the-art popcorn vending machine that was specifically designed and created for "Nuts on Clark" to serve popcorn at airports, sports venues, stadiums, and grocery stores throughout the country. "Nuts on Clark" is excited for the opportunity to roll-out this new machine for the first time at O'Hare Airport. While "Nuts on Clark" has offered vending machines in other locations before, the new Cashless Vending Machine improves upon those machines as it takes the versatility of two popcorn self-service station units and integrates it with an innovative touchscreen cashless payment system. "Nuts on Clark" designed this cashless vending machine to fulfill the promise of fresh-popped popcorn for customers to purchase throughout the airport without visiting a store location or to be in contact with an employee. The vending machine will be replenished with fresh batches of popcorn, popped fresh at our airport locations. The Cashless Vending Machine has a door that closes and locks from the inside of the machine after the popcorn is dispensed. The bags for the customers' popcorn will be dispensed from inside the unit, individually from the unit to each customer, only one bag will be permitted per transaction and customer. The Cashless Vending Machine only accepts payment by credit card and cannot accept cash.

There are many benefits to Cashless Vending Machine that will benefit O'Hare Airport and its passengers including but not limited to:

- Easy to use;
- Cashless;
- Consumer friendly touchscreen for ordering and transactions;
- Visual and audio prompts to instruct customers during transactions;
- Accepting of all mobile and NFC payment protocols;
- Swipe, and EMV chip cards, and a fully integrated "back-of-the house" telemetry that allows business data to be reviewed via a mobile app or through a web page.

##### **2. Proposed menu of services and products and the approximate price range for each category.**

The Cashless Vending Machine will offer the much-loved, world-renowned popcorn that has made "Nuts on Clark" famous to O'Hare Airport passengers. On offer will be the two original flavors of "Nuts on Clark" popcorn: our signature butter popcorn and our original "Nuts on Clark" caramelcorn and cheesecorn mix. There will be two available sizes priced at \$5.00 for a medium and \$8.00 for a Large.

##### **3. Sources of merchandise, products, and supplies.**

All merchandise, products, and supplies will be from "Nuts on Clark" locations within the airport (Terminal 1, Terminal 2, Terminal 3, and Terminal 5). Additionally, there will be products available from the "Nuts on Clark" domestic Terminal 1B storage area and Terminal 5 storage area.

##### **4. Narrative description of the proposed capital improvements.**

This Cashless Vending Machine will cost approximately \$11,000 for initial capital investment.

**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*

(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Chicago Department of Aviation  
Chicago's O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_."

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT  
NO. \_\_\_\_\_**

**CERTIFICATE FOR DRAWING**

The undersigned, the Commissioner of the Chicago Department of Aviation, represents, warrants and certifies to \_\_\_\_\_ (the "Bank") with reference to Letter of Credit No. \_\_\_\_\_ issued by the Bank in favor of the City of Chicago (the "Beneficiary") that:

1. A breach of the Lease and License Agreement ("Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, as amended, modified or supplemented, between the City of Chicago ("City") and \_\_\_\_\_, an \_\_\_\_\_, has occurred, or a replacement Letter of Credit in a form and substance satisfactory to the City Comptroller has not been issued to the City by a Financial Institution meeting the requirements set forth in the Agreement. As a result, the City is making demand under the Letter of Credit to pay \_\_\_\_\_ dollars (\$\_\_\_\_\_) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

2. Payment of the draft shall be made by bank wire paid to our account as per our wire instructions below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name of Bank)  
(City & State)  
(ABA No.)  
(Account Name)  
(Account No.)  
(Reference No., if any)

3. All defined terms used but not defined herein shall have the meaning assigned hereto in the Letter of Credit.

In witness hereof, the City has executed this certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF CHICAGO

BY: \_\_\_\_\_  
Its: Commissioner of Aviation

**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**

## **EXHIBIT 6**

### **INSURANCE REQUIREMENTS** **Chicago Department of Aviation**

#### **Automated Retail License Agreement** **Food, beverage, retail products gifts and vending merchandise at O'Hare** **(Vending Machines)**

#### **A. INSURANCE REQUIRED**

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

- 1) Workers Compensation and Employers Liability (Primary and Umbrella)  
Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 2) Commercial General Liability (Primary and Umbrella)  
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.



- 3) Automobile Liability (Primary and Umbrella)  
When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Licensee with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 4) Excess/Umbrella  
Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

- 5) Property  
The Licensee must maintain All Risk Property Insurance for the licensed space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Licensee is responsible for all loss or damage to personal property including equipment, fixtures, contents, materials and supplies.

- 6) Cyber Liability  
Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

- 7) Commercial Crime Insurance  
The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) **Builders Risk**

When Licensee undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Licensee must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Licensee is responsible for all loss or damage to City of Chicago property at full replacement cost.

**B. Additional Requirements**

**Evidence of Insurance.** Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

**Failure to Maintain Insurance.** Failure of the Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

**Notice of Material Change, Cancellation or Non-Renewal.** Licensee must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

**Waiver of Subrogation.** Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

herein for any loss arising from or relating to this Agreement. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

Licensee's Insurance Primary. All insurance required of Licensee under this Agreement must be endorsed to state that Licensee's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Licensee under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Licensee maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated



satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs**

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim.

Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives.

### C. REPORTING

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

### D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

## VI. GOOD FAITH EFFORTS

### A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

#### B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders/proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making

the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**

**A. NON-COMPLIANCE GENERALLY**

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

**B. NON-COMPLIANCE WITH ACDBE AGREEMENT**

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.



**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

**SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION  
CONTRACTS**

**I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

**Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%**  
**WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.

1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

H. If the MBE or WBE subcontracts out any of its work:

1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

V. **Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

A. Schedule B: MBE/WBE Affidavit of Joint Venture

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed



original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

**C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization**

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

**D. Letters of Certification**

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

**E. Schedule F: Report of Subcontractor Solicitations**

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

**F. Schedule H: Documentation of Good Faith Efforts**

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

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## **VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

**VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740

of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

**EXHIBIT 9**

**ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS**



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Nuts on Clark, Inc.

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: Nuts on Clark, Inc.

C. Telephone: 773 - 549 - 6622 Fax: 773 - 549 - 6164 Email: nuts on clark@nuts on clark.com

D. Name of contact person: Carla Kenney Phillips

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Retail, Food and Service Vending Units RFP

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>Estelle Kenney</u>	<u>President</u>
<u>Carla Kenney Phillips</u>	<u>Managing Director</u>

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
estate Kenney	3830 N. Clark Street Chicago, IL 60613	80%
Carla Kenney Phillips		20%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

N/A

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

NO

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes     ☒ No     ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes     ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

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C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)  
[ ] is                    ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

N/A

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.



## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

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## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Nuts on Clark, Inc.  
(Print or type exact legal name of Disclosing Party)

By: \_\_\_\_\_  
(Sign here)

Carla Kenney Phillips  
(Print or type name of person signing)

Managing Director  
(Print or type title of person signing)

Signed and sworn to before me on (date) JUNE 22, 2021,

at COOK County, ILLINOIS (state).

  
\_\_\_\_\_  
Notary Public

Commission expires: 11/2/2023



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

[ ] Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☒ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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## Exhibit 10

### Airport Concessions Program Handbook

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*



# **AIRPORT CONCESSION PROGRAM HANDBOOK**



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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- 3 FINANCIAL AUDIT STANDARDS
- 4 CONCESSIONS OPERATING STANDARDS
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- 6 LISTING OF KEY CONCESSIONS MANAGEMENT PERSONNEL
- 7 RULES AND REGULATIONS

## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### **CDA UNIT FUNCTIONS**

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession-agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

### **STAGE 3 - DESIGN APPROVAL**

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### **STAGE 4 - PRE-CONSTRUCTION APPROVAL**

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### **STAGE 5 - CONSTRUCTION**

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### **PHYSICAL INSPECTIONS**

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities; general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.



Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS

## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Monthly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

**Merchandise/Product**

Are Merchandise/Product Levels Adequate?

**Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

**Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

**Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

**Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?



## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## **APPENDIX 3**

### **FINANCIAL AUDIT STANDARDS:**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### **Lease Fees**

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### **Records**

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### **Insurances**

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### **General Airport Guidelines**

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### **Laws and Ordinances**

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### **Default Notices**

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

**APPENDIX 6****KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905
Yolanda Woodruff Director of Retail Operations	(773) 894-5463
Dorine Litman Property Manager / ORD	(773) 894-3908
Patricia Grzyb Property Manager / MDW	(773) 838-0733
Sungjin Choi Construction and Design Manager	(773) 686-7606



## APPENDIX 7

### RULES AND REGULATIONS:

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

**EXHIBIT 11**

**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<u>Infraction</u>	<u>1<sup>st</sup> Violation</u>	<u>2<sup>nd</sup> Violation</u>	<u>3<sup>rd</sup> Violation</u>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

(Initial Here)

**EXHIBIT 12**

**UTILITY USAGE FEE**



**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.



## **EXHIBIT B-8**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**Good Vibrations, LLC d/b/a BodyCharger Systems, LLC in  
Illinois**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT  
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]



## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

The City owns and, through CDA, operates Chicago O'Hare International Airport ("**O'Hare**" or the "**Airport**"). O'Hare includes an international terminal, three domestic terminals, a multimodal facility and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

The City and Licensee acknowledge that the continued operation of the Airport as safe, convenient, and attractive facility is vital to the economic health and welfare of the City of Chicago, and that the City's right to supervise performance under this Agreement by Licensee is a valuable right incapable of quantification.

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

2.1 Incorporation of Background. The background set forth above is incorporated by reference as if fully set forth here.

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE/WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

"Affiliate" means, except where otherwise defined, any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Licensee.

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

"Airport Concession Program Handbook" means the handbook developed by CDA to govern the uniform operation of the concessions' programs at the Airport. The Airport Concession Program Handbook is available on the CDA website and may be amended from time to time by CDA. Any amendment of the Airport Concession Program Handbook by CDA during the Term of this Agreement will be binding on Licensee without need for amendment of this Agreement, provided that the amendment of Airport Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissioner" means the head of the Department and any City officer or employee authorized to act on the Commissioner's behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where such person is expressly authorized to do so.

"Common Areas" means those areas of the Terminals that are not leased, licensed, or otherwise designated or made available by the Department for exclusive or preferential use by specific party or parties.

"Comptroller" means the head of the Department of Finance of the City and any City officer or employee authorized to act on the Comptroller's behalf.

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

The DBO shall be confirmed in writing by the parties, and such written "Confirmation of DBO" shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement.

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.

§6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

“Event of Default” has the meaning set forth in Article 9.

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the

Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

"Products" means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Licensee is permitted to sell in its Licensed Retail Space and maintain in inventory in its Storage Space, if any, under the terms of this Agreement, as set forth by category or item in Exhibit 4. Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4 unless otherwise agreed in writing by the Commissioner.

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

41 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

42 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.



43     Products.

(a)     General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)     Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)     Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44     Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first-class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix 1 of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

#### 4.7 Operation of Concession.

##### (a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

##### (b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) **Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.**

(c) **Trade Name.** Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) **Records and Audit.** Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) **Licenses and Permits.** Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.



(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors;' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

5.5 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

- (i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.
- (ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

## 6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

(d) Year End True Up. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year exceeds the amount of all payments made by Licensee to the City for the License Year in question, then Licensee must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year is less than the amount of all License Fee payments made by Licensee to the City for the period in question, but the Percentage Fee still exceeds the MAG for that License Year, then Licensee will receive a credit against the next License Fee payment due under this Agreement for the amount by which the License Fee actually paid by Licensee exceeded the Percentage Fee attributable to the period.

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

#### 6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

(i) Licensee must also furnish to Commissioner no later than March 1 of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Licensee, showing in reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Concessions during the preceding License Year, copies of all returns and other information filed with respect to Illinois sales and use taxes, and as such other financial and statistical reports as the Commissioner may, from time to time, reasonably require by written notice to Licensee.

(ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$\_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this



Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

(b) Losses. "Losses" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Licensee, its employees, agents, subtenants, and Subcontractors.

(c) Defense of Suits. At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Agreement. Licensee must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involves the Airport.

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

(b) Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately vacate some or all of the Licensed Spaces until the Letter of Credit is in place and effective.

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

(d) Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

## **ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION**

9.1 Events of Default. Each of the following (a) through (n) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed thirty (30) days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within forty-five (45) days from delivery of the notice, Licensee will have the additional time, not in any event to exceed forty-five (45) days, to cure the failure.

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## ARTICLE 10. SPECIAL CONDITIONS

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

(a) Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

(b) Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

- (i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or
- (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

(d) There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.



(e) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

(f) No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

(g) Licensee has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

(i) Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

(j) Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

(a) Authorization to do Business. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

(b) Economic Disclosure Statement. Licensee has provided the Commissioner with an EDS for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within thirty (30) days of any event or change in circumstance that

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

103 City's Right to Assign. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

- a. City Council, in its sole discretion, if the Change in Ownership involves

- a 100% Change in Ownership of Licensee, or
- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the

Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgement.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

(b) It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2-55 of the Municipal Code, respectively. Licensee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractors as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

(c) Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must surrender the Licensed Space to the City free from the presence and contamination of any hazardous substances.

(d) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

7-28-390 Dumping on public way—Violation—Penalty; 7-  
28-440 Dumping on real estate without permit;  
11-4-1410 Disposal in waters prohibited;  
11-4-1420 Ballast tank, bilge tank or other discharge; 11-  
4-1450 Gas manufacturing residue;  
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-  
1530 Compliance with rules and regulations required; 11-4-  
1550 Operational requirements;  
11-4-1560 Screening requirements; and  
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Licensee's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect Licensee's eligibility for future City agreements.

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

(f) Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):

(i) Licensee agrees that Licensee, any person or entity who directly or indirectly has an ownership or beneficial interest in Licensee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Licensee's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Licensee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this bid, proposal or Agreement by Licensee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Licensee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

(ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

(iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive



Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.

i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

(g) Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

- (i) Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "**Artwork**") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 et seq.) (the "**Copyright Act**"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and sublicensees, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

106 Airport Security.

(a) This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Licensee is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Licensee must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Licensee must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum-security enhancement. Any drawings, plans, and specifications provided by Licensee under this Agreement must comply with those guidelines for airport security developed by the City, the

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

(c) Gates and doors located on the Licensed Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Licensee until the malfunction is remedied.

(d) In connection with the implementation of its security program, Licensee may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Licensee acknowledges that all such knowledge and information is of a highly confidential nature. Licensee covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Licensee further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

(e) Licensee understands that fines and/or penalties may be assessed by the TSA or FAA for Licensee's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Licensee's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Licensee, or any party for which Licensee is liable under this Agreement, is responsible for all or part of the fine or penalty, Licensee shall pay said amount of the fine or penalty as Additional Fees.

#### 107 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the furnishing of services in the Licensed Spaces, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the License in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

(b) It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the License, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(f) Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Licensee of Licensee's obligations under this Agreement relative to nondiscrimination.

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

(h) Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

109 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

10.10 Avigation Easement. There is reserved to the City, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Licensed Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Licensee by accepting this License agrees for itself, its successors, and assigns that it will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Licensed Space and cause the abatement of the interference at the expense of Licensee.

10.11 National Emergency. This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.12 2014 Hiring Prohibitions.

(a) The City is subject to the June 16, 2014, "City of Chicago Hiring Plan" (the "**2014 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a sublicensee, and from directing Licensee to hire an individual as an employee or as a sublicensee. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Licensee in connection with this License are employees or sublicensees of Licensee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer- employee relationship of any kind between the City and any personnel of Licensee.

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Licensee by a City employee or City official in violation of this Section, or advocating a violation of this Section above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

## **ARTICLE 11. GENERAL CONDITIONS**

11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the grant and use of the License and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

11.2 Counterparts. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be



interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Chicago Department of Aviation  
City of Chicago  
O'Hare International Airport  
10510 W. Zemke Rd Chicago,  
Illinois 60666

and with a copy to:  
Deputy Commissioner of Concessions at the same address.

If the notice or communication relates to payment of Fees or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller  
City of Chicago  
City Hall - Room 501 121  
N. LaSalle Street  
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section 2  
North LaSalle Street, Suite 540  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

(a) This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

(c) To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs (a) and (b) above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs (a) and (b).

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee. Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 Estoppel Certificate. From time to time upon not less than fifteen (15) days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 No Personal Liability. Licensee, or any sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 Joint and Several Liability. If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Licensee is the joint and several obligations or undertaking of each such individual or other legal entity.

11.18 Non-Recordation. Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure event*"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within twenty (20) days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than sixty (60) days due to a *force majeure* event, without the express written consent of the Commissioner.

**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO)**

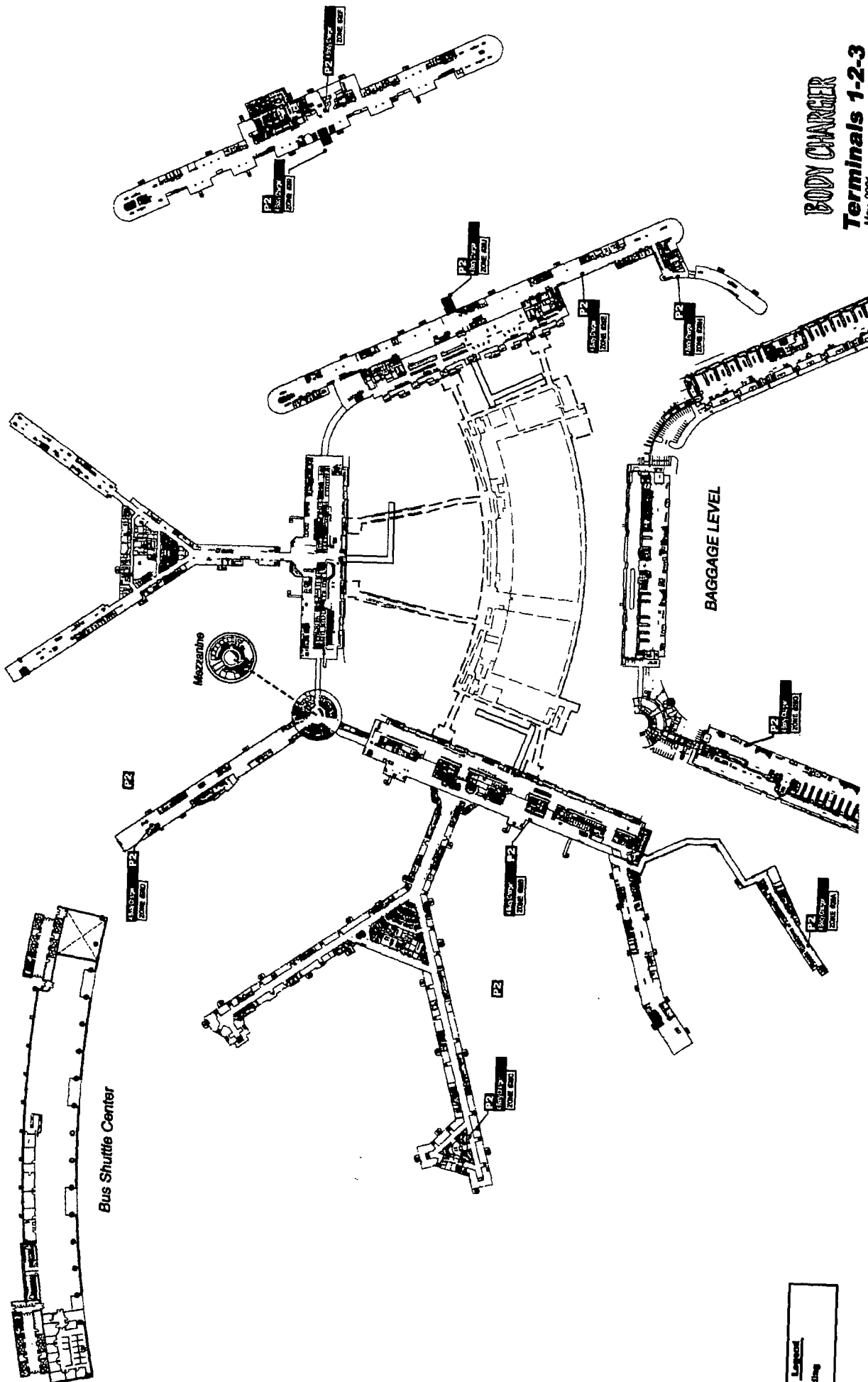
**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO )**

The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
26A	Body Charger Systems	L Stinger Gates L23-L24
26B	Body Charger Systems	T3 Main K1 Gate
26C	Body Charger Systems	T3K Gate K15
26G	Body Charger Systems	T3G Gate G12
26i	Body Charger Systems	T1C Gate B12
26J	Body Charger Systems	T1C Gate C18
26K	Body Charger Systems	T3 Baggage/Vest.3A
26N	Body Charger Systems	Next to Galileo Bar
26O	Body Charger Systems	Disco Tunnel C-Side
26P	Body Charger Systems	Disco Tunnel B-Side

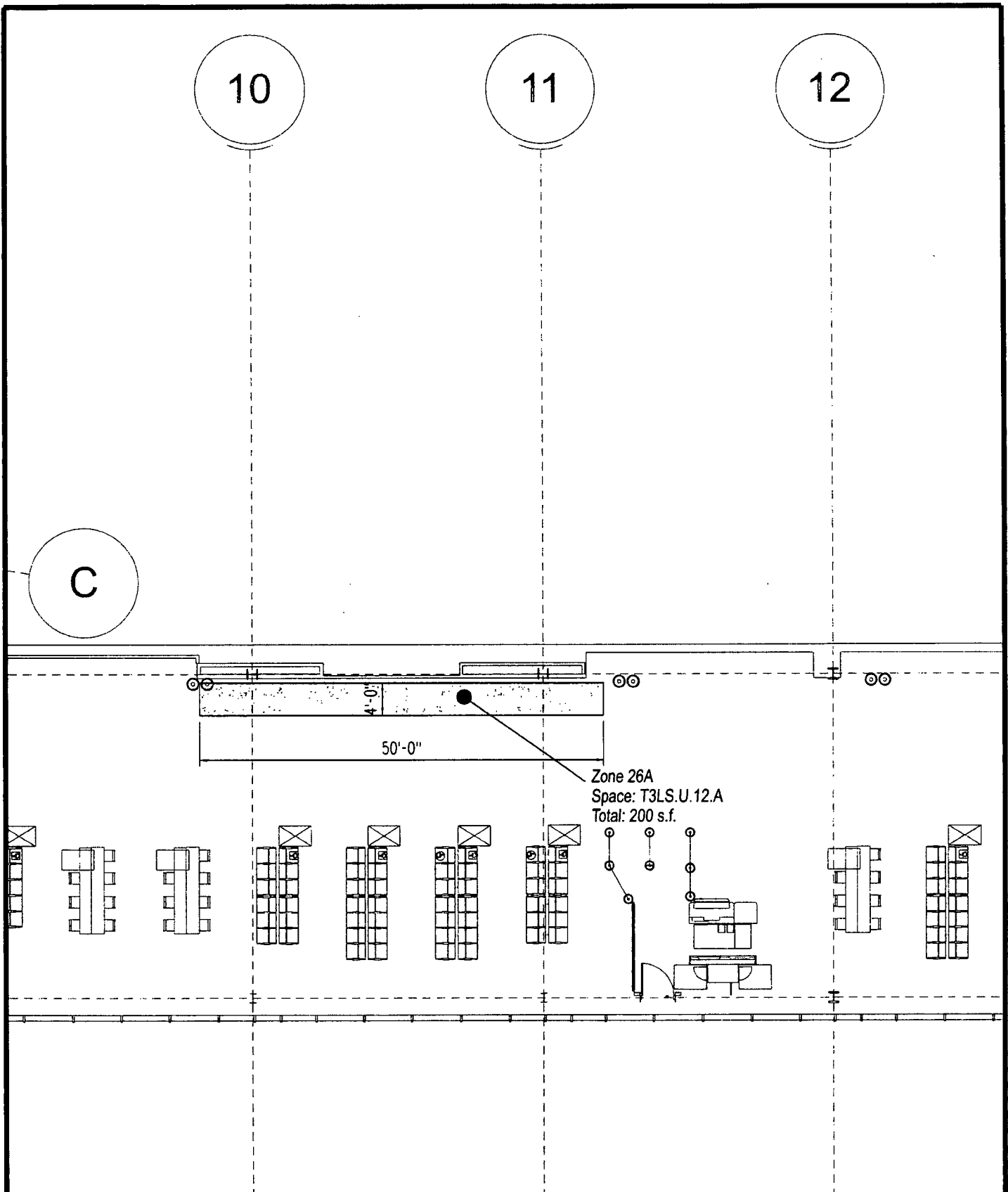
The Date of Beneficial Occupancy is: TBD

# **BODY CHARGER** **Terminals 1-2-3** May, 2021



Legend  
 P2  
 P3





Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Scale: 1" = 20'-0"

Terminal 3 / L-Stinger Upper Level

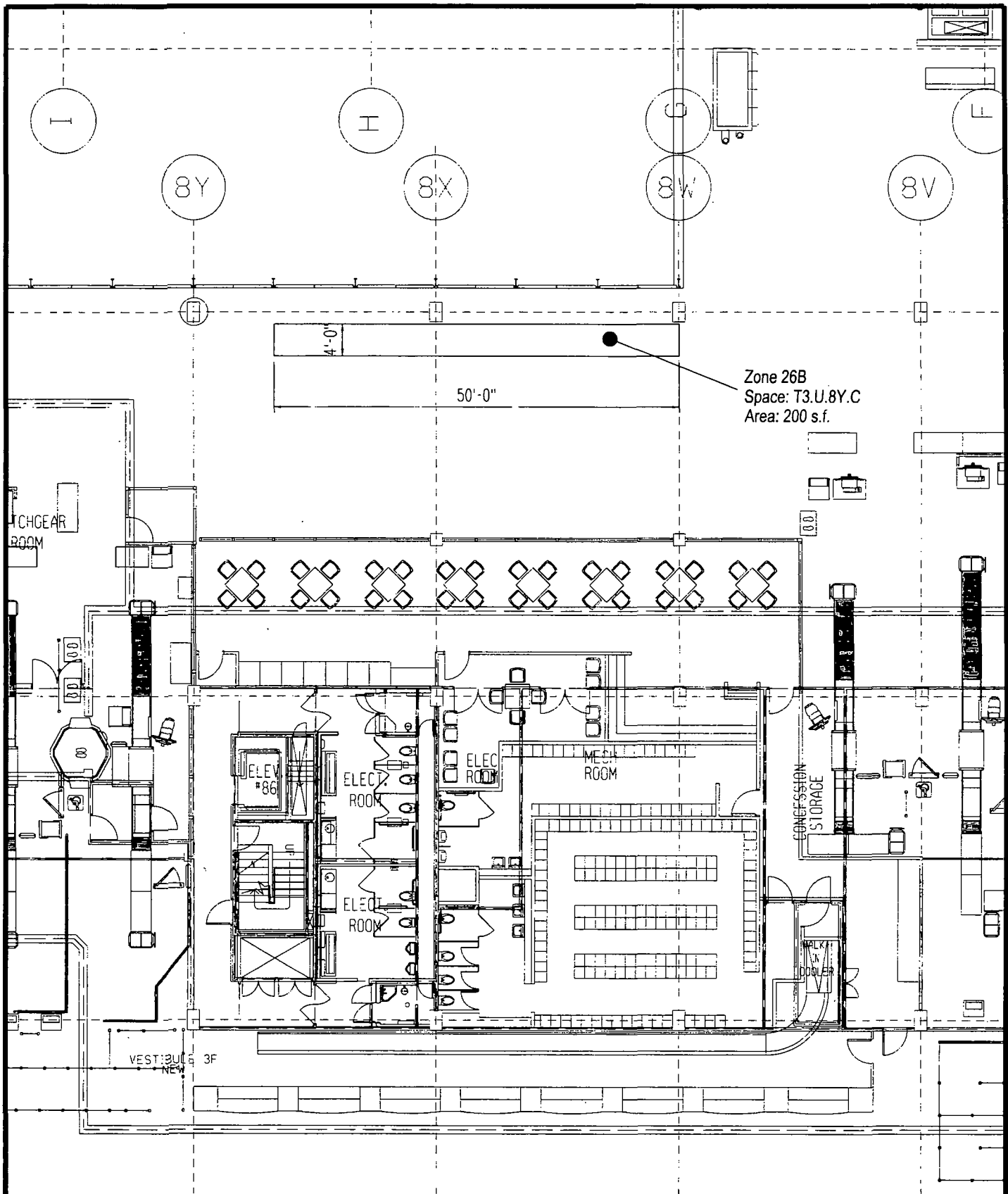
Automated Retail  
Zone # 26A (T3LS.U.12.A)



KEY PLAN

Date: May, 2021

Created by CADD Services



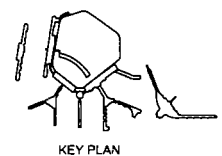
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

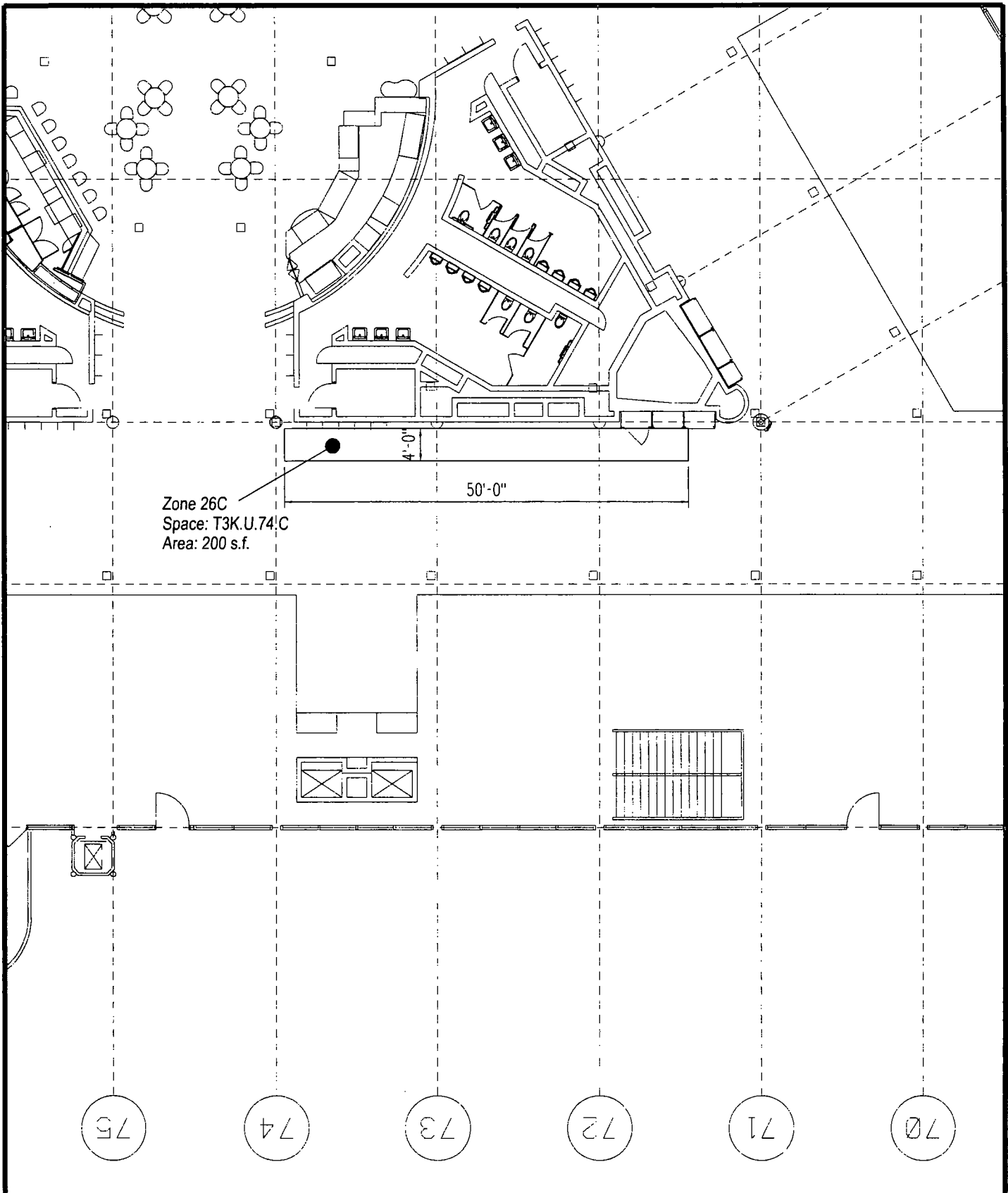
Terminal 3 Upper Level

Automated Retail  
Zone #26B (T3.U.8Y.C)



Date: May, 2021

Created by CADD Services



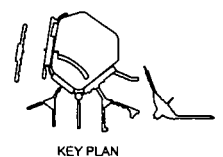
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

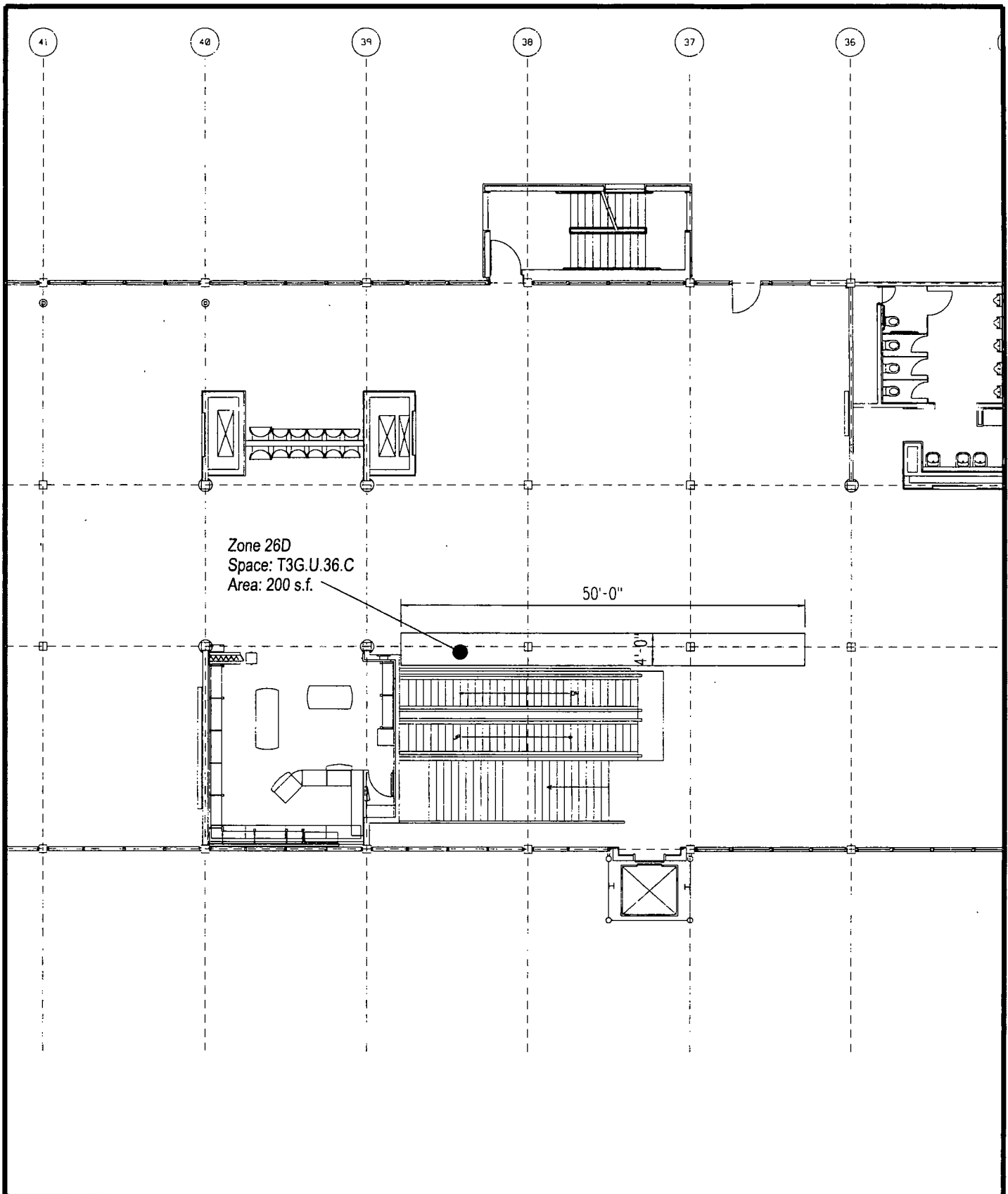
Terminal 3 / Concourse HK Upper Level

Automated Retail  
Zone #26C (T3K.U.74.C)



Date: May, 2021

Created by CAD0 Services



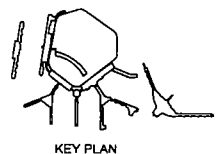
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 / Concourse G Upper Level

Automated Retail  
Zone #26D (T3G.U.36.C)



Date: May, 2021

Created by CAD Services

102

103

104

105

B12

Zone 26i  
Space: T1B.U.102.B  
Total: 360 s.f.

90'-0"

4'-0"

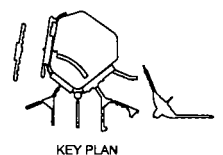
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 1 Upper Level

Automated Retail  
Zone #26E (T1B.U.102.B)



Date: May, 2021

Created by CADJ Services

# C18

# C18A

DN

Zone 26F  
Space: T1C.U.28.G  
Area: 100 s.f.

25'-0"

4'-0"

Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

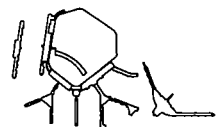
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Scale: 1" = 20'-0"

Terminal 1 / Concourse C Upper Level

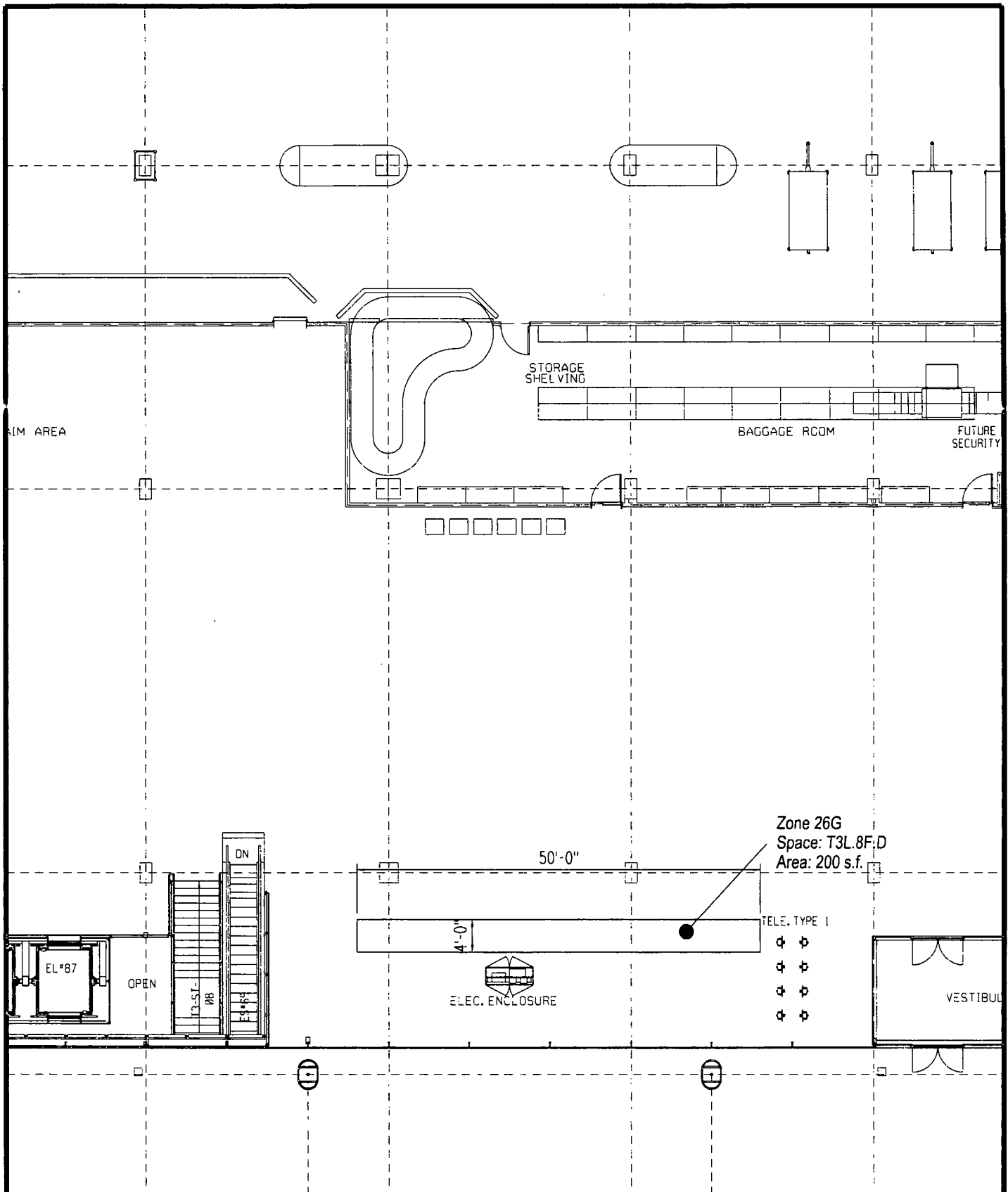
Automated Retail  
Zone #26F (T1C.U.28.G)



KEY PLAN

Date: May, 2021

Created by CADD Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

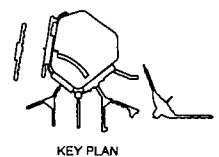
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 3 Lower Level

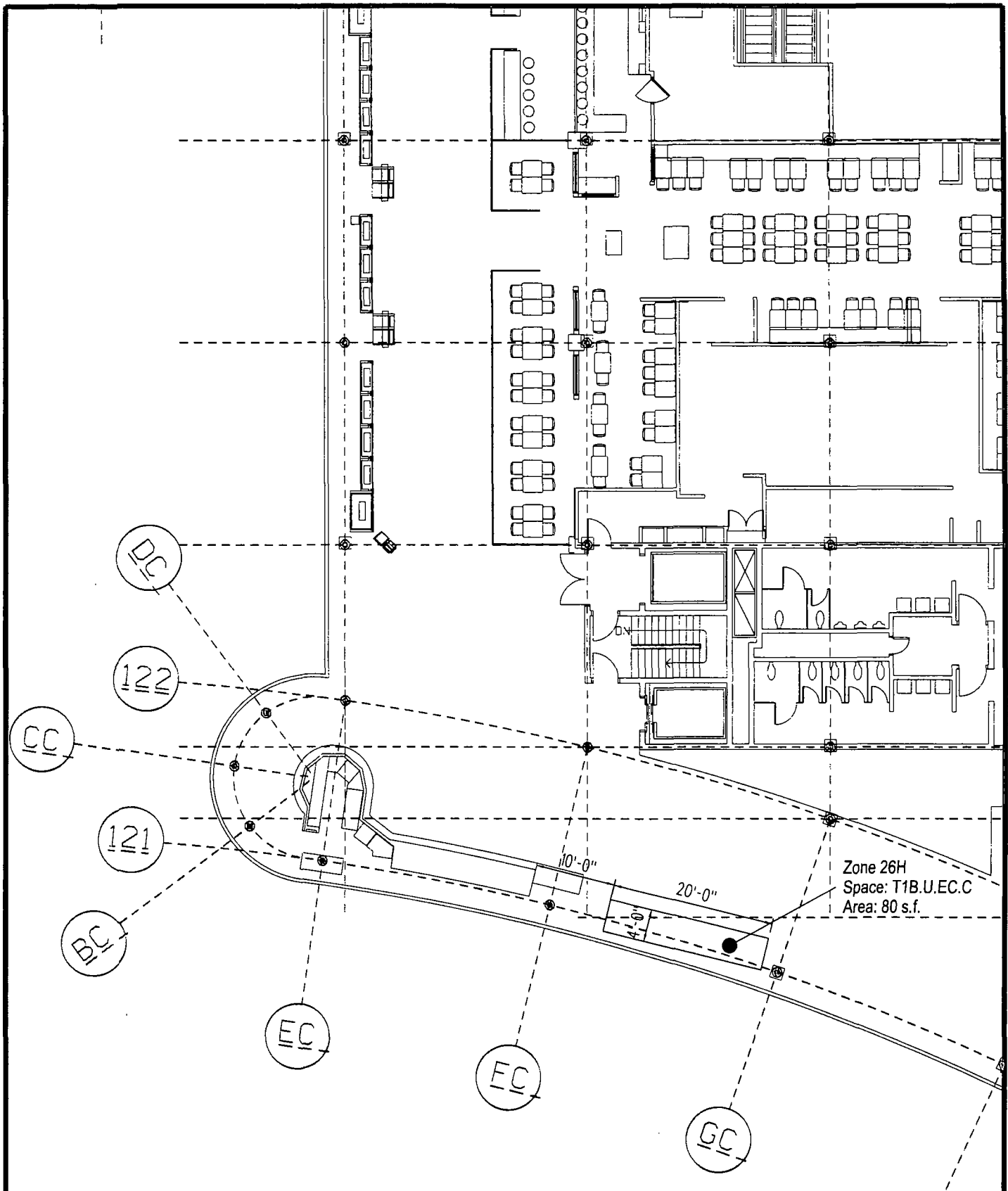
Automated Retail  
Zone #26G (T3L.8F.D)

Scale: 1" = 20'-0"



Date: May, 2021

Created by CADD Services



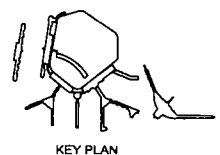
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"

Terminal 1 Upper Level

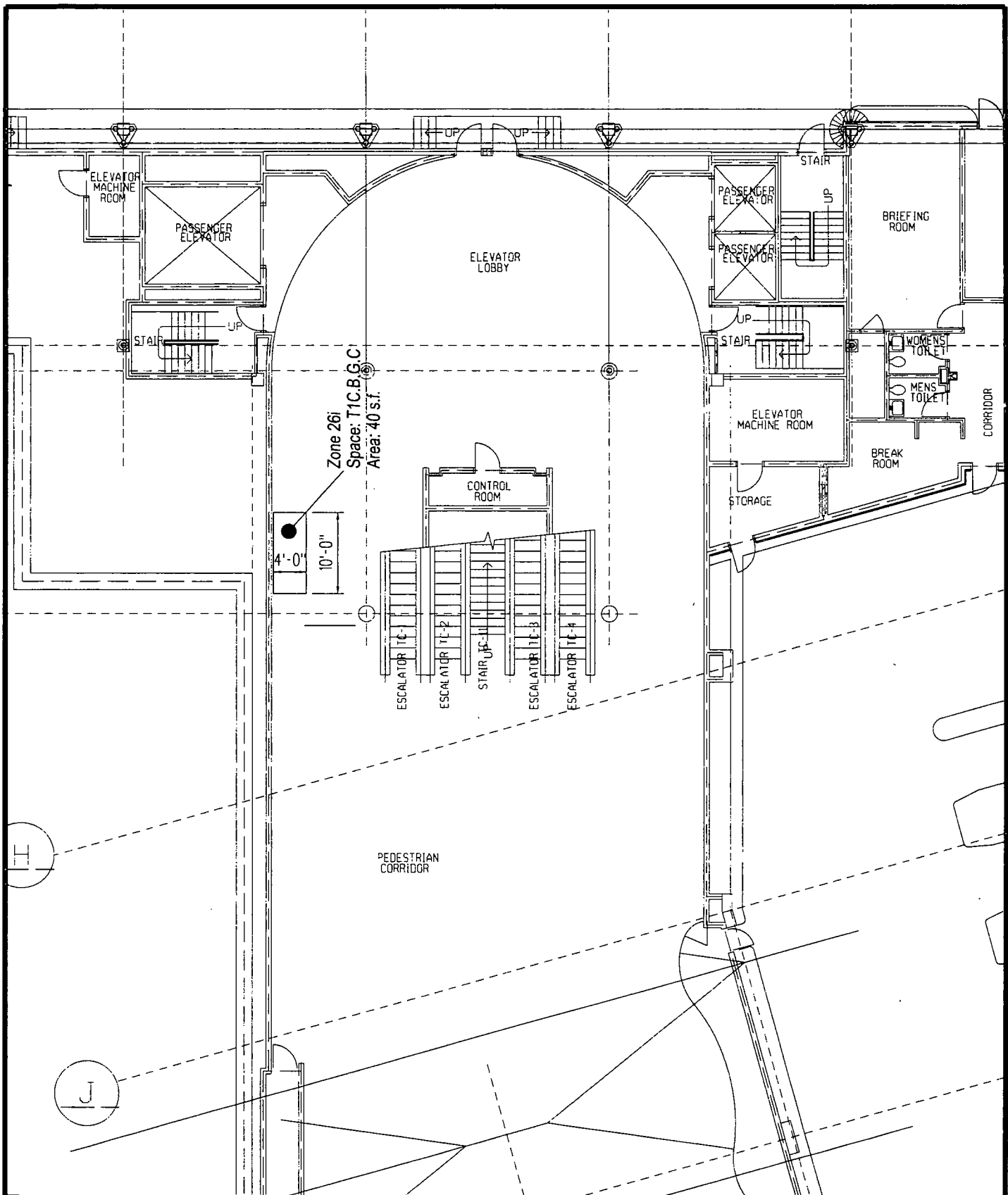
Automated Retail  
Zone #26H (T1B.U.EC.C)



Date: Autumn 2012

Created by CADD Services





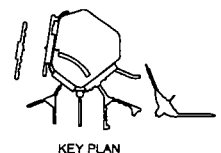
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

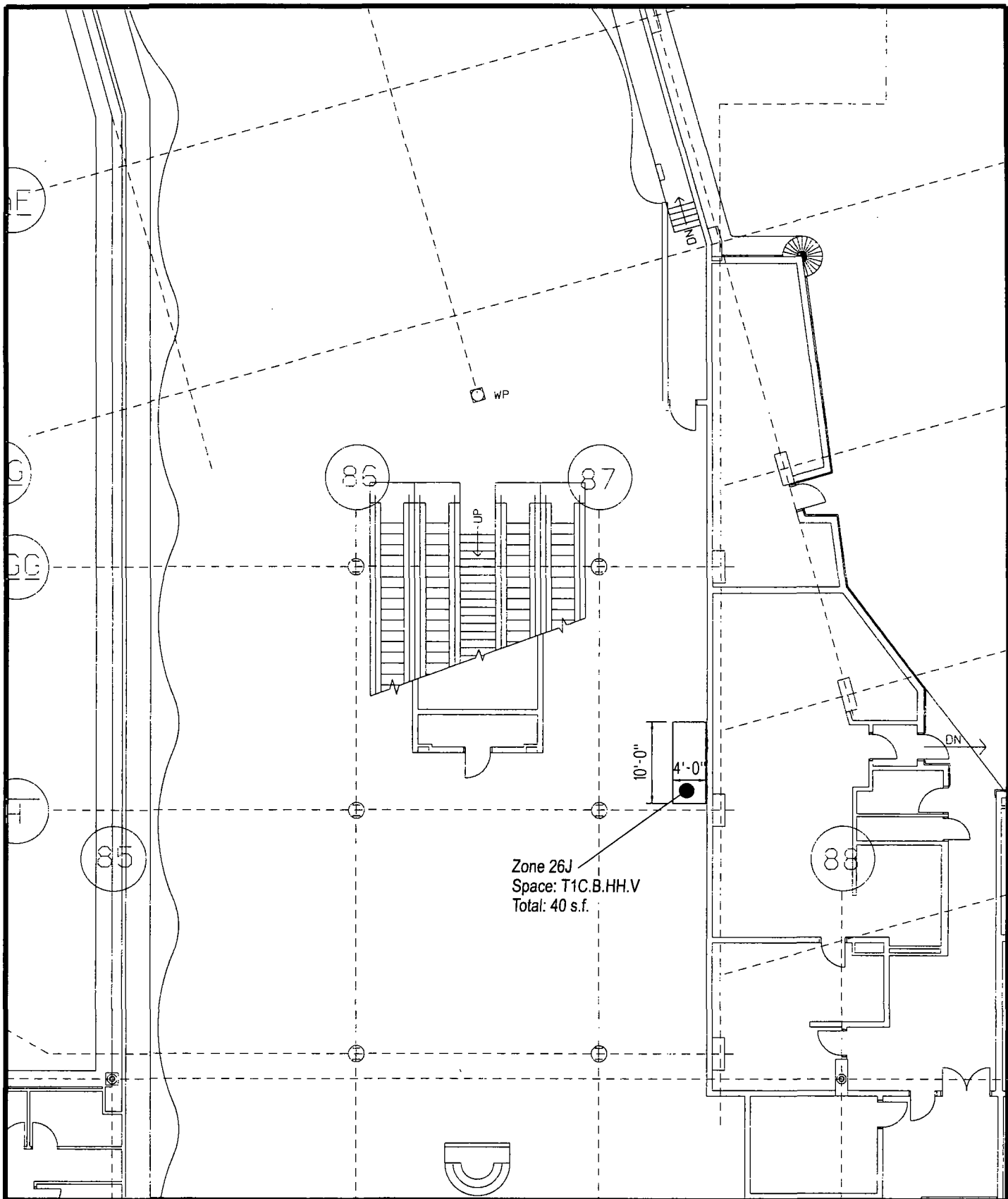
Terminal 1 / Concourse C Pedestrian Tunnel

Automated Retail  
Zone #26i (T1C.B.G.C)



Date: May, 2021

Created by CABO Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

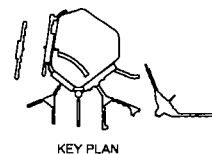
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Scale: 1" = 20'-0"

Terminal 1 Upper Level

Automated Retail  
Zone #26J (T1C.B.HH.V)



KEY PLAN

Date: May, 2021

Created by CADD Services

## **EXHIBIT 2**

### **FEES**

## **EXHIBIT 2**

### **FEEES**

1. Percentage Fee: Body Charger Systems, LLC

Gross Revenues	Percentage Fee
All	18.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

**EXHIBIT 3**  
**DEVELOPMENT PLAN**

RFP PROPOSAL

FOR

Package 3 – Automated Retail, Services and  
Food

AT

O'HARE

INTERNATIONAL AIRPORT

JAMIE L. RHEE, COMMISSIONER

[www.flychicago.com](http://www.flychicago.com)



RESPONDENT

**Good Vibrations, LLC**  
BodyCharger Systems®

12031 136<sup>th</sup> Avenue  
Kenosha, WI 53142

Tel: 262-269-1111 – [mark@bodychargersystems.com](mailto:mark@bodychargersystems.com)

*"Voted one of the Top 5 New Airport Innovations of 2019"*

## **TABLE OF CONTENTS**

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5. Airport Concession Disadvantaged Business Enterprise Participation Plan
6. Professional References
7. Outstanding Claims and Litigation
8. Exceptions
9. Executed Proposal Affidavit
10. Business Information Statement
11. Financial Statements
12. Other Information
13. Labor Peace Agreement
14. Sexual Harassment Affidavit
15. All Forms

**GOOD VIBRATIONS FOR GOOD HEALTH**  
**BodyChargerSystems®**

October 2, 2020

Ms. Castalia Serna  
Deputy Commissioner of Concessions and Customer Service  
Bid Resource Center  
Chicago Department of Aviation  
10510 E. Zemke Road  
Chicago, IL 60666

RE: RFP for Package 3 – Automated Retail, Services and Food  
Addendum #1 – August 5, 2020 - received  
Addendum #2 – August 18, 2020 - received  
Addendum #3 – August 25, 2020 - received  
Addendum #4 – August 28, 2020 - received  
Addendum #5 – September 9, 2020- received

Dear Ms. Serna:

The Respondent embraces the goals of CDA's concession program and meets or exceeds the requirements as stated in the RFP. We welcome the opportunity to submit a proposal for Package 3 - Automated Retail, Services and Food of the RFP issued by the Chicago Department of Aviation to provide services at O'Hare Airport.

BodyChargerSystems is a multi-service concession that upgrades various airport passenger seats with services, amenities, and conveniences for travelers to purchase, if they wish to upgrade their comfort and sitting experience.

From the convenience of their seat, customers can 1) enhance their circulation with low-intensity, whole-body vibration through the feet, 2) enjoy the resulting "shoes on" foot massage, 3) charge electrical devices with WIRELEES charging, 4) utilize the small tray for food/drink/work, 5) access USB and electrical outlets, and 6) view retail offerings, restaurants and airport information from a "touchless display monitor.

We provide passengers with a unique experience and refreshing opportunity to boost blood flow in preparation for long periods of inactivity associated with travel. The foot massage calms passengers, provides instant stress reduction and instantly relieves foot pain and leg discomfort.

Our unique patent pending design transforms airport passenger seating into a new revenue stream.

***"Voted one of the Top 5 New Airport Innovations of 2019"***



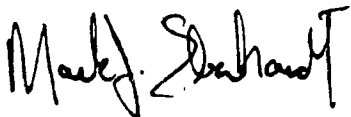
It's fun to watch the "OMG" and positive expressions of travelers while they experience our services. We believe that our innovation, quality, and multiple first-class services, are the reason we are best suited to provide automated services at O'Hare Airport.

Address and Contact Information:

Mark Eberhardt  
Good Vibrations, LLC  
12031 136<sup>th</sup> Avenue  
Kenosha, WI 53142  
Email: [mark@bodychargersystems.com](mailto:mark@bodychargersystems.com)  
Telephone: 262-269-1111

We would like to thank you in advance for your consideration. If awarded a Concession, we commit to develop and perform the Concession in a manner consistent with this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. Eberhardt". The signature is fluid and cursive, with the first name "Mark" being more prominent.

Mark J. Eberhardt  
President

***"Voted one of the Top 5 New Airport Innovations of 2019"***

## Experience and Qualification Statement

In 1994, the Respondent had an idea to attach a bill validator payment system to a massage chair and place them in airports. A company was formed, FIRST CLASS SEATS and the business grew to include 27 airports and over 100 shopping mall locations throughout the US and Puerto Rico. By 2008, with annual sales at \$5 million dollars, First Class Seats was acquired by Smarte Carte.

A short time thereafter, the Respondent established a similar healthy vending concept, specifically using a specially calibrated form of Whole-Body Vibration that is delivered through the feet while sitting (shoes on). This low-intensity Whole-Body Vibration causes the muscles to involuntarily contract thereby producing "passive exercise" which helps increase circulation.

Whole Body Vibration was invented in the early 1960's by space scientists looking for a way to prevent muscle atrophy so astronauts could spend an extended time in space. What they discovered was that a certain calibration and frequency of vibration would cause muscles to reflexively contract (exercise) without effort. Since that time, Whole-Body Vibration has become a popular and effective therapy in a plethora of health applications including fitness training, rehabilitation, obesity, muscle strengthening, therapy for the elderly, bed ridden, and people who are not able to participate in regular exercise.

Our mission is to provide quick, convenient, and inexpensive therapy for better circulation and better health. An added bonus is that the experience is pleasant and feels like a foot massage (shoes on).

Our business/concept provides 1) virtually silent, automated Whole-Body Vibration machines in high traffic venues for the traveling public to engage in passive exercise to improve circulation and their health, 2) electrical device charging and 3) a display screen to view airport information, restaurant and retail options and other information of interest to air travelers.

In our quest to maximize the per unit revenue from this concept, over the years we've experimented with and built several different models and chassis designs. Options have been added for marketplace testing in various high traffic locations. A few of those venues are listed below: Please see the attached pictures of other designs.

### **Responses to Proposal Form A**

1.

General Mitchell Field International Airport, Milwaukee, Wisconsin

**Contract Dates:** 6/1/2017 to 2/16/2020

**Description of Concession:** Automated Vending BodyCharger with electronic device charging

**Description and Costs of the development and installation:** Design architectural, engineering and manufacturing since inception over the years to bring this product where it is today is around \$500,000.00

**Annual Gross Sales:** Year 2019 was the only year we consistently had 16 units throughout the airport. We generated roughly \$60,306.00 over the 2 ½ years at MKE. MKE was a test location to determine the amount of revenue that would be generated at pre and post security locations. That said, units were moved around frequently, in and out and to different locations. We started with 4 units in pre-security and added another 12 units at various dates through the term in post security locations

**Rent Paid:** The rent paid was a total of 20% of gross revenue

**Annual passenger traffic:** The annual passenger volume was roughly 3 million enplanements in 2019.

**Contact person:** Nick Covelli 414-747-4776.

Greenville/Spartanburg Airport, Greer, South Carolina

**Contract Dates:** 2015 to present

**Description of Concession:** Automated Vending BodyCharger with electronic device charging. In addition, we tested batteries for power in lieu of electrical outlets. We have 8 units in Terminals 1 and 2.

**Description of Costs of development and Installation:** please see above

**Annual Gross Sales:** over 5 years has been roughly \$25,000,00.

**Rent paid** is 20% of gross annual sales

**Annual passenger traffic** has averaged around 1 million enplanements annually.

**Contact person:** Scott Carr 864-848-6222

Pleasant Prairie Premium Outlet Mall

**Contract Dates:** October of 2016 to present

**Description of Concession:** Automated Vending BodyCharger with electronic device charging

**Description of Costs of development and Installation:** please see above.

**Annual Gross Sales** \$26,390.00 over the past five years:

**Rent paid:** 20%

**Annual traffic volume:** 5 million

**Contact person:** Tera Greenland 262-857-2101

Chicago Outlet Mall, Aurora, Illinois

**Contract Dates:** August of 2020 to present

**Description of Concession:** Automated Vending BodyCharger with electronic device charging

**Description of Costs of development and Installation** please see above

**Sales since Installation** in August - \$1,200.00

**Rent paid:** 20%

**Annual traffic volume** 5 million

**Contact:** Sam Thatcher 630-692-1451

2. The Respondent has many years of operation experience with concessions in large and small airports around the US. Operating a similar concept as First Class Seats Inc., the Company installed and managed vending massage chairs in 27 airport locations and 100 shopping malls. The larger airport locations included, DFW, Dallas TX; George Bush Intercontinental, Houston, TX; McCarran International Airport, Las Vegas, NV; Greater Pittsburgh International Airport, Pittsburgh, PA; Nashville Airport, Nashville, TN.

Prior to the sale of First Class Seats, there were 8 employees at the Wisconsin headquarters and business relationships were essential with DBE qualified companies at most airport locations. Local independent contractor services were procured for most shopping mall locations.

Marketing efforts included free service "coupons" that were made available in quantity to customer service locations in airports and shopping malls. These coupons are well received by the traveling public and Airport employees.

In addition to current airport locations, we believe our past experience with similar automated airport concessions provides a solid background for future performance.

3. Photographs of like or similar concessions.

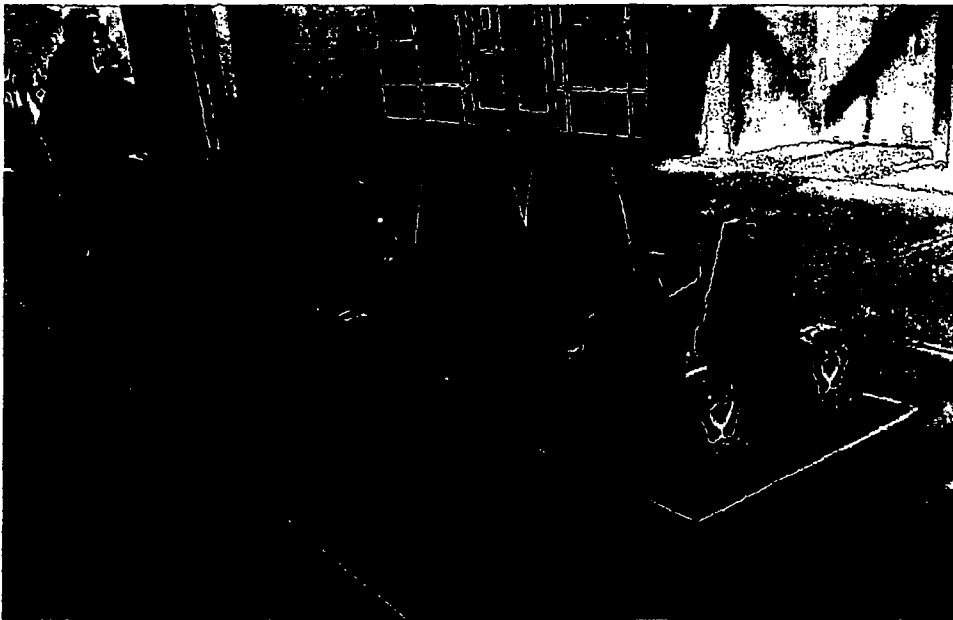
General Mitchell Field International, Milwaukee, Wisconsin



Greenville/Spartanburg, Greer, South Carolina



Chicago Outlet Mall, Aurora, Illinois



4. Other additional information that will indicate your experience as it pertains to this RFP.

The Respondent's company headquarters is located within 25 miles of O'Hare enabling immediate attention to any concern.

5. Resumes of key personnel, including principles and on-site management. Also include a brief description of their potential roles in operations at the Airport.

Mark J. Eberhardt – see attached resume. The Respondent will oversee all operations on a daily basis.

Ivan Duncan – ACDBE partner – Role will be to monitor equipment and operations on a daily basis to include cleaning and service, on-site liaison between Airport and Company to address any questions or concerns.

## Mark J. Eberhardt

### Education

1971	Pike High School, Indianapolis, IN
1972	Indiana University/Purdue University, Indianapolis, IN
1989	University of Wisconsin, Parkside, Kenosha, WI

### Business Experience

2010 – present	Good Vibrations, LLC, Kenosha, WI Founder and President
2008 – 2010	Smarte Carte, Inc., St. Paul, MN Director, Business Development
1994 – 2008	First Class Seats, Inc., Racine, WI Founder and President
1994 - 2000	UBS Financial Services, Milwaukee, WI Vice President Investments
1988-1994	Robert W. Baird, Milwaukee, WI Vice President

## Methods of Management and Operations

### Plan for Operation

#### 1) Staffing Plan

ACDBE partner to provide adequate staffing to clean and monitor ALL locations and equipment as needed. Continuous and multiple visits to each location will be made to ensure cleanliness and operational efficiency.

#### 2) Merchandise Logistics

Each unit will display LED lighted signage that suggests the function of the BodyCharger and will include the O'Hare International Airport, logo(as pictured). Units are also equipped with video monitor screens that explain the health benefits, show retail and restaurant options and airport service information along with wireless and UBS device charging.

#### 3) Facility Maintenance Plan

Units are equipped with 24/7 remote monitoring that reports real time sales and equipment function. Units are monitored on site and remotely to ensure that maintenance issues can be immediately detected and repairs can be made.

The frequency of cleaning will be targeted initially at peak travel times and sporadically throughout the day. Our success depends upon providing passengers with a clean and fresh unit to enjoy.

Our equipment is manufactured by the Respondent's company. It is commercial grade and designed for high traffic venues and designed for high traffic venues.

- 4) Each unit is equipped with built-in wireless remote monitoring which can signal passenger volume and trends.
- 5) From a sustainability standpoint, our motors/units have been operating in the field in a variety of different high traffic venues for over ten years. Equipment failure has been almost non-existent. Little equipment maintenance is required other than cleaning. Each unit consumes less than ½ amp of electricity when operating – very energy efficient. The footprint/floor space we occupy is the same floor space where passengers place their feet when sitting. A “foot massage” is a welcome treat for most everybody and the low cost has allowed us to operate a sustainable business.



- 6) Describe the methods you will use to monitor and remain current with passenger concessions trends during the term of the Agreement

Wireless remote monitoring of use, time of operation and method of activation (credit card or cash) is an integral part of our units and changes are made to accommodate trends observed.

- 7) Prove a Sustainability Plan as it pertains to the operations of the concession, as further described in Section D.12.

Our concession is energy efficient – we give energy to our customers through Whole-Body Vibration. Our concession generates no disposals or landfill waste. Our concession does not generate or contribute to noise pollution.

## Concessions Development Plan

### 1. Concept/System and theme including why each component is best for ORD

BodyCharger Systems is a multifunctional airport and healthy passenger comfort/convenience concession that is best for ORD because it addresses and helps solve multiple problems relevant in airports; namely, increasing circulation through passive exercise. In addition, passengers can elevate feet, use the small tray for eating and working, charge electrical devices wirelessly or through USB and receive information regarding local restaurants, retail and other airport information through non-touch display screens.

### 2. Proposed menu of services and products and the approximate price range for each category

We transform an ordinary airport seat and sitting into an experience by providing a menu of passenger services and conveniences. They include (shoes on) foot massage, "whole body vibration" to enhance circulation and health, calm stress, help with foot and leg pain instantly.

In addition, our concession provides terminal seating with trays for food and drink and work space. We provide wireless device charging for those without cords and outlets/USB ports. All units have display screen monitors for passengers to view airport information menus and amenities all for only \$1.00 for each two minutes of activation. Customers can deposit multiple bills and any denomination of \$5.00 \$10.00 or \$20.00 for longer time and uninterrupted service. Passengers can swipe a credit card for \$5.00 and 10 minutes of service.

### 3. Sources of merchandise, products and supplies

BodyChargerSystems builds and assembles units in Racine/Kenosha WI and uses a variety of local suppliers and subcontractors. Our motors are manufactured in Taiwan.

### 4. Narrative description of the respondent's sustainability initiatives incorporated in the design and construction of the proposed tenant improvements.

BodyChargerSystems has low electrical energy requirements - consuming less than 1/2 amp when activated. The units produce no waste and no emissions. There is no buildout and it is not necessary to disrupt or alter Airport locations. BodyCharger units are placed on and attached to a very shallow metal subfloor or platform that we provide to hide electrical cords and keep units in place.

5. Preliminary plans in sufficient detail to allow evaluation of the quality and design of the proposed tenant improvements including:

- a. Layout and space plans of the facility showing reception, point of sales, fixture layout, seating, expected queuing and other pertinent features

Units are placed and arranged in a row in front of every other existing airport seat and span the length of the provided space/location. Electrical cords will run under a custom designed subfloor/platform. Please see the attached pictures.

- b. Renderings, sketches or photo-renderings of the concessions that include the interior and exterior views of the facility and show the overall design of the space, general color scheme and fixtures.

Please see the attached pictures.

- c. Descriptions and photographs that demonstrate the quality of the various materials to be used within the concession

Please see the attached pictures. BodyChargers are fabricated with steel sheet metal, then treated with a heated powder coating process for surface color durability and easy cleaning. (similar to automobile painting).

- d. For E-Commerce Mobile Self Ordering and Delivery systems, graphic representations of the system (both hardware and software) and process of its use by the customer as well as support services and integration with the Concessionaires, Airlines and/or City systems and reporting.

N/A

- e. For Automated Retail, Services and Food Machines and/or Kiosks, a description of the kiosk, its specifications and branded product offerings.

BodyChargers measure 18" in diameter and are approximately 32" high. The units are placed on the floor in front of existing airport seating – creating a personal space. Please refer to pictures.

- f. Marketing plans and conceptual designs. These plans should include how the concession is planning to market the services to the customer as well as educating the customer on how to use it. The marketing plan should include graphic examples.

The front of each unit is back lighted to tastefully highlight and market services. In addition, the built-in rolling non-touch display/monitor will highlight and educate customers on the health benefits of Whole-Body Vibration and passive exercise, market services, display airport information and provide instructions for payment and how to activate.

- g. All design materials should be included in the proposal.

Please see above item C.

## **6. Proposed Project Schedule**

Upon notification and receipt of an executed Concession Agreement, the Respondent will immediately begin the design, fabrication and manufacturing custom for the measurements on each individual location. This process will take approximately 60 to 90 days. The installation will begin no later than 90 days from the Effective Date. Installation of Phase I and Phase II will be completed in Q1 and Q2 of 2021.

**Compensation to the City** – Provide the proposed License Fee.

See Form G – 18% of gross sales.

## **7. Projected Sales, Net Income, and Cash Flow**

The formula that used to project sales is based on total annual enplaned passengers. To provide a good faith estimate of Gross Receipts through 2026, our assumptions are based on the 2019 annual enplanements provided by CDA in the RFP. The projected gross receipts do not consider the COVID pandemic's impact on the traveling public or ORD enplanement numbers.

Based upon years of experience with the current BodyCharger Systems concept and a similar airport concession, we have developed a formula to project sales based on the number of "one million" annual enplaned passengers. The density of foot traffic is also a factor.

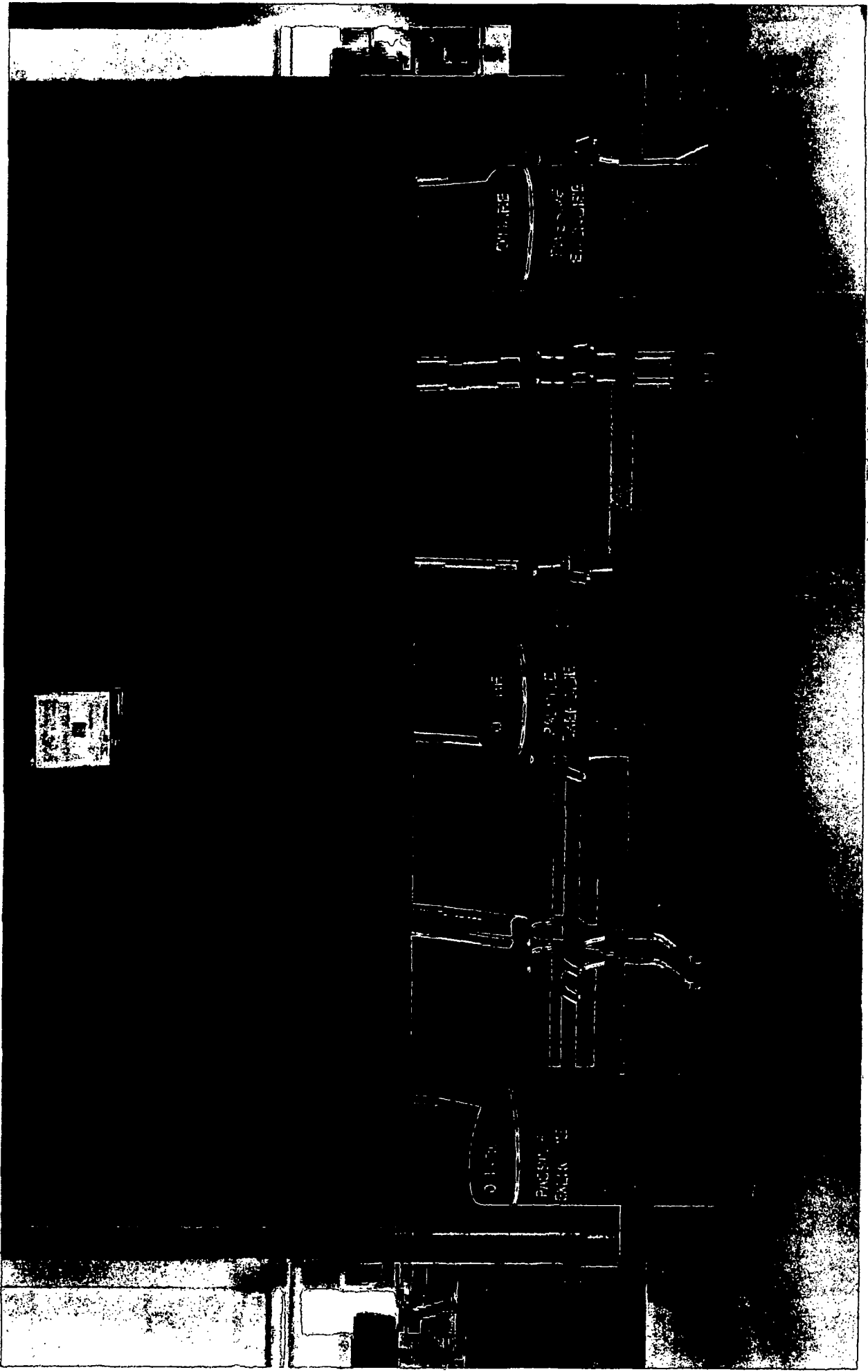
We have found in general, that one million enplaned passengers generate "per unit" sales of roughly \$2.04 per unit per day. For example, in 2019 GSP had roughly one million enplaned passengers and the average, per unit, per day, sales were \$2.03 for each BodyCharger unit. In 2019, Milwaukee's General Mitchell Field had roughly 3 million enplaned passengers and the average per unit per day sales were \$6.17 per BodyCharger unit.

Reported 2019 ORD annual enplaned passengers were roughly 40 million. We therefore multiply \$2.04 times 40 which equals \$81.60 per unit per day sales for ORD. Though we would like to deploy many more units, thru 2026, for the purpose of this good faith estimate, we expect to install at least 65 BodyCharger units at the available locations which we expect to generate daily sales of (65 x \$81.60) \$5,304.00 per day or \$1,935,960.00 annually\*. BodyChargers are available for use 24 hours a day 365 days a year.

## **8. Capital Investment and Financing Plan**

The source of funding will come from a loan from the respondent to BodyChargerSystems. The total cost including machines, transportation, installation, and site improvement is estimated to be around \$300,000.00. depending on the cost to prepare each location (provide electrical, remove telephones, drywall painting) proposed location improvement cost range from \$6,000.00 to \$75,000.00 depending on necessary work

Build/Development/Installation cost/investment will be around \$195,000.00. Site improvement and electrical upgrade if needed is estimated to be from \$6,000.00 to \$75,000.00. Annual wages including office/administrative/accounting/technical support is estimated at \$100,000.00. ACDBE @ 32% cost includes cleaning and site management and is expected to be \$619,507.00 of 1<sup>st</sup> full year estimated revenue. On site repair/maintenance is \$15,000.00 annually. Finance cost @ 4% is \$6,000.00. The total fixed annual expenses are expected to be approximately \$20,000.00.



0110

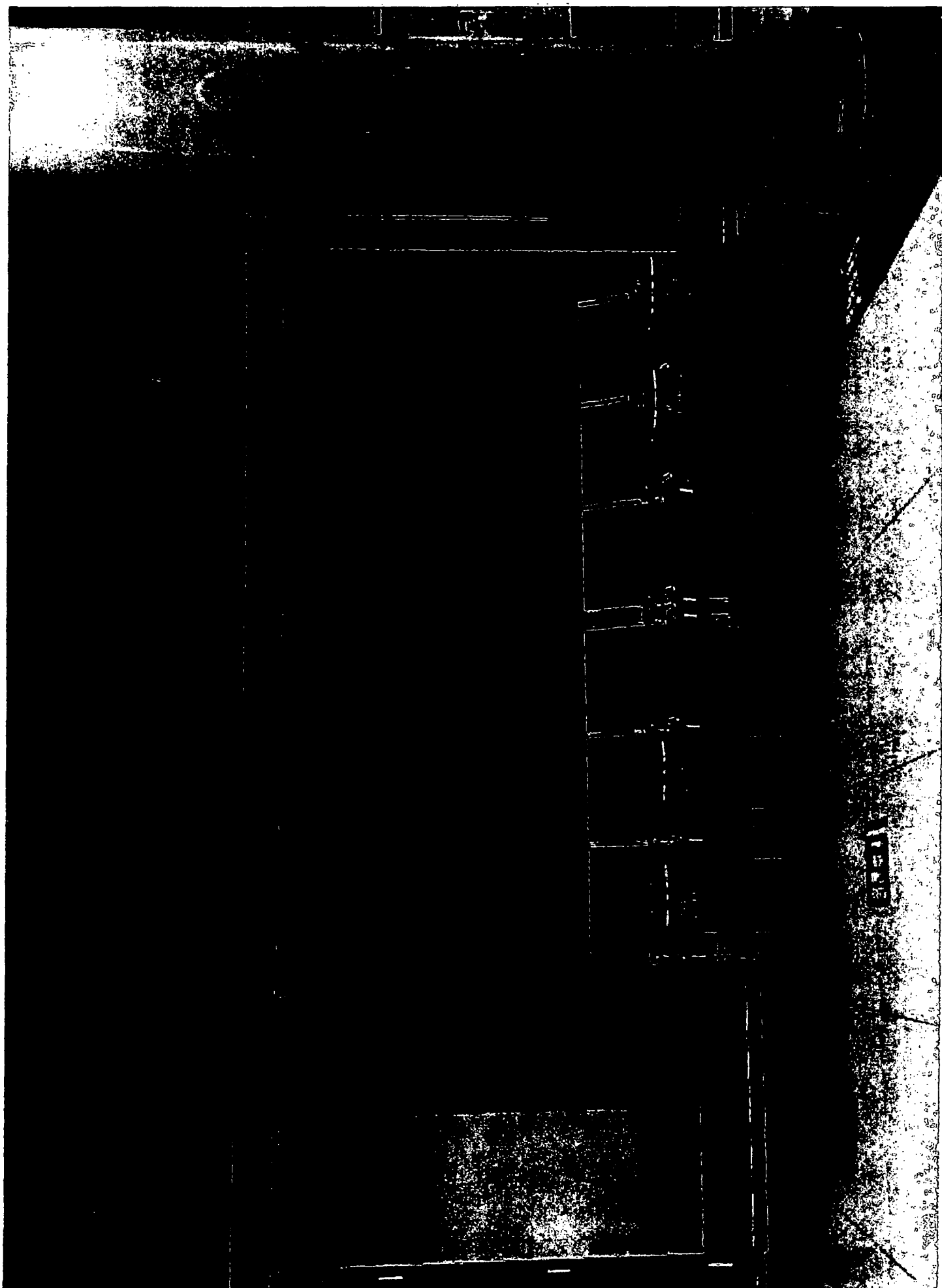
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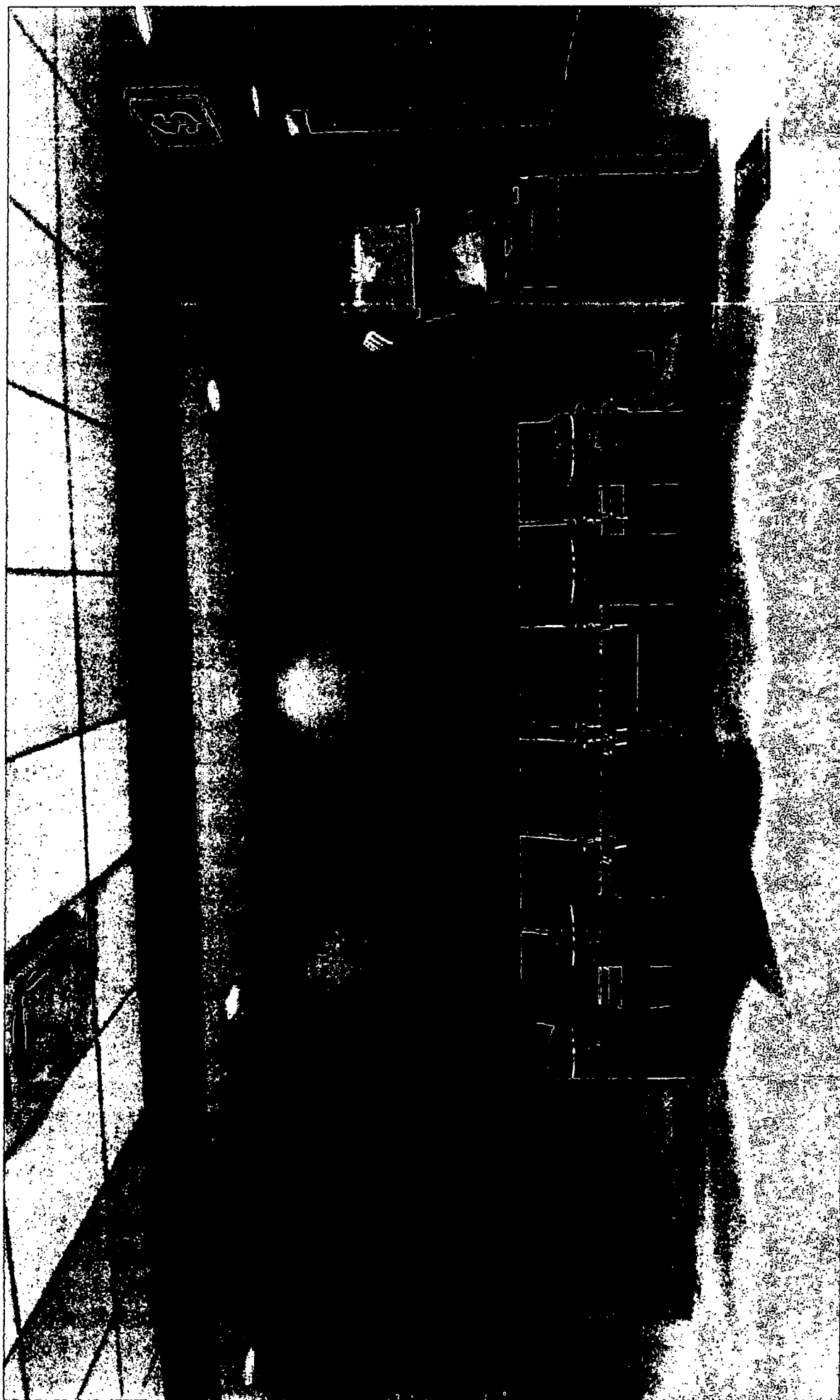
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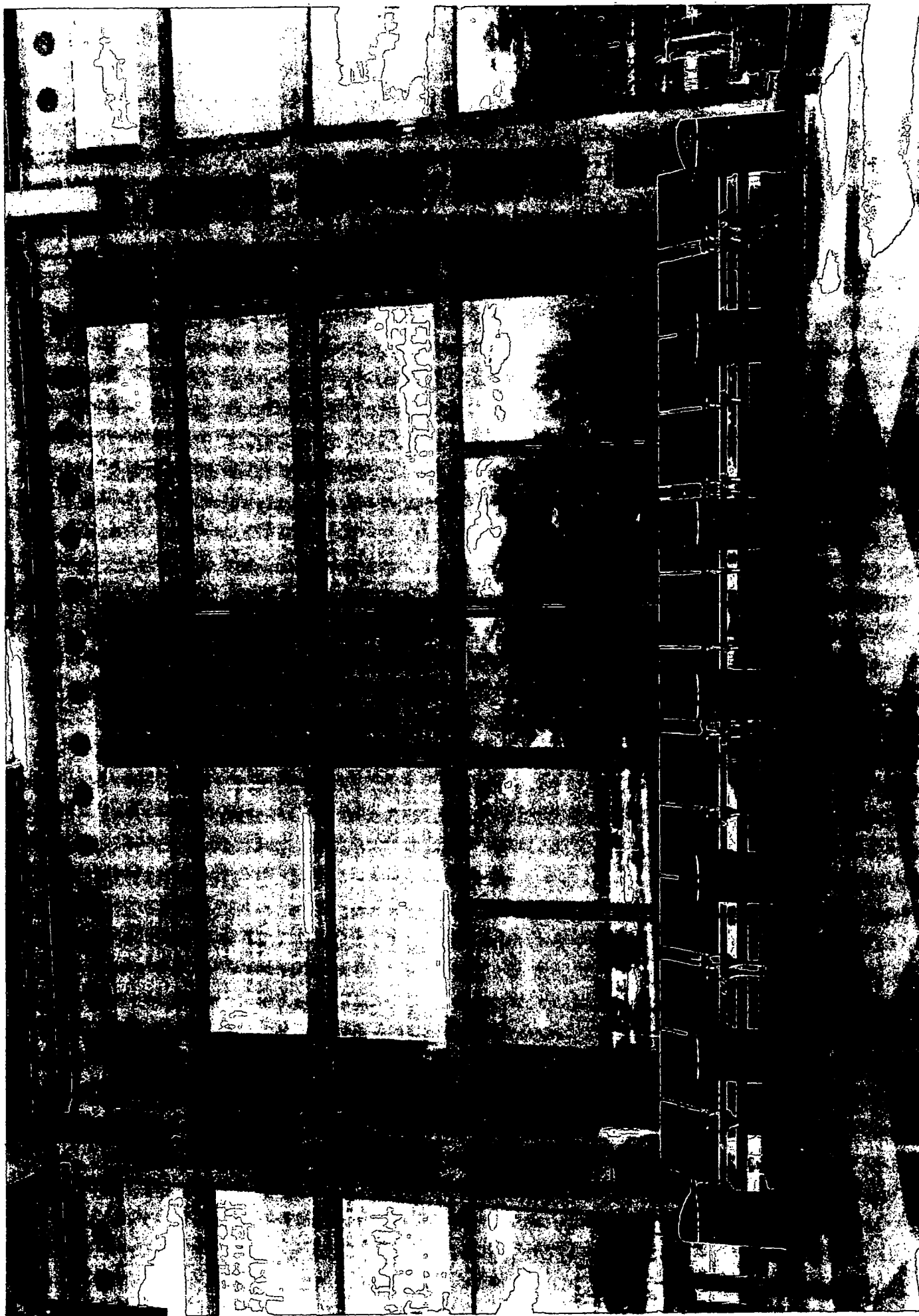
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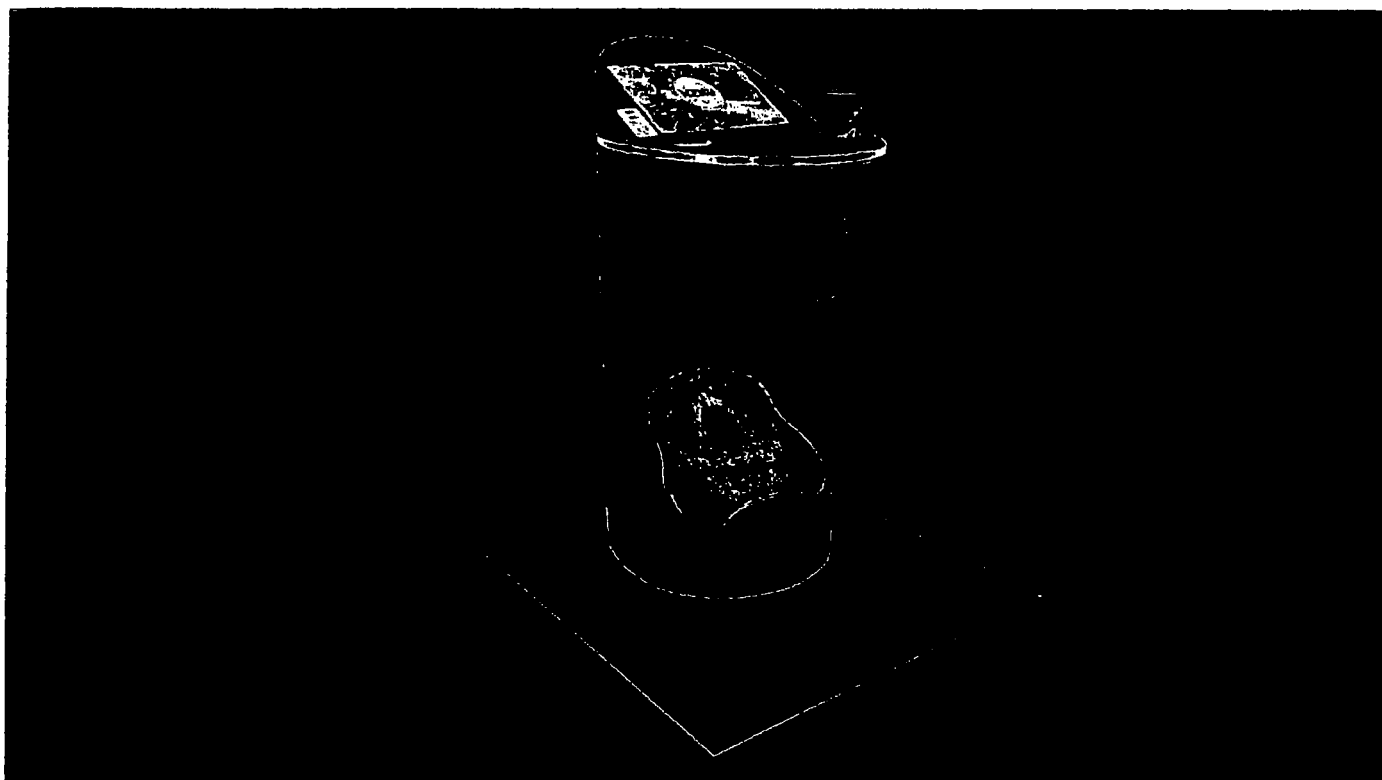
PACIFIC  
SALON











**Proposal Form B  
Concept Plan  
Package 3  
(Automated Retail, Services and Food)**

*Instructions: Provide respondent's proposed concept plan showing the following information for each proposed Concession Location. Use additional copies of this table as necessary. Submit additional information as set forth in the Proposal Requirements following this proposal*

Respondent:

Good Vibrations, LLC (d/b/a BodyCharger Systems)

Concession Location	Location Description	Concession Description	Proposed Equipment/Facility	Proposed Operator	Anticipated Opening Date
<b>Terminal 1</b>					
Location #1 - T1,B12	4 x 27	Gate 12 with outlet	8 Units	ACDBE	
Location #2 - T1,C11	4 x 27	Gate 11 with outlet	8 Units	ACDBE	
Location #4 - T1,LL Baggage	4 x 12	Baggage Claim outlet	4 Units	ACDBE	Phase III
Location #5 - T1,BL Tunnel		next to shoeshine			
<b>Terminal 2</b>					
Location #3 - T2,E1 repeated location?		Near Summer House outlet			
Location #6 - T2,E6	4 x 9	Gate E6 outlet behind wall	3 Units	ACDBE	
Location #7 - T2 Adjacent to ATM	4 x 15	Behind McDonalds outlet	5 Units	ACDBE	
Location #8 - T2,F12	4 x 15	Gate F12 no outlet	5 Units	ACDBE	Phase III
Location #9 - T2,E8	4 x 10	Gate E8 outlet	4 Units	ACDBE	
Location #10 - T2,E1 repeated location?		Near Summer House outlet			
Location #11 - T2,H3	4 x 12	Near Bubbles Bar no outlet	4 Units	ACDBE	Phase III
Location #12 - T2-T3 Bridge	4 x 9	Bridge	3 Units	ACDBE	Phase III
<b>Terminal 3</b>					
Vacant Space T3HK.U.9.H.B					
Location # 13 - T3,H1	4 x 28	Starbucks outlet	9 Units	ACDBE	
Location #14 - T3,G11	4 x 10	outlet	3 Units	ACDBE	
Location #15 - T3,H3	4 x 28				
Location #16 - T3, K18	4 x 12	Phone removal	4 Units	ACDBE	
Location # 17 - T3, K19	4 x 12	Gate K19 outlet but phone removal	4 Units	ACDBE	Phase III
Location #18 - T3, LL Baggage					
Location #19 - T3,BL Passageway to CTA					
<b>Add Additional Proposed Locations Below (insert additional rows as needed)</b>					
See Attached List of					
proposed additional locations					

Anticipated opening date for all locations except those indicated as Phase III will be 2021 Q1 and Q2

## PROPOSED ADDITIONAL/ALTERNATE LOACTIONS

### UNITED TERMINAL 1

Gate E-1 across from the seafood restaurant

B-5 across from Starbucks - behind trashcan

B-6 Between Johnston & Murphy and Wolfgang

B-8 Next to Oakley

B-9

B-11 Across from window

B-12

Across from Chilis along window (from Chilis all the way to McDonalds on the window). About 100 ft

(Wolfgang Puck location is a good example of placing a group of units under an existing wall sign and having the outlet a few feet away by one of the steel columns

### TERMINAL 2

E-2 Air Canada across from Duty Free (Airline chairs straddle the lease line). This is a great example of the opportunity of utilizing these types of locations where there is plenty of electric inside the gate.

E-6 Next to Smarte Carte

E-8 under wall pictures

E-13 under flight monitor sign (53 inches from the floor to the bottom of the sign)

F-9 under the sign across from Sarah's Candies

F-10 next to gate

## TERMINAL 2 (continued)

Across from G-11

## WALK-WAY NON-TERMINAL LOCATIONS

On Column by /across from PUBLICAN TAVERN

On Column across from FIELD MUSEUM

Across from PELOTON between G and H

Outside below the ROTUNDA

## TERMINAL 3

Next to BROOKS BROTHERS

Across from SUNGLASS HUT by K-6

K-8

On post K-13

Across from K-15 on the wall by the Food Court (2 spots)

Across from K-12 outside Food Court

Across from L-20

Across from L-23

# Proposal Form C

## Projected Gross Receipts by Concession Type

Instructions: Provide a good faith estimate of Gross Receipts for each proposed Concession for the 2020 through 2026 Lease Years. The listing of Proposed Concession on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary. On a separate sheet, provide major assumptions in narrative format.

Respondent:		Good Vibrations, LLC (d/b/a BodyCharger Systems)		Proposed Packages:		Automated Retail, Services and Food (Package 3)					
Concession Type	Proposed Concept/Brand	Anticipated Opening Date	XX Months 2020	2021	2022	2023	2024	2025	2026		
Package 1	Alternative Mobile Electronic Self-Ordering and Delivery Service										
Package 2	Automated Self-Checkout Micro Marts										
Package 3	Automated Retail, Services and Food	1st Q 2021	N/A	\$1 million	\$1.9 million	\$2.1 million	\$2.3 million	\$2.6 million	\$2.8 million		

Chicago Department of Aviation  
Proposal Form C

July 30, 2020

Please see attached major assumptions.

## PROPOSAL FORM C MAJOR ASSUMPTIONS

The formula that used to project sales is based on total annual enplaned passengers. To provide a good faith estimate of Gross Receipts through 2026, our assumptions are based on the 2019 annual enplanements provided by CDA in the RFP. The projected gross receipts do not consider the COVID pandemic's impact on the traveling public or ORD enplanement numbers.

Based upon years of experience with the current BodyCharger Systems concept and a similar airport concession, we have developed a formula to project sales based on the number of "one million" annual enplaned passengers. The density of foot traffic is also a factor.

We have found in general, that one million enplaned passengers generate "per unit" sales of roughly \$2.04 per unit per day. For example, in 2019 GSP had roughly one million enplaned passengers and the average, per unit, per day, sales was \$2.03 for each BodyCharger unit. In 2019, Milwaukee's General Mitchell Field had roughly 3 million enplaned passengers and the average per unit per day sales were \$6.17 per BodyCharger unit.

Reported 2019 ORD annual enplaned passengers were roughly 40 million. We therefore multiply \$2.04 times 40 which equals \$81.60 per unit per day sales for ORD. Though we would like to deploy many more units, thru 2026, for the purpose of this good faith estimate, we expect to install at least 65 BodyCharger units at the available locations which we expect to generate daily sales of  $(65 \times \$81.60)$  \$5,304.00 per day or \$1,935,960.00 annually\*. BodyChargers are available for use 24 hours a day 365 days a year.

Our anticipated opening date is the 1<sup>st</sup> quarter of 2021. The installation may be conducted in three phases over 2021 depending upon timing of receipt of Concession, necessary permits and any improvements needed for the sites included. Phase I and Phase II will be completed by the second quarter of 2021, which will consist of 50 units.

In 2021 with only 50 units our sales are projected to be 1 million dollars. In 2022 the annual sales are projected to be \$1,935,960 -.

Sales projection for 2023 is \$2,129,566.00

Sales projection for 2024 \$2,342,512.00.

Sales for 2025 is \$2,576,763.00

Sales for 2026 is \$2,834,439.00

\*based on 2019 annual enplanements

\*\*based on 10% per year sales increases

# **Proposal Form D** **Capital Investment and Financing Sources Plan**

*Instructions: Provide proposed capital investment and financing sources for each proposed Concession Package. Investment includes leasehold improvements, furniture, fixtures, and equipment; franchise fees. Investment does not include other start-up costs. The listing of Proposed Concessions on this form should correspond with respondent's proposed concept plan. Use additional copies of this table as necessary.*

**Respondent:**

Good Vibrations, LLC (d/b/a BodyCharger Systems)

**Packages**

**Proposed:** Automated Retail, Services and Food (Package 3)

Concession Location ID	Proposed Capital Investment	Financing Sources (Investor and Debt or Equity) and Amount					
		Source 1	Amount 1	Source 2	Amount 2	Source 3	Amount 3
Alternative Mobile Self-Ordering and Delivery Service							
Automated Self-Checkout Micro Marts							
Automated Retail, Services and Food	\$300,000	Self Financed	\$80,000	Self Financed Pending Sale of Real Estate	\$65,000	Self Financed Loan form Personal 401 K	\$155,000

Chicago Department of Aviation  
Proposal Form D

July 30, 2020



## Proposal Form G

### Proposed Concession Fee Rates

*Compensation to the City consists of the Minimum Annual Guarantee Fee ("MAG") and Percentage Fee as described in Section D.2. of the RFP. The City has established the MAG to be paid the City during the Lease Years of the Term. This amount is not "biddable." Any respondent who states a different amount in its proposal will be deemed non-responsive and eliminated from further consideration for award of the offered concession. The City has not established a range of Percentage Fee Rate (s) for each concession category. Respondents must propose a Percentage fee rate(s) for each Package. Any respondent who fails to propose a Percentage Fee Rate(s) will be deemed non-responsive and eliminated from further consideration for award of the offered concession.*

**Respondent:** Good Vibrations, LLC (d/b/a BodyCharger Systems)

#### 1) Proposed Percentage Fee Rate:

Concession Category	Percentage Fee Rate Ranges (for product categories)	Sales Tiers	Proposed Percentage Fee Rate
Alternative Mobile Self-Ordering and Delivery Service			N/A
Automated Self-Checkout Micro Marts			N/A
Automated Retail, Services and Food			18% of Annual Gross Sales

*Note: if not proposing on one or more concession categories (packages) indicate with an "n/a" in the corresponding boxes.*

## Airport Concession Disadvantaged Business Enterprise Participation Plan

We have a current business relationship with the ACDBE firm, The Barbershop at O'hare Airport Inc., whereby the company currently plays the role of concept testing and consulting. We anticipate this relationship to continue and expand, if we are so fortunate to be awarded a Concession by the CDA at O'Hare. The applicable Forms are attached.

**SCHEDULE D:  
COMMITMENT TO PARTICIPATION BY AIRPORT CONCESSION  
DISADVANTAGED BUSINESS ENTERPRISES (ACDBES)**

Name of Tenant:

Good Vibrations, LLC (d/b/a BodyCharger Systems)

Description of Airport Concession (from title page of Request for Proposals):

To Provide Alternative Mobile Electronic Self-Ordering and Delivery Service, Automated Self-Checkout micro marts and Automated Retail, Services and Food Ordering Concessions

State of Wisconsin )County (City) of Kenosha )

In connection with the above-referenced Airport Concession Request for Proposals ("RFP"), and any concession agreement entered into pursuant to the RFP, I, Mark Eberhardt  
(Name of Affiant) **HEREBY DECLARE AND AFFIRM** that I am the President (Title of Affiant) and duly authorized representative of the above-named Tenant and that I have personally reviewed the information set forth in the attached Schedules C and B (if applicable), with the following being a summary of such information:

Name of ACDBE Firm	Role of ACDBE in Concession (as set forth in Schedule C or B)	Proposed ACDBE Participation (as percentage of gross revenues)
The Barbershop at OHare Airport Inc.	Monitor equipment operations on a daily basis, to include cleaning and service. On-site liason between airport and company to ensure optimum customer experience	32%

Total Proposed ACDBE Participation Commitment: 32 %

Schedule D: Affidavit of Tenant

To the best of my knowledge, information, and belief, the facts and representations contained in the aforementioned attached Schedules are true, and no material facts have been omitted.

The Tenant will enter into formal agreements with all listed ACDBE firms for work as indicated by this Schedule D and accompanying Schedules so as to ensure compliance with the Total Proposed ACDBE Participation Commitment stated above, and understands that it must enter into such agreements as a condition precedent to execution of a concession Agreement by the City of Chicago. Copies of each signed joint venture agreement, subcontract, purchase order, or other agreement will be submitted to the Department of Aviation so as to assure receipt no later than ten (10) business days prior to anticipated execution of the concession Agreement by the City.

The Tenant designates the following person as its ACDBE Liaison Officer:

Mark Eberhardt

262-269-1111

(Name – Please print or type)

(Phone)

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THIS DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED ON BEHALF OF THE RESPONDENT TO MAKE THIS AFFIDAVIT.

Mark Eberhardt

(Name and Title of Affiant – Print or type)

Mark Eberhardt

(Signature)

10/24/2020

(Date)

State of Wisconsin  
County of Kenosha

On this 2 day of October, 2020

The above signed officer, Mark Eberhardt (Name of Affiant), personally appeared and, known by me to be the person described in the above Affidavit, acknowledged that (s)he executed the same in the capacity stated above and for the purposes stated above.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

[Signature]

(Notary Public Signature)

Commission expires: 10/18/2022



**Proposal Form E**  
**Airport Concession Disadvantaged**  
**Business Enterprise Plan**

**Respondent:** Good Vibrations, LLC (d/b/a BodyCharger Systems)

1. Indicate total proposed Airport Concession Disadvantaged Business Enterprise (ACDBE) participation:

32%

2. List ACDBE participants and indicate if ACDBE participant is a joint venture partner. Also indicate the ownership percentage of the ACDBE and the role that the ACDBE participant will have in the ownership, management and operation of the concession.

ACDBE Entity	Form of Participation	Participation Percentage	Role/Scope of Work	Capital Contribution
The Barbershop at OHare Airport Inc.	Management Services	32%	Monitor equipment operations on a daily basis, to include cleaning and service. On-site liason between airport and company to ensure optimum customer experience.	0

3. Attach resumes for key personnel/principals of the ACDBE entities.

# IVAN DUNCAN

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## PROFILE

An entrepreneur who has successfully founded, number of, different companies in a variety of industries namely, consulting, barbering, and night clubs. All the ventures have been very successful in providing value to customers, and profitable to the owners and stakeholders. Ivan has also been involved in the management of these companies, as well as in the production of services.

## WORK & PROFESSIONAL EXPERIENCE

The following describes the work and professional experiences of Ivan Duncan in terms of positions and job responsibilities in number of companies over the years.

**The Barbershop at O'Hare Airport Inc.**  
Chicago, IL 06/2014 - Present

**Job Position: Owner/President/Master Barber**

- Incorporated the business creating the appropriate legal structure and securing the appropriate legal identity – EIN from the IRS
- Selected location of business and facility at O'Hare Airport, negotiated leases and rent, and lead the design and construction of the build out for the barber shop.
- Developing and communicating the organization's business plan describing the mission, vision, and values statements as well as marketing plan, financial plan, and operations plan.
- Organizing the organization's resources including staffing (hiring barbers, contracting for accounting, legal, and other services), and securing funding in order to achieve the organization's strategic goals and objectives,
- Directing and leading development of marketing, human resource, operational, and financial plans, policies and procedures to ensure appropriate organizational behavior in meeting operational performance goals while satisfying the mission and strategic goals and objectives.
- Managed the growth strategy to diversify revenue base through expansion and entering second line of business - Automated Personal Service Concession - at airports.
- Providing haircuts and shaves as in shop master barber and shop manager.
- Monitoring, evaluation and coaching barbers to improve shop performance and brand.

**IWD Management Inc.**  
Indianapolis, Indiana 01/1999 - 06/2014

**Job Position: Owner/President**

- Business Consultant
- Analyze Businesses
- Conducted Market Studies
- Specialist in establishing Credit for Businesses
- Marketing Management

**Oxygen Lounge**  
Indianapolis, Indiana 01/2007 – 10/2009

**Job Position: Owner/President**

- Incorporated Business
- General Contractor for build out
- Managed Facility, hired managers and staff
- Utilized Strategic Management Marketing Tools

**Beauty Salon**  
Indianapolis, Indiana 01/2008 – 01/2009

**Job Position: Owner/President/Master Barber**

REFERENCES AVAILABLE UPON REQUEST

# IVAN DUNCAN

207 East Ohio Street Apt 184

Chicago, IL 60611

847-610-0073

Duncanivan2020@gmail.com

- Incorporated Business
- General Contractor for build out
- Managed Facility, hired managers and staff
- Utilized Strategic Management Marketing Tools
- Professional Stylists/Master Barber
- Specialists in Hot Shaves

**Broad Ripple Barber Shop**  
**Indianapolis, Indiana 04/2004 – 08/2010**

**Job Position: Owner/President/Master Barber**

- Incorporated Business
- General Contractor for build out
- Managed Facility, hired managers and staff
- Utilized Strategic Management Marketing Tools
- Professional Stylists/Master Barber
- Specialists in Hot Shaves

**Salon by Wesley Jean**  
**Roswell, Georgia 01/2002 – 08/2004**

**Job Position: Owner/President/Master Barber**

- Incorporated Business
- General Contractor for build out
- Managed Facility, hired managers and staff
- Utilized Strategic Management Marketing Tools
- Professional Stylists/Master Barber
- Specialists in Hot Shaves

**The Barber Shop**  
**Alpharetta, Georgia 10/1999 – 04/2002**

**Job Position: Owner/President/Master Barber**

- Incorporated Business
- General Contractor for build out
- Managed Facility, hired managers and staff
- Utilized Strategic Management Marketing Tools
- Professional Stylists/Master Barber
- Specialists in Hot Shaves

**Duncan's Barber Shop**  
**Indianapolis, Indiana 09/1998 – 09/1999**

**Job Position: Owner/President/Master Barber**

- Incorporated Business
- General Contractor for build out
- Managed Facility, hired managers and staff
- Utilized Strategic Management Marketing Tools
- Professional Stylists/Master Barber
- Specialists in Hot Shaves

**Great Clips**  
**Indianapolis, Indiana 01/1994 – 08/1998**

**Job Position: Manager/Master Barber**

- Managed Staff

**REFERENCES AVAILABLE UPON REQUEST**

# **IVAN DUNCAN**

- Multicultural stylist

## **EDUCATION**

- City College of Chicago-Wilbur Wright College-2014
- Indiana Barber College –1993
- Master Barber License-2003

## **LICENSES**

- Barber License - State of Illinois
- Master Barber License – State of Illinois

## **SKILLS**

Professional Management Skills, Professional Marketing Skills, Customer Service Skills, Versa Pro (Payroll), Training Skills, Event Planning, Computer Software, Specialists in Hot Shaves



**SCHEDULE C**  
**LETTER OF INTENT FROM ACDBE TO PERFORM**  
**AS SUBCONTRACTOR, SUPPLIER AND/OR CONSULTANT**

[NOTE: If Tenant is proposing to perform as a joint venture of ACDBE and non-ACDBE firms, use Schedule B - Affidavit of Joint Venture - instead of Schedule C.]

Name of Tenant:

BodyChargerSystems

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Description of Airport Concession (from title page of Request for Proposals):

Automated Services

The Barbershop at O'Hare Airport Inc.  
 From: DBA O'Hare Automated Personal Services ("ACDBE")  
 Name of ACDBE Firm

To: BodyChargerSystems and the City of Chicago:  
 Name of Tenant

The ACDBE certification status of the undersigned is confirmed by the attached Letter of Certification from the City of Chicago dated June 18, 2020 (or letter of certification from the Illinois Department of Transportation dated \_\_\_\_\_). This Schedule C and the Letter of Certification will be attached to Schedule D - Commitment of Tenant to ACDBE Participation.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named airport concession:

#### Description of ACDBE Participation in concession

Responsible for managing concession operations at O'Hare functions include:

- (1) clearing concession space and service production equipment at various locations, and ensuring environment contributes positively to customer experience,
- (2) Monitoring operations performance to ensure adherence to performance goals,
- (3) Managing relationship to airport concession management,
- (4) Raising equipment maintenance and repair events with corporate technical support.

#### Description of compensation to be paid to ACDBE

\$65k - first year compensation as 32% of estimated first year revenue.

Value of participation by ACDBE as percentage of concession gross revenues:

32 %

[NOTE: If more space is needed to fully describe the ACDBE firm's proposed role and/or compensation, attach additional sheets.]

**Schedule C: Letter of Intent from ACDBE**

**SUB-SUBCONTRACTING LEVELS**

0 % of the value of the ACDBE's participation will be sub-subcontracted to non-ACDBE contractors.

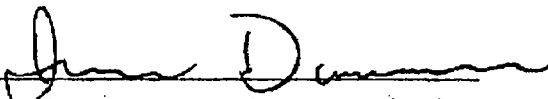
0 % of the value of the ACDBE's participation will be sub-subcontracted to ACDBE contractors.

July 30, 2020

**NOTE: IF ACDBE WILL NOT BE SUB-SUBCONTRACTING ANY OF THE PARTICIPATION DESCRIBED IN THIS SCHEDULE, A ZERO (0) MUST BE SHOWN IN EACH BLANK ABOVE.**

**NOTICE: IF MORE THAN TEN PERCENT (10%) OF THE VALUE OF THE ACDBE'S PARTICIPATION WILL BE SUB-SUBCONTRACTED, A BRIEF EXPLANATION AND DESCRIPTION OF THE WORK TO BE SUB-SUBCONTRACTED MUST BE ATTACHED TO THIS SCHEDULE.**

The undersigned will enter into a formal written agreement for the above participation with Tenant, conditioned upon the City of Chicago selecting the Tenant as a concessionaire, approval of Tenant's ACDBE Participation Commitment referencing this Schedule C by the City of Chicago, and successful negotiation of a concession Agreement between Tenant and the City of Chicago.

  
(Signature of Owner, President, or Authorized Agent of ACDBE)

Ivan Duncan Owner/President  
Name/Title (Print)

08/23/2020  
Date

847-610-0073  
Phone

## Proposal Form J Form of Reference

**Respondent:** Good Vibrations, LLC

*Please use the following format for each of the **three** required references:*

**REFERENCE NO.** 1

**Name:** Scott Carr

**Title:** Vice President - Commercial Business

**Firm:** Greenville/Spartanburg International Airport

**Address:** 2000 GSP Drive, Suite 1

Greer, SC 29651

**Telephone:** 864-848-6222

**Nature and magnitude of association (including years):**

We placed BodyCharger units in this airport on April 2016 on a renewal concession agreement. The airport and its travelers have been pleased with our service and our agreement has been renewal annually. We continue to offer BodyCharger units at GSP today.

## Proposal Form J Form of Reference

**Respondent:** Good Vibrations, LLC

*Please use the following format for each of the **three** required references:*

**REFERENCE NO.** 2

**Name:** Tera Greenland

**Title:** Manager

**Firm:** Prime Outlets at Pleasant Prairie

**Address:** 11211 120th Avenue

Pleasant Prairie, WI 53158

**Telephone:** 262-857-2101

**Nature and magnitude of association (including years):**

We placed BodyCharger units at this high traffic location in October of 2016. The venue and we, are satisfied with our performance.

Our lease has been renewed annually. We continue to offer BodyCharger units at this location.

## Proposal Form J Form of Reference

**Respondent:** Good Vibrations, LLC

*Please use the following format for each of the **three** required references:*

**REFERENCE NO.** 3

**Name:** Karen Lanham or Samuel Thatcher

**Title:** Office Manager/Mall Manager

**Firm:** Chicago Premium Outlets

**Address:** 1650 Premium Outlets Blvd., Suite 150

Aurora, IL 60502

**Telephone:** 630-692-1451

**Nature and magnitude of association (including years):**

We placed BodyCharger units at this high traffic shopping mall in August of 2020. The venue and we have been satisfied with our performance and we expect to add an additional units by October 10, 2020.

## Outstanding Claims and Litigation

The Respondent is neither in default nor has any past due amounts or arrearages on any previous or existing contract, or other financial obligations, to the City, the State of Illinois, or any political subdivision of the State of Illinois.

The Respondent has not been involved in any material legal actions, received any fines, penalties or been a respondent to any of the following:

- i. A debtor in bankruptcy; or
- ii. A plaintiff or defendant in a legal action for deficient performance under a contract or violation of a statute or related to service reliability; or
- iii. A respondent in an administrative action for deficient performance on a project or in violation of a statute or related to service reliability; or
- iv. A defendant in any criminal action; or
- v. A named insured of an insurance policy for which the insured has paid a claim related to deficient performance under a contract or in violation of a statute or related to service reliability; or
- vi. A principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to deficient performance under a contract or in violation of a statute or related to service reliability; or
- vii. A defendant or respondent in a governmental inquiry or action regarding accuracy of preparation of financial statements or disclosure documents.



## Exceptions

Respondents should include a list and discussion of exceptions, if any, to the requirements of this RFP, Sample Agreement, and any addenda. Identify the requirement, nature of the exception and explanation. If no exceptions are identified and respondent's proposal is accepted, respondent is expected to conform to all the requirements specified herein including, in particular, execution of a contract substantially similar to the Sample Agreement attached hereto. The City, in its sole discretion, shall determine whether substantive or extensive exceptions render the proposal non-responsive.

Note: the proposer may include alternative deal terms in the Exceptions section for the City to consider. These deal terms may include rental options as long as they are no less than the financial equivalent of what is proposed in the main body of this proposal.

## Proposal Form O

### Proposal Exceptions

*Instruction: Please list any exceptions below. Note that by listing any exception does not in any way mean the exception will be allowed. The City reserves the right to accept, not accept or to negotiate any and all exceptions with a selected respondent.*

EXCEPTIONS (PLEASE REFER TO THE SECTIONS IN THE RFP TO WHICH IT PERTAINS)	DETAILED DISCUSSION OF THE EXCEPTION INCLUDING WHY THE EXCEPTION IS PREFERRED
Insurance Requirement - Automobile Liability Sec. D. 8	Request that Automobile Liability be removed as no automobiles will be used for Concession
Insurance Requirement - Workers' Compensation Sec. D. 8	Request that Workers' Compensation be removed as no employees of the Respondent will be engaged in work at the Airport, other than owner. All on-site labor will be performed by ACDBE partner.
Respondent has committed to 32% ACDBE participation, whether it involves one or more ACDBE firms. Only one ACDBE firm is currently contemplated. Sec. D. 4	If it proves that current selected ACDBE partner cannot provide all services needed, Respondent may need to bring in another ACDBE firm with an agreeable pro-rata portion of the gross revenues being split among two ACDBE firms.
Respondent requests a provision be included in any agreement with the City to cover future pandemics or catastrophic events as it applies to agreed upon MAG payments or fines associated with delays with initial installation of the Concession. Section D. 1.	If the current COVID pandemic resurges in Q4 2020 or Q1 of 2021, the Respondent may experience delays in product preparation and ability to obtain needed assistance for installation. If there is a COVID resurgence or new pandemic in the future, any agreed upon future MAGs will likely be unsustainable.
Security Deposit Sec. D. 3	We request this amount be set at \$5,000 and adjusted if needed. For a small company a larger security deposit ties up working capital.
Respondent requests the opportunity to provide additional Personal financial information of the Respondent can be made available for review prior to award of an Agreement. Sec. 11. The Respondent supports all activities of the LLC.	Good Vibrations, LLC (d/b/a BodyCharger Systems) is a new and growing company without strong financial information. Due to the current personal identity theft environment, we request the opportunity to provide personal tax return and other financial information on a confidential basis, if seriously considered for a Concession opportunity.
<i>Add additional rows and/or continue on an additional page(s)</i>	

## **Proposal Form K**

### **Proposal Affidavit**

The undersigned Respondent hereby submits to the City of Chicago ("City") through its Chicago Department of Aviation ("Department and/or CDA") the Proposal enclosed, to operate as a concessionaire at Chicago O'Hare International Airport ("Airport") based upon all terms and conditions set forth in the City's Request at the Airport's dated July 30, 2020 ("RFP"), as it may have been amended in one or more addenda thereto. Respondent further specifically agrees hereby to provide goods and services in the manner set forth in the Proposal.

1. Respondent intends that the City rely on the Respondent's submitted information and the representation that Respondent has the capability to successfully undertake and complete the responsibilities and obligations contained in the Proposal and the Lease and License Agreement ("Agreement") to be executed by the City and Respondent, if Respondent is awarded this concession, and Respondent understands the City will so rely.
2. Respondent acknowledges that the City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by the Respondent.
3. Respondent acknowledges that Respondent has read and fully understands all the provisions and conditions set forth in the RFP and considers the project feasible.
4. Respondent acknowledges that the City is obligated to adhere to certain Grant Assurances as a recipient of federal grant funds and adherence to said Grant Assurances will become an obligation of the Respondent if Respondent is awarded this concession.
5. Respondent has the capability to successfully undertake and complete the responsibilities and obligations contained in the Proposal.
6. Respondent acknowledges that this Proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the date and time responses to this RFP are due to be submitted to the City, as set forth in the RFP documents.
7. The City reserves the right to reject any and all proposals, to withdraw the RFP, to reissue the RFP, to enter into negotiations with any and all respondents, and to accept that proposal which in its judgment will provide the best level of service to the traveling public.
8. Respondent agrees that this Proposal constitutes an offer valid for a period of 180 days following the Due Date set forth in the RFP and any addenda thereto.
9. Respondent solely will bear all costs incurred by Respondent in connection with the preparation and submission of this Proposal and with Respondent's costs associated with any negotiations with the City. Under no circumstances shall the City be responsible for any costs associated with Respondent's submittal or negotiations of any agreement with the City.

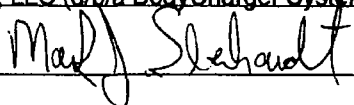
10. Respondent acknowledges that the City will not recognize brokers with regard to the leases offered by the RFP and will not be responsible for any fees, expenses or commissions purported to arise from the execution of any lease related to this RFP. Respondent agrees to hold harmless the City from any claims, demands, actions or judgments in connection with any broker fees, expenses or commissions.
11. Respondent acknowledges that the City may conduct various investigations of the Respondent's business experience, financial responsibility, and character. Respondent agrees to permit and cooperate with any such investigations.

Respondent warrants that: 1) Respondent has not in any manner directly or indirectly, conspired with any person or party to compete unfairly or compromise the competitive nature of the RFP process; 2) the contents of this Proposal as to rent, terms or conditions have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business, prior to the official opening of this Proposal; and 3) Respondent has not engaged in any activities in restraint of trade in connection with this RFP.

Name of Respondent (Legal Name): Good Vibrations, LLC (d/b/a BodyCharger Systems)

Signature of Authorized Person:

Mark Eberhardt



Title:

President

Business Address of Respondent:

12031 136th Avenue, Kenosha, WI 53142

Business Phone Number:

262-269-1111

Date:

County of:

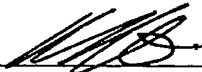
Kenosha

State of:

Wisconsin

Signed and sworn before me this 2 day of October, 2020

Notary Signature:



My Commission Expires:

10/18/2022

Affix Seal



## Proposal Form L Business Information Statement

Respondent must include a separate Business Information Statement for the respondent and all proposed joint venture partners, subtenants, sub-concessionaires, and all other entities and individuals as instructed on this form.

Respondent must provide an organization chart which includes each of the entities for which a Business Information Statement is required.

*Instruction: Provide the following information for the entity or individual completing this Statement (the "Reporting Entity").*

**A. Basic Information:**

1. Name of Reporting Entity completing this form:

Good Vibrations, LLC (d/b/a BodyCharger Systems)

2. Relationship of Reporting Entity to Respondent:

Same

**B. Reporting Entity Information**

1. Principal Office Address:

12031 136th Avenue, Kenosha, WI 53142

2. Telephone and Facsimile Numbers:

262-269-1111

3. E-Mail Address:

mark@bodychargersystems.com

4. Contact Person's Name/Title:

Mark Eberhardt, President

5. Is Reporting Entity an ACDBE certified by the Illinois UCP?

☐ Yes ⇒ {attach copy of current certification letter}

☒ No

6. Form of Reporting Entity

☐ Corporation ⇒ {skip to Section C}

☐ Partnership ⇒ {skip to Section D}

☐ Joint Venture ⇒ {skip to Section E}

- ☒ Limited Liability Company ⇒ *{skip to Section F}*
- ☐ Limited Liability Partnership ⇒ *{skip to Section G}*
- ☐ Individual ⇒ *{finished with form}*

Type text here

C. If Reporting Entity is a corporation, please answer the following:

1. When incorporated? \_\_\_\_\_

2. Is the corporation incorporated in the State of Illinois?

☐ Yes ⇒ *{skip to Question C6}*

☐ No

3. Is the corporation registered to do business in Illinois?

☐ Yes ⇒ When: \_\_\_\_\_

☐ No

4. Name, address and phone number of registered Illinois agent.

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5. Attach Certificate of Authority to transact business in Illinois.

6. The corporation is:

☐ Public

☐ Private

*Continued on next page*

F. If Reporting Entity is a Limited Liability Company ("LLC"), please answer the following:

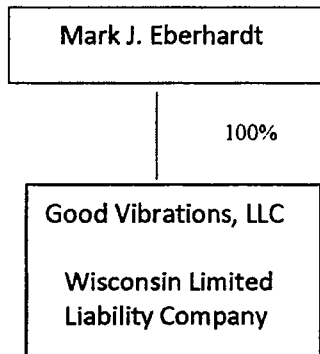
1. Date of organization? April 13, 2010
2. Are LLC Articles of Organization recorded?
  - ☒ Yes ⇒ Date 4/13/2010
  - ☐ No
3. Has the LLC done business in Illinois?
  - ☒ Yes ⇒ When? 8/2020 Where? Chicago Premium Outlets
  - ☐ No
4. Provide a copy of the LLC Articles of Organization.
5. Provide a copy of the LLC Management or Operating Agreement
6. Provide the name, address, and ownership share of each LLC member having a membership interest of 7.5% or more (use additional pages as necessary).

<i>Name</i>	<i>Address</i>	<i>Percentage Share</i>
Mark Eberhardt	12031 136th Avenue, Kenosha, WI 53142	100%

***Additional Instruction: if any LLC member listed above is not an individual, that business entity must also submit a Business Information Statement.***

*Finished with Form*

## RESPONDENT ORGANIZATIONAL CHART





Sec. 183.0202  
Wis. Stats.



State of Wisconsin  
Department of Financial Institutions

**ARTICLES OF ORGANIZATION - LIMITED LIABILITY COMPANY**

Executed by the undersigned for the purpose of forming a Wisconsin Limited Liability Company under Chapter 183 of the Wisconsin Statutes:

- Article 1.       **Name of the limited liability company:**  
MARSHA, LLC
- Article 2.       **The limited liability company is organized under Ch. 183 of the Wisconsin Statutes.**
- Article 3.       **Name of the initial registered agent:**  
Marsha J. Eberhardt
- Article 4.       **Street address of the initial registered office:**  
4820 Conlaine Drive  
Racine, WI 53402  
United States of America
- Article 5.       **Management of the limited liability company shall be vested in:**  
A manager or managers
- Article 6.       **Name and complete address of each organizer:**  
Marsha J. Eberhardt  
4820 Conlaine Drive  
Racine, WI 53402  
United States of America
- Other Information. **This document was drafted by:**  
Marsha J. Eberhardt

**Organizer Signature:**  
Marsha J. Eberhardt

**Date & Time of Receipt:**

4/13/2010 1:45:25 PM

**Credit Card Transaction Number:**

20104132201572

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**ARTICLES OF ORGANIZATION - Limited Liability  
Company(Ch. 183)**

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Filing Fee: \$130.00  
Total Fee: \$130.00

**ENDORSEMENT****State of Wisconsin  
Department of Financial Institutions**

EFFECTIVE DATE	
4/13/2010	

<b>FILED</b> 4/13/2010	
---------------------------	--

AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
GOOD VIBRATIONS, LLC

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 13<sup>th</sup> day of June, 2011, by Mark J. Eberhardt, a resident of the state of Wisconsin ("Member") and Good Vibrations, LLC ("Company").

Explanatory Statement

A limited liability company, Good Vibrations, LLC (the "Company"), has been formed under the laws of the State of Wisconsin by the filing of Articles of Organization, on April 13, 2010, pursuant to Chapter 183 of the Wisconsin Statutes on behalf of the party hereto. The Member and Company have agreed to organize and operate such limited liability company in accordance with the terms of, and subject to the conditions set forth in, this Agreement.

NOW, THEREFORE, for good and valuable consideration, the Member and Company, intending legally to be bound, agree as follows:

1. Name. The Name of the Company is Good Vibrations, LLC, provided that the Member may, from time to time, change the name of the Company to any name permitted by the Wisconsin Statutes.
2. Registered Office and Registered Agent. The Company's registered office is 12031 136<sup>th</sup> Avenue, Kenosha, WI 53142. The name of the Company's registered agent at such address is Marsha J. Eberhardt. The Member may, from time to time, change the registered office and the registered agent of the Company.
3. Term. The term of the Company shall be perpetual, unless the Company is earlier dissolved in accordance with the provisions of this Agreement.
4. Business of the Company. The business of the Company shall be to engage in any lawful businesses and activities for which limited liability companies may be organized under Chapter 183 of the Wisconsin Statutes.
5. Admission of Member. The name and address of the sole Member of the Company is listed below. Other persons shall be recognized and admitted as Members of the Company only upon such person being approved for admission as a Member pursuant to a written document signed by the Member. In no event shall any person be recognized or admitted as a Member of the Company unless such person shall have executed a counterpart of this Operating Agreement,

thereby agreeing to be bound by all of the terms hereof which purport to be binding upon all Members.

Mark J. Eberhardt

12031 136<sup>th</sup> Avenue, Kenosha, WI 53142

6. Membership Interests. The percentage of the Member's ownership interest in the Company is set forth below:

Mark J. Eberhardt

100% ownership interest

7. No Individual Authority. No Member of the Company, acting in his, her or its capacity as such, shall have any authority to act for, or to create, undertake or assume any liabilities, obligations or responsibility on behalf of, the Company or any other Member of the Company.
8. Manager-Managed. The business and affairs of the Company shall be managed by one or more Managers and by such officers of the Company, as may be appointed from time to time by the Board of Managers pursuant to this Agreement. Except where the approval of the Member is expressly required by non-waivable provisions of the Wisconsin Statutes, the Board of Managers shall have full and complete authority, power and discretion to direct, manage and control the business, affairs and properties of the Company.
9. Officers. The Board of Managers may appoint such officers and agents as they shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Managers.
10. Dissolution. The Company shall be dissolved upon the occurrence of either of the following events: (a) by the written agreement of a majority in interest of the Members; or (b) the sale of substantially all of the assets of the Company.
11. Inconsistencies. In the event of any inconsistency between this Agreement and Chapter 183 of the Wisconsin Statutes, to the extent permitted by applicable law, the terms of this Agreement shall govern.
12. Application of Wisconsin Law. This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Wisconsin.
13. Amendments. This Agreement may not be amended except by a written document executed by a majority in interest of the Members.
14. Heirs, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Members and their heirs, legal representatives, successors and assigns.

15. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.
16. Capital. The sole Member initially contributed \$50,000.00, in cash, and no Contributions of other property, to the Company. Capital contributions from Member shall be made on an ongoing basis on an as-needed basis.
17. Allocation of Profits and Losses. The Company's profits and losses shall be allocated in profits and losses proportion to the capital contributions of the Members.
18. Distributions. Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among Members in the same proportions as their capital balances.
19. Assignments. A Member may not assign in whole or in part his or her limited liability company interest without the consent of the other Member(s).
20. Resignation. Without the consent of the remaining Members, a Member may not resign from the Company.
21. Liability of Members. The Members and Managers shall not have any liability for the other Members' or Managers' obligations or liabilities of the Company except to the extent provided under Wisconsin Law. The Company shall indemnify the Members and Managers for their actions as Members and Managers to the fullest extent permitted by Wisconsin Law.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 13<sup>th</sup> day of June, 2011.

Good Vibrations, LLC

By Mark J. Eberhardt  
Mark J. Eberhardt, Sole Member

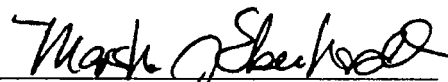
**GOOD VIBRATIONS, LLC**

**CERTIFICATION OF ORGANIZATION AND NAME CHANGE  
AMENDMENTS**

The undersigned, Marsha J. Eberhardt, a Manager of Good Vibrations, LLC, a Wisconsin Limited Liability Company, organized under Chapter 183 of the Wisconsin Statutes, does hereby certify:

1. That the Articles of Organization were filed on April 13, 2010 for MARSHA, LLC;
2. That on August 20, 2010, the Articles of Organization were amended to change the name of the Company from MARSHA, LLC to Eberhardt Entertainment, LLC;
3. That on April 19, 2011, the Articles of Organization were amended to change the name of the Company from Eberhardt Entertainment, LLC to First Class Feet, LLC;
4. That on June 9, 2011, the Articles of Organization were amended to change the name of the Company from First Class Feet, LLC to Good Vibrations, LLC; and
5. That attached hereto is a true and correct copy of the Articles of Organization and related Articles of Amendment of the Company.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand this 2nd day of October 2020.

  
Marsha J. Eberhardt

DEPT OF  
FINANCIAL INSTITUTIONS  
STATE OF WISCONSIN  
Wis. Stats.

2011 JUN -2 AM 9:08

State of Wisconsin  
Department of Financial Institutions  
Division of Corporate and Consumer Services



**ARTICLES OF AMENDMENT - LIMITED LIABILITY COMPANY**

Note: Articles of Amendment cannot be filed to add or remove members, managers or owners of the limited liability company. Member and manager information should be listed in the company's operating agreement. The operating agreement is not filed with the Department of Financial Institutions.

A. The present limited liability company name (prior to any change effected by this amendment) is:

First Class Feet, LLC

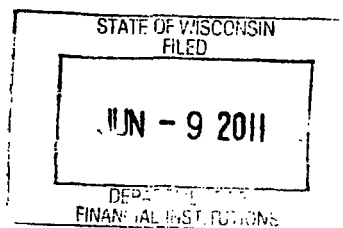
(Enter Limited Liability Company Name)

Text of Amendment (*Refer to the existing articles of organization and the instructions on the reverse of this form. Determine those items to be changed and enter the number identifying the paragraph in the articles of organization being changed and how the amended paragraph is to read.*)

RESOLVED, THAT the articles of organization be amended as follows:

Resolved that Article 1 of the Articles of Organization be amended to read:

That the name of the limited liability company is Good Vibrations, LLC.



B. Amendment(s) to the articles of organization was adopted by the vote required by sec. 183.0404(2), Wis. Stats.

C. Executed on June 1, 2011

(Date)

Marsha J. Eberhardt  
(Signature)

Title: ☐ Member OR ☒ Manager

(Select and mark (X) the appropriate title) Marsha J. Eberhardt

(Printed name)

This document was drafted by Marsha J. Eberhardt

(Name the individual who drafted the document)

**FILING FEE - \$40.00**  
DFI/CORP/504(R09-05)

STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
Sec. 183.0203  
Wis. Stats.  
2011 APR 12 AM 9:29

State of Wisconsin  
Department of Financial Institutions  
Division of Corporate and Consumer Services



## ARTICLES OF AMENDMENT - LIMITED LIABILITY COMPANY

Note: Articles of Amendment cannot be filed to add or remove members, managers or owners of the limited liability company. Member and manager information should be listed in the company's operating agreement. The operating agreement is not filed with the Department of Financial Institutions.

A. The present limited liability company name (prior to any change effected by this amendment) is:

Eberhardt Entertainment, LLC

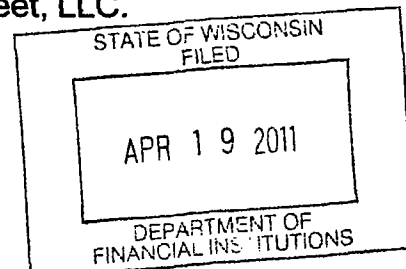
(Enter Limited Liability Company Name)

Text of Amendment (Refer to the existing articles of organization and the instructions on the reverse of this form. Determine those items to be changed and enter the number identifying the paragraph in the articles of organization being changed and how the amended paragraph is to read.)

RESOLVED, THAT the articles of organization be amended as follows:

Resolved that Article 1 of the Articles of Organization be amended to read:

The name of the limited liability company is First Class Feet, LLC.



B. Amendment(s) to the articles of organization was adopted by the vote required by sec. 183.0404(2), Wis. Stats.

C. Executed on April 11, 2011

(Date)

Marsha J. Eberhardt  
(Signature)

Title: ☐ Member OR ☒ Manager

(Select and mark (X) the appropriate title) Marsha J. Eberhardt

(Printed name)

This document was drafted by Marsha J. Eberhardt

(Name the individual who drafted the document)

**FILING FEE - \$40.00**

DFI/CORP/504(R09-05)



2010 AUG 17 AM 10:20

State of Wisconsin  
Department of Financial Institutions  
Division of Corporate and Consumer Services



**ARTICLES OF AMENDMENT - LIMITED LIABILITY COMPANY**

Note: Articles of Amendment cannot be filed to add or remove members, managers or owners of the limited liability company. Member and manager information should be listed in the company's operating agreement. The operating agreement is not filed with the Department of Financial Institutions.

A. The present limited liability company name (prior to any change effected by this amendment) is:

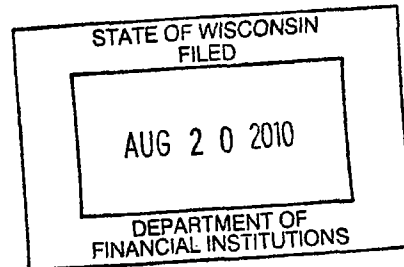
MARSHA, LLC

(Enter Limited Liability Company Name)

Text of Amendment (*Refer to the existing articles of organization and the instructions on the reverse of this form. Determine those items to be changed and enter the number identifying the paragraph in the articles of organization being changed and how the amended paragraph is to read.*)

RESOLVED, THAT the articles of organization be amended as follows:

Resolved that Article 1 of the Articles of Organization be amended to read:  
The name of the limited liability company is Eberhardt Entertainment, LLC.



B. Amendment(s) to the articles of organization was adopted by the vote required by sec. 183.0404(2), Wis. Stats.

C. Executed on August 16, 2010

(Date)

*Marsha J. Eberhardt*  
(Signature)

Title: ☐ Member OR ☒ Manager

(Select and mark (X) the appropriate title) Marsha J. Eberhardt

(Printed name)

This document was drafted by Marsha J. Eberhardt

(Name the individual who drafted the document)

**FILING FEE - \$40.00**

DFI/CORP/504(R09-05)

Sec. 183.0202  
Wis. Stats.



State of Wisconsin  
Department of Financial Institutions

**ARTICLES OF ORGANIZATION - LIMITED LIABILITY COMPANY**

Executed by the undersigned for the purpose of forming a Wisconsin Limited Liability Company under Chapter 183 of the Wisconsin Statutes:

- Article 1.        **Name of the limited liability company:**  
MARSHA, LLC
- Article 2.        **The limited liability company is organized under Ch. 183 of the Wisconsin Statutes.**
- Article 3.        **Name of the initial registered agent:**  
Marsha J. Eberhardt
- Article 4.        **Street address of the initial registered office:**  
4820 Conlaine Drive  
Racine, WI 53402  
United States of America
- Article 5.        **Management of the limited liability company shall be vested in:**  
A manager or managers
- Article 6.        **Name and complete address of each organizer:**  
Marsha J. Eberhardt  
4820 Conlaine Drive  
Racine, WI 53402  
United States of America
- Other Information. **This document was drafted by:**  
Marsha J. Eberhardt

**Organizer Signature:**  
Marsha J. Eberhardt

## STATEMENT WITH RESPECT TO FINANCIAL INFORMATION

Since the inception of the idea/concept for BodyCharger® Systems, we have focused on design and market tests to discover the optimum design for customer appeal and service and protecting the product through patent filings and trademark registrations. Offering a healthy benefit has always been a key component to the product.

Over the years a broad spectrum of markets has been tested, from employee health to hospitality, home-use, medical use (units continue to be used today in physical therapy, podiatrist and general medical office waiting rooms, while surgeons and nurses enjoy the benefits at Loyola Hospital), airports, and retail. All revenue was funneled back into the business to continue the quest to find the optimum product design and viable venue for the business.

Please understand this is an explanation for the poor financials and profitability. The principal of the business, is well capitalized and has the necessary means to move forward with the execution of this RFP as proposed. Three years of personal income tax returns, as well as any additional financial net worth statements, can be provided to CDA prior to executing an Agreement.

**Good Vibrations, LLC**  
**Profit & Loss by Class**  
January 2018 through August 2020

	Greenville/Spartanburg (Airports)	Milwaukee Mitchell (Airports)
<b>Ordinary Income/Expense</b>		
Income		
ASK MARK/MARSHA	0.00	0.00
Mail Vending Income	4,081.00	8,942.00
<b>Total Income</b>	<b>4,081.00</b>	<b>8,942.00</b>
Cost of Goods Sold		
Merchant Account Fees	0.00	0.00
<b>Total COGS</b>	<b>0.00</b>	<b>0.00</b>
<b>Gross Profit</b>	<b>4,081.00</b>	<b>8,942.00</b>
Expense		
Advertising and Promotion	0.00	0.00
Amortization Expense	0.00	0.00
Automobile Expense	7.00	0.00
Bank Service Charges	0.00	0.00
Computer and Internet Expenses	0.00	0.00
Depreciation Expense	0.00	0.00
Dues and Subscriptions	0.00	0.00
Equipment Rental	792.94	0.00
Gifts	0.00	0.00
Insurance Expense	0.00	0.00
Interest Expense	0.00	0.00
Legal Fees	0.00	0.00
License and Permits	0.00	0.00
Meals and Entertainment	468.65	0.00
Miscellaneous	0.00	0.00
Office Supplies	0.00	0.00
Parts	0.00	0.00
Postage and Delivery	0.00	0.00
Product Design	0.00	0.00
Professional Fees	3,200.00	0.00
Rent Expense	2,542.20	11,118.40
Repairs and Maintenance	0.00	0.00
Shows	0.00	0.00
Supplies	0.00	510.07
Tax	0.00	0.00
Travel Expense	5,413.42	348.00
<b>Total Expense</b>	<b>12,424.21</b>	<b>11,976.47</b>
<b>Net Ordinary Income</b>	<b>-8,343.21</b>	<b>-3,034.47</b>
<b>Other Income/Expense</b>		
Other Income		
Sales Tax Discount	0.00	0.00
<b>Total Other Income</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Other Income</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Income</b>	<b>-8,343.21</b>	<b>-3,034.47</b>

**Good Vibrations, LLC**  
**Profit & Loss by Class**  
**January 2018 through August 2020**

	Airports - Other (Airports)	Total Airports
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
ASK MARK/MARSHA	0.00	0.00
Mall Vending Income	0.00	13,023.00
<b>Total Income</b>	0.00	13,023.00
<b>Cost of Goods Sold</b>		
Merchant Account Fees	0.00	0.00
<b>Total COGS</b>	0.00	0.00
<b>Gross Profit</b>	0.00	13,023.00
<b>Expense</b>		
Advertising and Promotion	232.10	232.10
Amortization Expense	0.00	0.00
Automobile Expense	0.00	7.00
Bank Service Charges	0.00	0.00
Computer and Internet Expenses	0.00	0.00
Depreciation Expense	0.00	0.00
Dues and Subscriptions	0.00	0.00
Equipment Rental	0.00	792.94
Gifts	0.00	0.00
Insurance Expense	0.00	0.00
Interest Expense	0.00	0.00
Legal Fees	0.00	0.00
License and Permits	0.00	0.00
Meals and Entertainment	0.00	468.65
Miscellaneous	0.00	0.00
Office Supplies	0.00	0.00
Parts	0.00	0.00
Postage and Delivery	0.00	0.00
Product Design	0.00	0.00
Professional Fees	0.00	3,200.00
Rent Expense	0.00	13,660.60
Repairs and Maintenance	0.00	0.00
Shows	0.00	0.00
Supplies	0.00	510.07
Tax	0.00	0.00
Travel Expense	0.00	5,761.42
<b>Total Expense</b>	232.10	24,632.78
<b>Net Ordinary Income</b>	-232.10	-11,609.78
<b>Other Income/Expense</b>		
<b>Other Income</b>		
Sales Tax Discount	0.00	0.00
<b>Total Other Income</b>	0.00	0.00
<b>Net Other Income</b>	0.00	0.00
<b>Net Income</b>	-232.10	-11,609.78

**Good Vibrations, LLC**  
**Profit & Loss by Class**  
January 2018 through August 2020

	<u>Chicago Premium Outlets</u>	<u>GV General</u>
<b>Ordinary Income/Expense</b>		
Income		
ASK MARK/MARSHA	0.00	0.00
Mall Vending Income	400.00	27,030.74
<b>Total Income</b>	<b>400.00</b>	<b>27,030.74</b>
Cost of Goods Sold		
Merchant Account Fees	0.00	5,931.57
<b>Total COGS</b>	<b>0.00</b>	<b>5,931.57</b>
<b>Gross Profit</b>	<b>400.00</b>	<b>21,099.17</b>
Expense		
Advertising and Promotion	0.00	14,629.22
Amortization Expense	0.00	0.00
Automobile Expense	0.00	1,656.97
Bank Service Charges	0.00	357.00
Computer and Internet Expenses	0.00	685.68
Depreciation Expense	0.00	0.00
Dues and Subscriptions	0.00	1,158.49
Equipment Rental	0.00	39.30
Gifts	0.00	439.85
Insurance Expense	0.00	2,005.63
Interest Expense	0.00	495.52
Legal Fees	0.00	10,764.00
License and Permits	0.00	132.00
Meals and Entertainment	0.00	998.82
Miscellaneous	0.00	0.00
Office Supplies	0.00	631.66
Parts	0.00	61.61
Postage and Delivery	0.00	495.22
Product Design	0.00	13,875.08
Professional Fees	0.00	26,078.50
Rent Expense	46.45	0.00
Repairs and Maintenance	0.00	0.00
Shows	0.00	15,159.59
Supplies	0.00	5,599.48
Tax	0.00	19.97
Travel Expense	180.95	7,919.21
<b>Total Expense</b>	<b>227.40</b>	<b>103,202.80</b>
<b>Net Ordinary Income</b>	<b>172.60</b>	<b>-82,103.63</b>
<b>Other Income/Expense</b>		
Other Income		
Sales Tax Discount	0.00	20.02
<b>Total Other Income</b>	<b>0.00</b>	<b>20.02</b>
<b>Net Other Income</b>	<b>0.00</b>	<b>20.02</b>
<b>Net Income</b>	<b>172.60</b>	<b>-82,083.61</b>

**Good Vibrations, LLC**  
**Profit & Loss by Class**  
**January 2018 through August 2020**

	Governor's Square Mall (Malls)	Harlem Irving (Malls)	Peachtree (Malls)
<b>Ordinary Income/Expense</b>			
<b>Income</b>			
ASK MARK/MARSHA	0.00	0.00	0.00
Mall Vending Income	930.00	4,317.00	251.00
<b>Total Income</b>	930.00	4,317.00	251.00
<b>Cost of Goods Sold</b>			
Merchant Account Fees	0.00	0.00	0.00
<b>Total COGS</b>	0.00	0.00	0.00
<b>Gross Profit</b>	930.00	4,317.00	251.00
<b>Expense</b>			
Advertising and Promotion	0.00	0.00	0.00
Amortization Expense	0.00	0.00	0.00
Automobile Expense	0.00	0.00	0.00
Bank Service Charges	0.00	0.00	0.00
Computer and Internet Expenses	0.00	0.00	0.00
Depreciation Expense	0.00	0.00	0.00
Dues and Subscriptions	0.00	0.00	0.00
Equipment Rental	527.37	0.00	0.00
Gifts	0.00	0.00	0.00
Insurance Expense	0.00	0.00	0.00
Interest Expense	0.00	0.00	0.00
Legal Fees	0.00	0.00	0.00
License and Permits	0.00	100.00	0.00
Meals and Entertainment	147.03	0.00	0.00
Miscellaneous	0.00	0.00	0.00
Office Supplies	0.00	0.00	0.00
Parts	0.00	0.00	0.00
Postage and Delivery	0.00	0.00	0.00
Product Design	0.00	0.00	0.00
Professional Fees	785.00	205.98	104.50
Rent Expense	-170.80	8,200.00	0.00
Repairs and Maintenance	46.12	0.00	0.00
Shows	0.00	0.00	0.00
Supplies	0.00	0.00	0.00
Tax	0.00	0.00	0.00
Travel Expense	826.63	0.00	22.41
<b>Total Expense</b>	2,161.35	8,505.98	126.91
<b>Net Ordinary Income</b>	-1,231.35	-4,188.98	124.09
<b>Other Income/Expense</b>			
<b>Other Income</b>			
Sales Tax Discount	0.00	0.00	0.00
<b>Total Other Income</b>	0.00	0.00	0.00
<b>Net Other Income</b>	0.00	0.00	0.00
<b>Net Income</b>	-1,231.35	-4,188.98	124.09

**Good Vibrations, LLC**  
**Profit & Loss by Class**  
**January 2018 through August 2020**

	Pleasant Prairie Premium Outlet (Malls)	Wolfchase Galleria (Malls)
<b>Ordinary Income/Expense</b>		
Income		
ASK MARK/MARSHA	0.00	0.00
Mall Vending Income	3,835.00	22,717.00
<b>Total Income</b>	<b>3,835.00</b>	<b>22,717.00</b>
Cost of Goods Sold		
Merchant Account Fees	0.00	0.00
<b>Total COGS</b>	<b>0.00</b>	<b>0.00</b>
<b>Gross Profit</b>	<b>3,835.00</b>	<b>22,717.00</b>
Expense		
Advertising and Promotion	0.00	0.00
Amortization Expense	0.00	0.00
Automobile Expense	0.00	0.00
Bank Service Charges	0.00	0.00
Computer and Internet Expenses	0.00	0.00
Depreciation Expense	0.00	0.00
Dues and Subscriptions	0.00	0.00
Equipment Rental	0.00	0.00
Gifts	0.00	0.00
Insurance Expense	0.00	0.00
Interest Expense	0.00	0.00
Legal Fees	0.00	0.00
License and Permits	0.00	0.00
Meals and Entertainment	0.00	41.13
Miscellaneous	0.00	0.00
Office Supplies	0.00	0.00
Parts	0.00	0.00
Postage and Delivery	0.00	187.24
Product Design	0.00	0.00
Professional Fees	0.00	3,585.40
Rent Expense	3,933.20	11,320.00
Repairs and Maintenance	0.00	0.00
Shows	0.00	0.00
Supplies	0.00	0.00
Tax	0.00	0.00
Travel Expense	0.00	443.95
<b>Total Expense</b>	<b>3,933.20</b>	<b>15,577.72</b>
<b>Net Ordinary Income</b>	<b>-98.20</b>	<b>7,139.28</b>
Other Income/Expense		
Other Income		
Sales Tax Discount	0.00	0.00
<b>Total Other Income</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Other Income</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Income</b>	<b>-98.20</b>	<b>7,139.28</b>



**Good Vibrations, LLC**  
**Profit & Loss by Class**  
January 2018 through August 2020

	<u>Total Malls</u>	<u>Unclassified</u>	<u>TOTAL</u>
<b>Ordinary Income/Expense</b>			
Income			
ASK MARK/MARSHA	0.00	0.00	0.00
Mall Vending Income	32,050.00	53,678.84	126,182.58
<b>Total Income</b>	<u>32,050.00</u>	<u>53,678.84</u>	<u>126,182.58</u>
Cost of Goods Sold			
Merchant Account Fees	0.00	2,062.95	7,994.52
<b>Total COGS</b>	<u>0.00</u>	<u>2,062.95</u>	<u>7,994.52</u>
<b>Gross Profit</b>	<u>32,050.00</u>	<u>51,615.89</u>	<u>118,188.06</u>
Expense			
Advertising and Promotion	0.00	126.11	14,987.43
Amortization Expense	0.00	1,135.07	1,135.07
Automobile Expense	0.00	14,071.86	15,735.83
Bank Service Charges	0.00	23.00	380.00
Computer and Internet Expenses	0.00	0.00	685.68
Depreciation Expense	0.00	7,194.60	7,194.60
Dues and Subscriptions	0.00	360.99	1,519.48
Equipment Rental	527.37	0.00	1,359.61
Gifts	0.00	25.00	464.85
Insurance Expense	0.00	1,355.36	3,360.99
Interest Expense	0.00	0.00	495.52
Legal Fees	0.00	0.00	10,764.00
License and Permits	100.00	126.00	358.00
Meals and Entertainment	188.16	0.00	1,655.63
Miscellaneous	0.00	0.00	0.00
Office Supplies	0.00	891.01	1,522.67
Parts	0.00	0.00	61.61
Postage and Delivery	187.24	61.00	743.46
Product Design	0.00	378.00	14,253.08
Professional Fees	4,680.88	450.00	34,409.38
Rent Expense	23,282.40	0.00	36,989.45
Repairs and Maintenance	46.12	613.46	659.58
Shows	0.00	2,212.50	17,372.09
Supplies	0.00	0.00	6,109.55
Tax	0.00	-20.03	-0.06
Travel Expense	1,292.99	70.00	15,224.57
<b>Total Expense</b>	<u>30,305.16</u>	<u>29,073.93</u>	<u>187,442.07</u>
<b>Net Ordinary Income</b>	<u>1,744.84</u>	<u>22,541.96</u>	<u>-69,254.01</u>
<b>Other Income/Expense</b>			
Other Income			
Sales Tax Discount	0.00	40.04	60.06
<b>Total Other Income</b>	<u>0.00</u>	<u>40.04</u>	<u>60.06</u>
<b>Net Other Income</b>	<u>0.00</u>	<u>40.04</u>	<u>60.06</u>
<b>Net Income</b>	<u><u>1,744.84</u></u>	<u><u>22,582.00</u></u>	<u><u>-69,193.95</u></u>

**Good Vibrations, LLC**  
**Statement of Cash Flows**  
January through August 2020

	Jan - Aug 20
<b>OPERATING ACTIVITIES</b>	
Net Income	-30,937.50
Adjustments to reconcile Net Income to net cash provided by operations:	
American Express	-495.86
Wells Fargo Credit	-864.45
Net cash provided by Operating Activities	-32,297.81
<b>FINANCING ACTIVITIES</b>	
Shareholder Contribution	48,734.20
Shareholder Draw	-13,069.23
Net cash provided by Financing Activities	35,664.97
Net cash increase for period	3,367.16
Cash at beginning of period	-596.79
Cash at end of period	<u>2,770.37</u>

**Good Vibrations, LLC**  
**Balance Sheet**  
**As of August 31, 2020**

	Aug 31, 20
<b>ASSETS</b>	
Current Assets	
Checking/Savings	2,270.37
Johnson	500.00
Petty Cash	
Total Checking/Savings	2,770.37
Total Current Assets	2,770.37
Fixed Assets	
Accumulated Depreciation	-77,938.10
Body Charger Systems	112,050.99
Furniture and Equipment	3,922.75
Total Fixed Assets	38,035.64
Other Assets	
Accumulated Amortization	-8,040.08
Organization Costs	17,026.00
Total Other Assets	8,985.92
<b>TOTAL ASSETS</b>	<b>49,791.93</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Credit Cards	951.74
American Express	
Total Credit Cards	951.74
Other Current Liabilities	
Sales Tax Payable	-20.00
Total Other Current Liabilities	-20.00
Total Current Liabilities	931.74
Total Liabilities	931.74

**Good Vibrations, LLC**  
**Balance Sheet**  
**As of August 31, 2020**

	Aug 31, 20
Equity	
Shareholder Contribution	242,661.49
Shareholder Draw	-87,805.91
Shareholder Equity	-75,057.89
Net Income	-30,937.50
Total Equity	48,860.19
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>49,791.93</b>

## Other Information

Respondent should provide any other information that it believes would be helpful in evaluating the respondent's ability to successfully develop and operate the concession.

### **Please Note:**

**If CDA determines it is in their best interest, the Respondent would welcome Clear Channel or any advertising company to utilize the wall space above our Concession space. Our units are only 32" high and it appears there is room above for advertising. We don't believe this will interfere with our business operations.**

(Excerpt from 2019 ACI Show Tampa)

September 17, 2019

## 5 cool innovations we saw at the ACI-NA expo

**At one of the country's top airport industry conferences of the year, we got a peek at some of the latest and greatest in passenger and guest amenities.**

Tampa International Airport had the pleasure of being the host airport for this year's ACI-NA Annual Conference & Exposition held at the Tampa Convention Center, where product reps and business owners from all over the world came together this week to show off some of the most cutting-edge airport innovations on the market. The expo show floor was a playground of new ideas, designs, solutions and inventions – some that are already available in airports around the world, some that are coming and some that could be precursors to the types of terminal amenities and technology we could see in the future.

Here are five things we saw that we thought were pretty cool:

### 2) Vibrating foot stools to help with tired legs and bodies

Long-haul flights and sprints through airports can take their toll on weary travelers. The BodyCharger is a "whole body vibration" machine that airports can offer as a foot rest in waiting areas, and it claims to increase "circulation and stimulation of the neuromuscular junction to increase delivery of oxygen and nutrients to the cells." We can't confirm nor deny the science behind this, but we do know 30 seconds of this left our feet and legs feeling refreshed and ready to run again. We didn't even have to remove our shoes.



## Proposal Form I Labor Peace-Small Business Exception Claim

This Claim of Exception to the Labor Peace Agreement Ordinance codified in the Municipal Code of Chicago, Chapter 10-36-210 is to be completed and signed by all Proposers who believe they meet both Small Business exception criteria in the Ordinance, as set forth below.

"Proposer" includes respondents to the request for proposal, including any and all joint venture partners or franchises. Each individual Proposer must execute either this Form I or Form H relating to the Labor Peace Agreement Ordinance in order for the Single Entity Respondent's Proposal to be deemed responsive.

Good Vibrations, LLC (d/b/a BodyCharger Systems) (herein referred to as "Proposer") declares under penalty of perjury that the following statements are true:

- i. Proposer and its subsidiaries and affiliates substantially under the control of Proposer together employ fewer than five-hundred (500) persons globally;  
- and-
- ii. Proposer and its subsidiaries and affiliates substantially under the control of Proposer anticipate that together they will employ fewer than fifty (50) full- or part-time employees at Proposer's Chicago airport operation (including both O'Hare International Airport and Midway International Airport combined) if awarded the opportunities they are currently seeking.

Proposer further certifies that if it exceeds the above employee parameters in i. or ii. after being awarded a contract, subcontract, lease, sublease, license or sublicense agreement for concessions operations at O'Hare or Midway Airports, it shall:

- a. Immediately notify the Chicago Department of Aviation; and
- b. Present evidence of a signed Labor Peace Agreement within thirty (30) days after the date of notification.

Proposer: Good Vibrations, LLC (d/b/a BodyCharger Systems)  
Authorized Signatory: Mark Eberhardt  
Title: Mark Eberhardt, President  
Date: OCTOBER 15<sup>th</sup> 2020

## Proposal Form M Sexual Harassment Affidavit

### SEXUAL HARASSMENT POLICY AFFIDAVIT (SECTION 2-92-612)

The policy prohibiting sexual harassment as described in Section 2-92-612 of the Municipal Code of Chicago ("MCC") is applicable to contracts paid from funds belonging to or administered by the City.

Concession Lease and License Agreement for Multimodal Facility Concession located at O'Hare International Airport

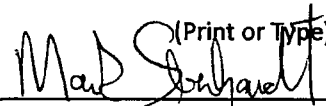
In accordance with requirements set forth in Section 2-92-612 of the MCC, Respondent hereby attests that Respondent has a written policy prohibiting sexual harassment that includes, at a minimum, the following information:

- (i) the illegality of sexual harassment;
- (ii) the definition of sexual harassment; and
- (iii) the legal recourse available for victims of sexual harassment.

Respondent understands that it may be required to produce records to the Commissioner of Chicago Department of Aviation or Chief Procurement Officer to verify the information provided.

Under penalty of perjury the person signing below: (1) warrants that he/she is authorized to execute this Affidavit on behalf of Respondent, and (2) warrants that all certifications and statements contained in this Affidavit are true, accurate, and complete as of the date of execution.

Name of Respondent: Good Vibrations, LLC (d/b/a BodyCharger Systems)

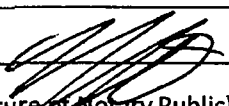
Signature of Authorized Officer:   
(Signature)

Title of Signatory: Mark Eberhardt, President  
(Print or Type)

State of Wisconsin

County of Kenosha

Signed and sworn (or affirmed) to before me on 10/2/2020 (date) by  
Mark Eberhardt (name/s of person/s making statement).

  
(Signature of Notary Public)

(Seal)





## Proposal Form N Proposal Checklist

*Instruction: Please complete the following checklist by initialing in the ATTACHED column indicating the information requested for this RFP has been included in your package.*

PROPOSAL FORM/ TABS	FORM	ATTACHED
Experience and Qualifications	Proposal Form A	mgE Tab 2
Concept Plan	Proposal Form B	mgE Tab 4
Projected Gross Receipts	Proposal Form C	mgE Tab 4
Capital Investment and Financing Sources	Proposal Form D	mgE Tab 4
Airport Concession Disadvantage Business Enterprise Plan	Proposal Form E	mgE Tab 5
Airport Concession Disadvantage Business Enterprise Forms	Proposal Form F	N/A
Proposed Concession Fee Rates	Proposal Form G	mgE Tab 4
Evidence of Signed Labor Peace Agreement	Proposal Form H	N/A
Labor Peace Small Business Exception Claim	Proposal Form I	mgE Tab 13
Form of Reference (3)	Proposal Form J	mgE Tab 6
Proposal Affidavit	Proposal Form K	mgE Tab 9
Business Information Statement	Proposal Form L	mgE Tab 10
Sexual Harassment Affidavit	Proposal Form M	mgE Tab 14
Proposal Checklist	Proposal Form N	mgE Tab 15
Exceptions	Proposal Form O	mgE Tab 8

**EXHIBIT 4**  
**PRODUCTS AND PRICE LIST**

## Concessions Development Plan

### 1. Concept/System and theme including why each component is best for ORD

BodyCharger Systems is a multifunctional airport and healthy passenger comfort/convenience concession that is best for ORD because it addresses and helps solve multiple problems relevant in airports; namely, increasing circulation through passive exercise. In addition, passengers can elevate feet, use the small tray for eating and working, charge electrical devices wirelessly or through USB and receive information regarding local restaurants, retail and other airport information through non-touch display screens.

### 2. Proposed menu of services and products and the approximate price range for each category

We transform an ordinary airport seat and sitting into an experience by providing a menu of passenger services and conveniences. They include (shoes on) foot massage, "whole body vibration" to enhance circulation and health, calm stress, help with foot and leg pain instantly.

In addition, our concession provides terminal seating with trays for food and drink and work space. We provide wireless device charging for those without cords and outlets/USB ports. All units have display screen monitors for passengers to view airport information menus and amenities all for only \$1.00 for each two minutes of activation. Customers can deposit multiple bills and any denomination of \$5.00 \$10.00 or \$20.00 for longer time and uninterrupted service. Passengers can swipe a credit card for \$5.00 and 10 minutes of service.

### 3. Sources of merchandise, products and supplies

BodyChargerSystems builds and assembles units in Racine/Kenosha WI and uses a variety of local suppliers and subcontractors. Our motors are manufactured in Taiwan.

### 4. Narrative description of the respondent's sustainability initiatives incorporated in the design and construction of the proposed tenant improvements.

BodyChargerSystems has low electrical energy requirements - consuming less than ½ amp when activated. The units produce no waste and no emissions. There is no buildout and it is not necessary to disrupt or alter Airport locations. BodyCharger units are placed on and attached to a very shallow metal subfloor or platform that we provide to hide electrical cords and keep units in place.

**EXHIBIT 5**  
**FORM OF LETTER OF CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*

(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Chicago Department of Aviation  
Chicago's O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_."

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CERTIFICATE FOR DRAWING

BY: \_\_\_\_\_  
Its: Commissioner of Aviation

**EXHIBIT 6**  
**INSURANCE REQUIREMENTS**



**Chicago Department of Aviation**

**Automated Retail License Agreement  
Food, beverage, retail products gifts and vending merchandise at O'Hare  
(Vending Machines)**

**A. INSURANCE REQUIRED**

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

- 1) Workers Compensation and Employers Liability (Primary and Umbrella)  
Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 2) Commercial General Liability (Primary and Umbrella)  
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Licensee with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Property

The Licensee must maintain All Risk Property Insurance for the licensed space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Licensee is responsible for all loss or damage to personal property including equipment, fixtures, contents, materials and supplies.

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) **Builders Risk**

When Licensee undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Licensee must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Licensee is responsible for all loss or damage to City of Chicago property at full replacement cost.

**B. Additional Requirements**

**Evidence of Insurance.** Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

**Failure to Maintain Insurance.** Failure of the Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

**Notice of Material Change, Cancellation or Non-Renewal.** Licensee must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

**Waiver of Subrogation.** Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

herein for any loss arising from or relating to this Agreement. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

Licensee's Insurance Primary. All insurance required of Licensee under this Agreement must be endorsed to state that Licensee's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Licensee under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Licensee maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED FORMS**

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation is in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the



concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs**

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives.

#### C. REPORTING

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

#### D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

### VI. GOOD FAITH EFFORTS

#### A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

## B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making

the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**



#### A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

#### B. NON-COMPLIANCE WITH ACDBE AGREEMENT

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.

**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED FORMS**

**SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION  
CONTRACTS**

**I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

**Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%**  
**WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Business Enterprise" or "WBE" means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

- A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:
1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
  2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
  3. Each joint venture partner executes the bid to the City; and
  4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.
- B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

- C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.

1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.



H. If the MBE or WBE subcontracts out any of its work:

1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

V. **Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

A. Schedule B: MBE/WBE Affidavit of Joint Venture

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed

original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

D. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

F. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

**VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740

of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.



**EXHIBIT 9**

**ECONOMIC DISCLOSURE STATEMENTS AND AFFIDAVITS**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Good Vibrations, LLC

Check ONE of the following three boxes:

d/b/a BodyCharger Systems, LLC  
in Illinois

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant  
OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: \_\_\_\_\_

C. Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: Mark@bodycharger

systems.com

D. Name of contact person: Mark J. Eberhardt

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD Automated Retail, food and service Vending Units RFP

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Wisconsin

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☒ Yes ☐ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

Mark J. Eberhardt

President

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Mark J. Eberhard +	12031-136 <sup>th</sup> Ave.	100%
	Kenosha, WZ 53142	

**SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

**SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
<u>The Barbershop at O'Hare Airport Inc.</u>	<u>O'Hare Hilton Hotel</u>	<u>subcontractor</u>	<u>32% participation</u>
<u>5600 Mannheim Road</u>	<u>ACD.BE</u>		
(Add sheets if necessary) <u>Chicago, IL 60666</u>			

[ ] Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

[ ] Yes    ☒ No    [ ] No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

[ ] Yes    ☒ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

NONE

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

NONE

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

NONE

## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."



If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

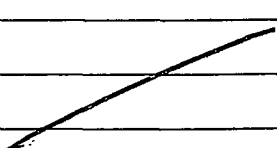
Does the Matter involve a City Property Sale?

☐ Yes

☐ No

N/A

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

N/A

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI – CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

---

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N/A

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

N/A

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Good Vibrations, LLC  
(Print or type exact legal name of Disclosing Party)

d/b/a Body Charger Systems, LLC  
in Illinois

By: Mark J. Eberhardt  
(Sign here)

Mark J. Eberhardt  
(Print or type name of person signing)

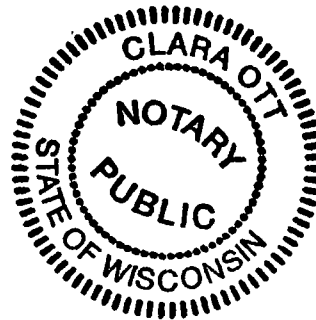
President  
(Print or type title of person signing)

Signed and sworn to before me on (date) May 28, 2021,

at Kenosha County, WI (state).

Clara Ott  
Notary Public Clara Ott

Commission expires: 7/25/23



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

[ ] Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N/A

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☒ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

N/A



**EXHIBIT 10**  
**AIRPORT CONCESSIONS**  
**PROGRAM HANDBOOK**

**All notices or communications from Licensor to the Licensee must be addressed to :**

**Company Name:** \_\_\_\_\_

**Attn:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

\_\_\_\_\_  
**Overight Address (if different)** \_\_\_\_\_

\_\_\_\_\_  
**With copies to:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

\_\_\_\_\_  
**Overnight Address (if different):** \_\_\_\_\_

\_\_\_\_\_  
**Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.**

# **AIRPORT CONCESSION PROGRAM HANDBOOK**



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### CDA UNIT FUNCTIONS

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.



**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS

## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Monthly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

### **Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?



## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Retail Storage**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer need cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

## **APPENDIX 3**

### **FINANCIAL AUDIT STANDARDS:**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### **Lease Fees**

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### **Records**

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### **Insurances**

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

### Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### **General Airport Guidelines**

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### **Laws and Ordinances**

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### **Default Notices**

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080



**APPENDIX 6****KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905
Yolanda Woodruff Director of Retail Operations	(773) 894-5463
Dorine Litman Property Manager / ORD	(773) 894-3908
Patricia Grzyb Property Manager / MDW	(773) 838-0733
Sungjin Choi Construction and Design Manager	(773) 686-7606

## **APPENDIX 7**

### **RULES AND REGULATIONS:**

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

**EXHIBIT 11**

**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<u>Infraction</u>	<u>1<sup>st</sup> Violation</u>	<u>2<sup>nd</sup> Violation</u>	<u>3<sup>rd</sup> Violation</u>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

\_\_\_\_\_ (Initial Here)



**EXHIBIT 12**

**UTILITY USAGE FEE**

**EXHIBIT 12**  
**UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## **EXHIBIT B-9**

**AUTOMATED RETAIL LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF AVIATION)**

**AND**

**Compass Group USA Inc., by and through its Canteen**

**Division**

**FOR**

**AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS**

**AT  
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT  
MAYOR**

**JAMIE L. RHEE  
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

RECOMMENDED BY: \_\_\_\_\_  
Commissioner of

Aviation APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Senior Counsel

(LICENSEE)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

[Notary]



## **AUTOMATED RETAIL LICENCE AGREEMENT**

This Automated Retail License Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, 2021 ("**Effective Date**"). The Agreement is by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [d/b/a name, if different from legal name of entity] ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

### **BACKGROUND**

The City owns and, through CDA, operates Chicago O'Hare International Airport ("**O'Hare**" or the "**Airport**"). O'Hare includes an international terminal, three domestic terminals, a multimodal facility and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") for a concession at the Airport and Licensee responded with a proposal to operate a concession featuring convenience, food, beverage, gift and vending merchandise at O'Hare. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Terminal location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

The City and Licensee acknowledge that the continued operation of the Airport as safe, convenient, and attractive facility is vital to the economic health and welfare of the City of Chicago, and that the City's right to supervise performance under this Agreement by Licensee is a valuable right incapable of quantification.

Therefore, the City and Licensee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. CITY APPROVAL**

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

## **ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS**

2.1 Incorporation of Background. The background set forth above is incorporated by reference as if fully set forth here.

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE\WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

## **ARTICLE 3. DEFINITIONS**

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

"Affiliate" means, except where otherwise defined, any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Licensee.

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

"Airport Concession Program Handbook" means the handbook developed by CDA to govern the uniform operation of the concessions' programs at the Airport. The Airport Concession Program Handbook is available on the CDA website and may be amended from time to time by CDA. Any amendment of the Airport Concession Program Handbook by CDA during the Term of this Agreement will be binding on Licensee without need for amendment of this Agreement, provided that the amendment of Airport Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissioner" means the head of the Department and any City officer or employee authorized to act on the Commissioner's behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where such person is expressly authorized to do so.

"Common Areas" means those areas of the Terminals that are not leased, licensed, or otherwise designated or made available by the Department for exclusive or preferential use by specific party or parties.

"Comptroller" means the head of the Department of Finance of the City and any City officer or employee authorized to act on the Comptroller's behalf.

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

The DBO shall be confirmed in writing by the parties, and such written "Confirmation of DBO" shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement.

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

"Department" means the Chicago Department of Aviation, also known as CDA. "Development

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“EDS” means the City’s Economic Disclosure Statement and Affidavit.

“Event of Default” has the meaning set forth in Article 9.

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made from an automated retail vending machine as part of the Concessions and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Spaces to any other stores or warehouses of Licensee;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- G. insurance proceeds received from the settlement of claims for loss of or damages to Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

“License” means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

“License Fee” means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

“License Year” means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy and ending on December 31 of that calendar year, and
- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires, or the

Agreement is otherwise terminated.

“Licensed Retail Space” means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee’s automated retail vending machines.

“Licensed Space” means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

“Marketing Fee” means Licensee’s contribution for promotions at the Airport, as set forth in Section 4.09(a).

“Minimum Annual Guarantee” or “MAG” means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

“Monthly Reports” has the meaning set forth in Section 6.04(1).

“Percentage Fee” means the percentage fee(s) set forth in Exhibit 2.

“Products” means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Licensee is permitted to sell in its Licensed Retail Space and maintain in inventory in its Storage Space, if any, under the terms of this Agreement, as set forth by category or item in Exhibit 4. Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4 unless otherwise agreed in writing by the Commissioner.

“Response” means the response to the RFP Licensee submitted to the City.

“Service Schedule” has the meaning set forth in Section 4.02(g).

“Services” means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

“Storage Space” means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner’s sole discretion for use by Licensee to store inventory and supplies.

“Subcontractor” means any person or entity with whom Licensee contracts with to provide any part of the Services. The term “Subcontractor” also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

“Term” means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

“Utility Usage Fee” means the fee for utilities used by Licensee’s automated retail

vending machines, calculated as set forth in in Exhibit 12.

“Value Pricing” has the meaning set forth in Section 4.04(a)(1).

“Vending Zone” means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

“Vending Zone Improvement Costs” means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

“Vending Zone Improvements” means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

### 3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) The term “person” includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

#### **ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS**

4.1 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

- A. interferes or might interfere with the reasonable use by others of Common Areas or the leased or licensed space of tenants or other licensees at the Airport;
- B. hinders or might hinder TSA, Airport security, police, fire-fighting or other emergency personnel in the discharge of their duties;
- C. would, or would be likely to, constitute a hazardous condition at the Airport;
- D. would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or
- E. would involve any illegal purposes.

4.2 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.



43     Products.

(a)     General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b)     Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c)     Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44     Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five- day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first- class, businesslike, efficient, courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that appear in Appendix 1 of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds: Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

#### 4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

#### 4.7 Operation of Concession.

##### (a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

##### (b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

(ii) Salaries of all employees of Licensee and its Subcontractors performing services or work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering work under this Agreement to ensure compliance of all Subcontractors with those regulations and with the other requirements hereunder and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, those requirements.

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

#### 4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.



(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

- (1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,
- (2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

#### 4.9 Marketing and Promotion.

(a) Marketing Fee and Advertising Fund. The Department operates a marketing fund (the "**Fund**") for the purpose of financing a program for advertising and promoting concessions at the Airport. The Program may include advertising, media placements, displays and related upkeep, special events, signage, enclosures, promotional events, brochures, videos and catalogs, mystery shops, market research and surveys, customer service training etc., as appropriate. The Program will be funded by contributions from Licensee and other concessions operators and tenants at the Airport. Licensee will contribute an amount of 0.5% of Gross Revenues per License Year to the Fund (such contribution the "**Marketing Fee**"). All contributions to the Fund may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Licensee shall make its contributions to the Fund monthly in arrears concurrently with its Fee payments under this Agreement. The City may, but is not required to, contribute to the Fund. Licensee has no ownership or beneficial interest whatsoever in the Fund or any unspent moneys therein.

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

#### 4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("**MBE/WBE**") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors' compliance with their commitments.

## **ARTICLE 5. LICENSED SPACES**

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

### **5.3 Additional Space**

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

5.5 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

## **ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS**

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

(i) Percentage Fee. The "**Percentage Fee**" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.

(ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "**Connection Fee**" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "**Additional Space Connection Fee**," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "**Additional Fees**" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

## 6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

(d) Year End True Up. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year exceeds the amount of all payments made by Licensee to the City for the License Year in question, then Licensee must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the preceding License Year is less than the amount of all License Fee payments made by Licensee to the City for the period in question, but the Percentage Fee still exceeds the MAG for that License Year, then Licensee will receive a credit against the next License Fee payment due under this Agreement for the amount by which the License Fee actually paid by Licensee exceeded the Percentage Fee attributable to the period.

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

#### 6.4 Reports.

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;  
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

- (c) Annual Reports.

- (i) Licensee must also furnish to Commissioner no later than March 1 of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Licensee, showing in reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Concessions during the preceding License Year, copies of all returns and other information filed with respect to Illinois sales and use taxes, and as such other financial and statistical reports as the Commissioner may, from time to time, reasonably require by written notice to Licensee.

- (ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by \_\_\_\_\_ for the year ended \_\_\_\_\_ relating to its operations at the Terminals pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$ \_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

## **ARTICLE 7. TERM OF AGREEMENT**

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

7.2 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

7.3 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

7.4 Termination Due to Change in Airport Operations. This Agreement, or the License, is subject to termination by either party on sixty (60) days' written notice in the event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Airport, the Terminals or a portion thereof that renders performance by either party hereunder impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least ninety (90) days, so long as the action or order is not the result of any Event of Default of Licensee.

7.5 Early Termination. Notwithstanding anything to the contrary set forth in this



Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY**

### **8.1 Indemnification.**

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

(b) Losses. "**Losses**" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Licensee, its employees, agents, subtenants, and Subcontractors.

(c) Defense of Suits. At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Agreement. Licensee must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involves the Airport.

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

(b) Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately vacate some or all of the Licensed Spaces until the Letter of Credit is in place and effective.

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

(d) Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

## **ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION**

9.1 Events of Default. Each of the following (a) through (n) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed thirty (30) days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within forty-five (45) days from delivery of the notice, Licensee will have the additional time, not in any event to exceed forty-five (45) days, to cure the failure.

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
  - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
    - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
    - (ii) fails to pay its debts generally as they mature;
    - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
    - (iv) makes a general assignment for the benefit of creditors;
    - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
    - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

(a) Effect of Waiver. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## **ARTICLE 10. SPECIAL CONDITIONS**

10.1 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

(a) Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

(b) Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

(c) The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

(i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any lease or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or

(ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

(d) There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.



(e) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

(f) No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

(g) Licensee has not and will not knowingly used the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

(h) Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

(i) Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of §2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

(j) Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

#### Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

(a) Authorization to do Business. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

(b) Economic Disclosure Statement. Licensee has provided the Commissioner with an EDS for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City's website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within thirty (30) days of any event or change in circumstance that

renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

102 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractors to abide by such restrictions in connection with their respective Subcontracts.

103 City's Right to Assign. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

a. City Council, in its sole discretion, if the Change in Ownership involves

a 100% Change in Ownership of Licensee, or

- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the

Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgment.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

(b) It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General and the Legislative Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 or Chapter 2-55 of the Municipal Code, respectively. Licensee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractors as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

(c) Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must surrender the Licensed Space to the City free from the presence and contamination of any hazardous substances.

(d) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

7-28-390 Dumping on public way—Violation—Penalty; 7-  
28-440 Dumping on real estate without permit;  
11-4-1410 Disposal in waters prohibited;  
11-4-1420 Ballast tank, bilge tank or other discharge; 11-  
4-1450 Gas manufacturing residue;  
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-  
1530 Compliance with rules and regulations required; 11-4-  
1550 Operational requirements;  
11-4-1560 Screening requirements; and  
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Licensee's and its Subcontractors' duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement and may further affect Licensee's eligibility for future City agreements.

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

(f) Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4):

(i) Licensee agrees that Licensee, any person or entity who directly or indirectly has an ownership or beneficial interest in Licensee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Licensee's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Licensee and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this bid, proposal or Agreement by Licensee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Licensee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

(ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

(iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive



Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
  - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
  - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
  - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
  - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
  - b. neither party is married; and
  - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
  - 1) joint ownership of a motor vehicle; and
  - 2) a joint credit account; and
  - 3) a joint checking account; and
  - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

(g) Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

- (i) Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "**Artwork**") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 et seq.) (the "**Copyright Act**"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and sublicensees, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

106 Airport Security.

(a) This Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("**Airport Security Laws**"), the provisions of which govern airport security and are incorporated by reference, including the rules and regulations promulgated under it. Licensee is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Laws, Licensee must promptly report any information in accordance with those regulations promulgated by the United States Department of Transportation, the TSA and by the City. Licensee must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum-security enhancement. Any drawings, plans, and specifications provided by Licensee under this Agreement must comply with those guidelines for airport security developed by the City, the

TSA and the FAA and in effect at the time of their submission.

(b) Further, Licensee must comply with, and require compliance by its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Commissioner, Licensee must adopt procedures to control and limit access to the Airport and the Licensed Space by Licensee and its Subcontractors, suppliers of materials and furnishers of services, employees, and business invitees in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Licensee must have in place and in operation a security program for the Licensed Space that complies with all applicable laws and regulations.

(c) Gates and doors located on the Licensed Space, if any, that permit entry into restricted areas at the Airport must be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or the Commissioner's designee without delay and must be kept under constant surveillance by Licensee until the malfunction is remedied.

(d) In connection with the implementation of its security program, Licensee may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Licensee acknowledges that all such knowledge and information is of a highly confidential nature. Licensee covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the Commissioner in advance in writing. Licensee further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

(e) Licensee understands that fines and/or penalties may be assessed by the TSA or FAA for Licensee's noncompliance with the provisions of 49 CFR Parts 1540 and 1542 entitled "Airport Security" or by other agencies for noncompliance with regulations applicable to Licensee's operations. In the event the City shall be subject to any fine or penalty by reason of any violation at the Airport of any such rule, regulation or standard, the Commissioner may conduct an investigation and make a determination as to the identity of the party responsible for the violation. If it is determined by the Commissioner that Licensee, or any party for which Licensee is liable under this Agreement, is responsible for all or part of the fine or penalty, Licensee shall pay said amount of the fine or penalty as Additional Fees.

#### 10.7 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the furnishing of services in the Licensed Spaces, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the License in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

(b) It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the License, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

(c) Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(f) Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier must be notified by Licensee of Licensee's obligations under this Agreement relative to nondiscrimination.

(g) Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

(h) Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

**108 Airport Concession Disadvantaged Business Enterprises (ACDBEs).** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

10.9 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

10.10 Avigation Easement. There is reserved to the City, its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Licensed Space. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport. Licensee by accepting this License agrees for itself, its successors, and assigns that it will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. If this covenant is breached, the City reserves the right to enter upon the Licensed Space and cause the abatement of the interference at the expense of Licensee.

10.11 National Emergency. This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

10.12 2014 Hiring Prohibitions.

(a) The City is subject to the June 16, 2014, "City of Chicago Hiring Plan" (the "**2014 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a sublicensee, and from directing Licensee to hire an individual as an employee or as a sublicensee. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel of Licensee in connection with this License are employees or sublicensees of Licensee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel of Licensee.

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Licensee by a City employee or City official in violation of this Section, or advocating a violation of this Section above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Department.

## **ARTICLE 11. GENERAL CONDITIONS**

11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the grant and use of the License and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

11.2 Counterparts. This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be



interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Chicago Department of Aviation  
City of Chicago  
O'Hare International Airport  
10510 W. Zemke Rd Chicago,  
Illinois 60666

and with a copy to:  
Deputy Commissioner of Concessions at the same address.

If the notice or communication relates to payment of Fees or other payments to the City or relates to the Security deposit or insurance requirements, a copy must be sent to:

City Comptroller  
City of Chicago  
City Hall - Room 501 121  
N. LaSalle Street  
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
Aviation, Environmental, Regulatory and Contracts Section 2  
North LaSalle Street, Suite 540  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

(a) This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

(b) This Agreement and all rights granted to Licensee under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

(c) To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs (a) and (b) above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs (a) and (b).

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee. Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies. No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 Estoppel Certificate. From time to time upon not less than fifteen (15) days prior request by the other party, a party or its duly authorized representative having knowledge of the following facts, will execute and deliver to the requesting party a statement in writing certifying as to matters concerning the status of this Agreement and the parties' performance under this Agreement, including the following:

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

11.15 No Personal Liability. Licensee, or any sublicensee, assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

11.17 Joint and Several Liability. If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Licensee is the joint and several obligations or undertaking of each such individual or other legal entity.

11.18 Non-Recordation. Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.20 Force Majeure. Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("*force majeure event*"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within twenty (20) days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than sixty (60) days due to a *force majeure* event, without the express written consent of the Commissioner.

**EXHIBIT 1**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO )**

**EXHIBIT I**  
**LICENSED SPACE**  
**(INCLUDING CONFIRMATION OF DBO )**

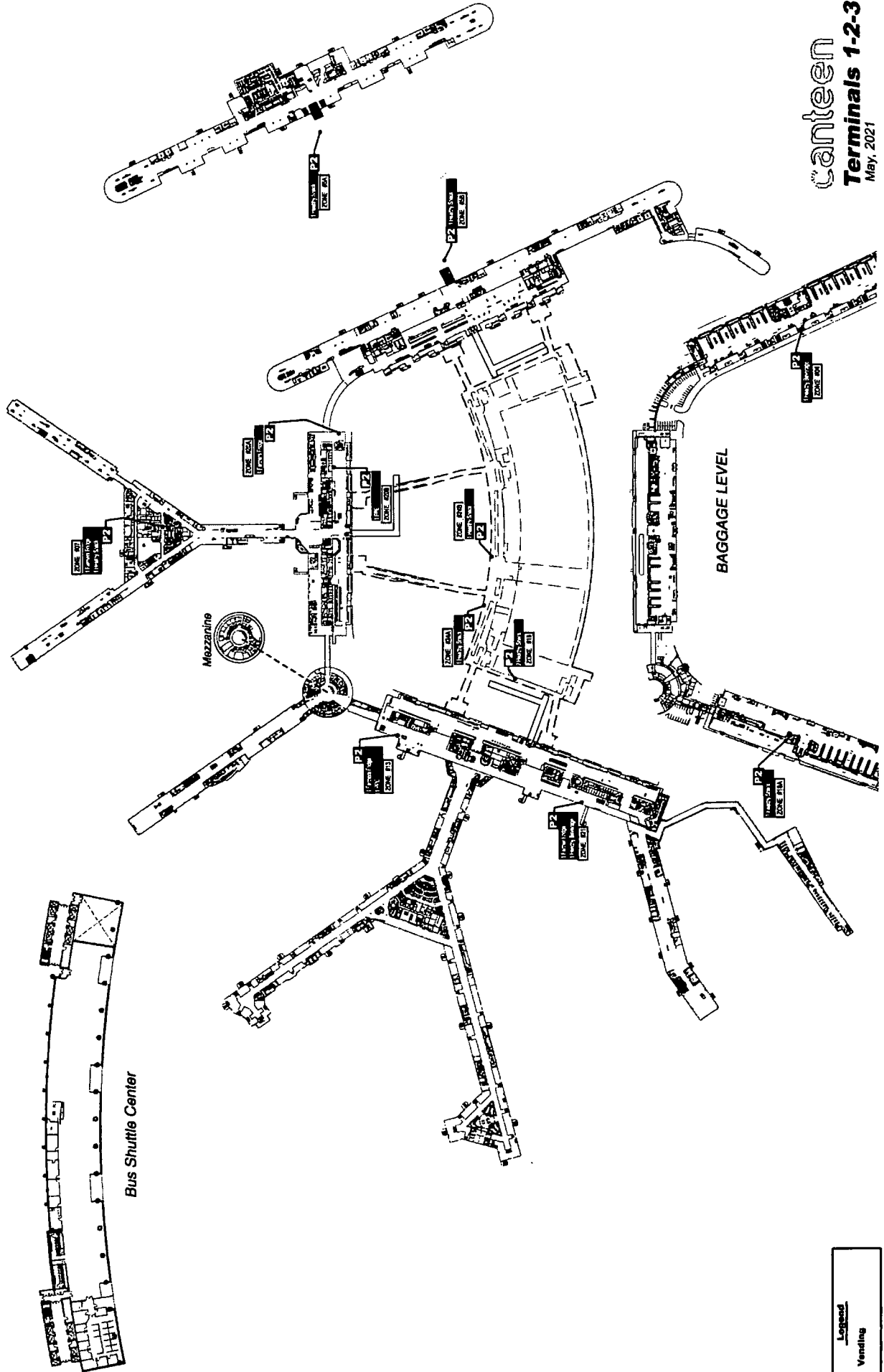
The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

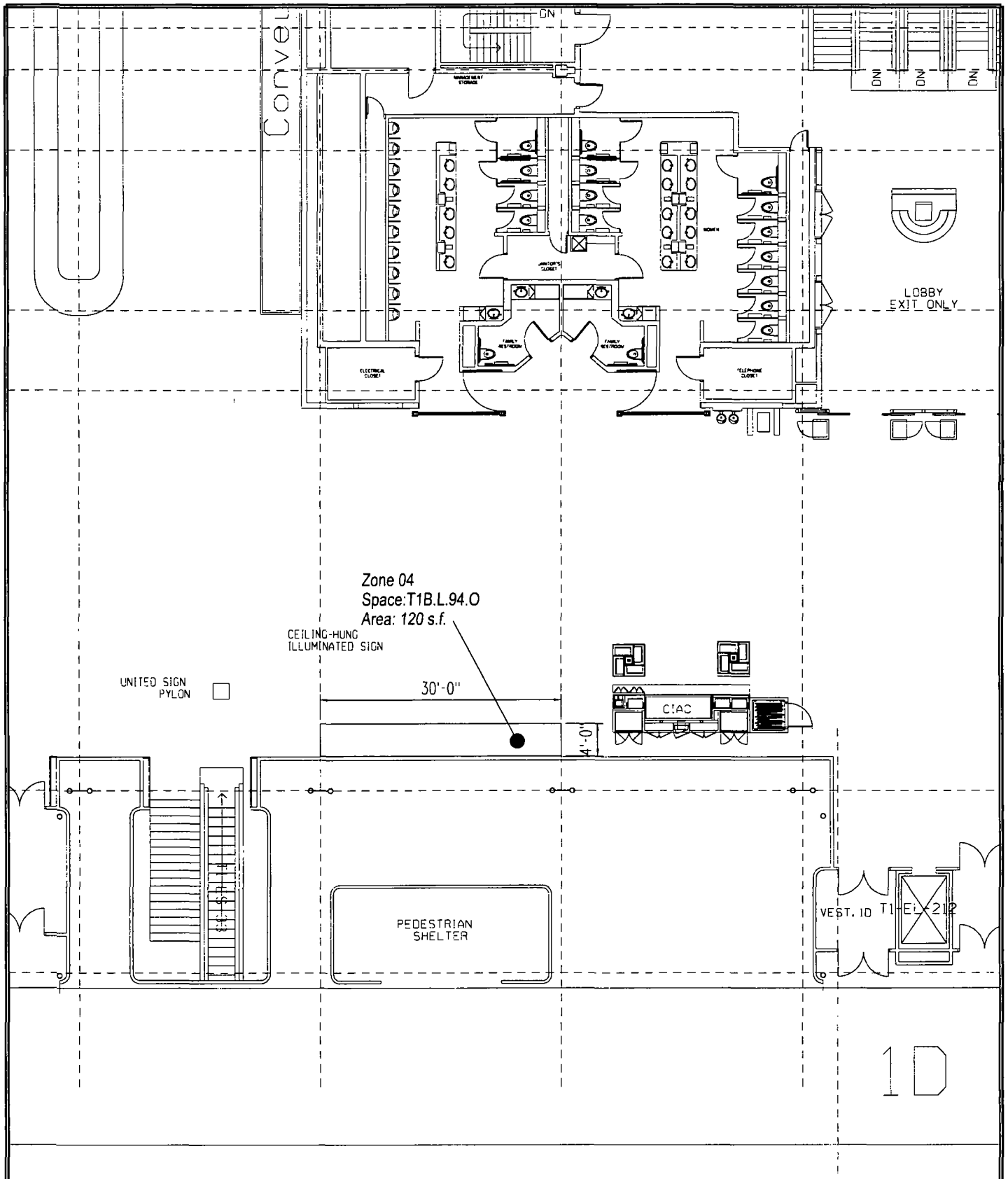
Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	n/a	T1B.U.107.B
2	n/a	T1B.U.12.B
3	n/a	T1B.U.73.M
4	Healthy Beverage	T1B.L.94.O
5A	Healthy Snack	T1C.T.G.C
5B	Healthy Snack	T1B.THH.V
6	n/a	T2E.U.39.A
7	Healthy Snack Farmer's Fridge	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	n/a	T2E.U.48.A
10	n/a	T2.L.40.6
11	n/a	T2EF.U.16.D
12	n/a	T2.U.45.J
13	Farmer's Fridge PPE	T3.U.8C.D
14	n/a	T3G.U.33.C
15	n/a	T3H.U.30.E
16	n/a	T3K.9Ma.A

17	n/a	T3K.U.75.L
18A	n/a	T3.L.8Y.C
18B	Healthy Beverage	T3.L.8Y.C
19	Healthy Snack	CTA Pedway
20A	PPE	T2.U.4A.D
20B	Farmer's Fridge	T2.U.4C.E
21	Farmer's Fridge Healthy Beverage	T3.U.8AA.F
22	n/a	T3HK.U.9R.E
23	n/a	L Stinger.U.2.3.A
24A	Healthy Snack	T2 CTA Pedway
24B	Healthy Snack	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD







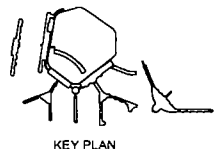
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale 1" = 20'-0"  
UNISON RETAIL MANAGEMENT

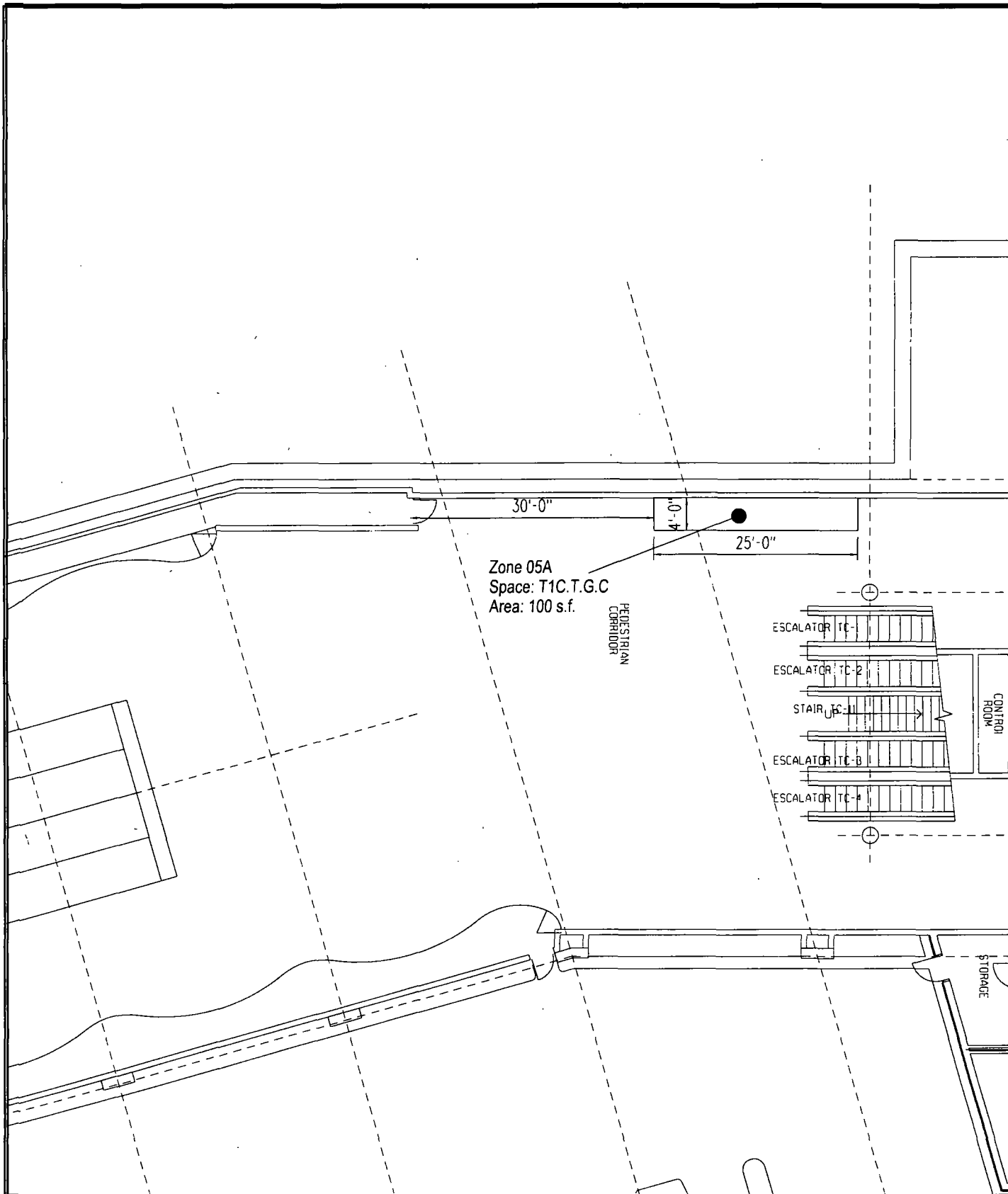
Terminal 1 Lower Level

Automated Retail  
Zone #04 (T1B.L.94.O)



Date: May, 2021

Created by CADDO Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

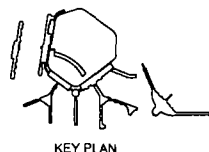
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 1 / Concourse C Pedestrian Tunnel

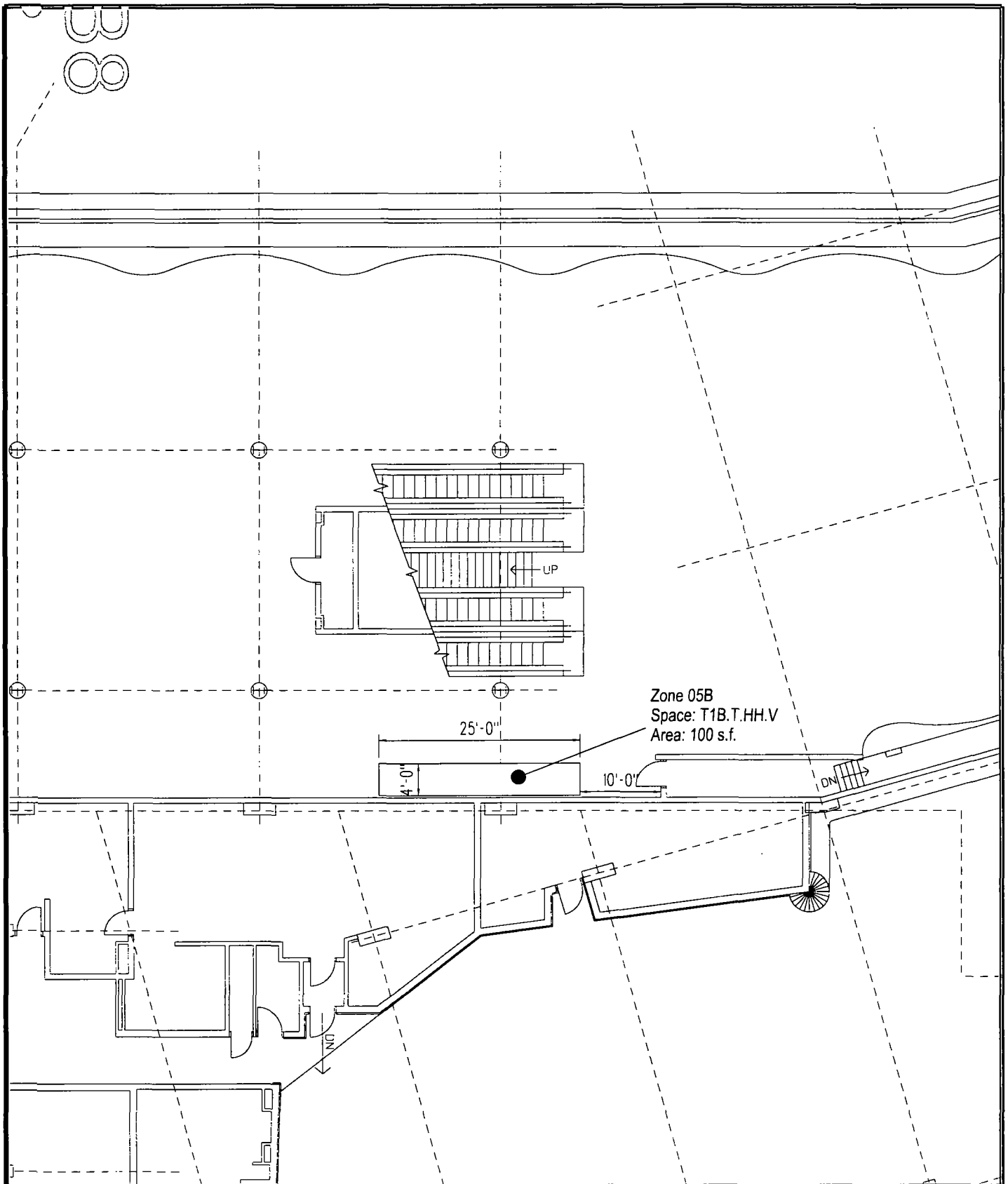
Automated Retail  
Zone #05A (T1C.T.G.C)

Scale: 1/16" = 1'-0"



Date: May, 2021

Created by CAD Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

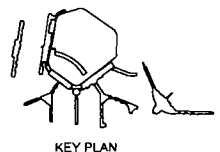
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 1 / Concourse B Pedestrian Tunnel

Automated Retail  
Zone # 05B (T1B.THH.V)

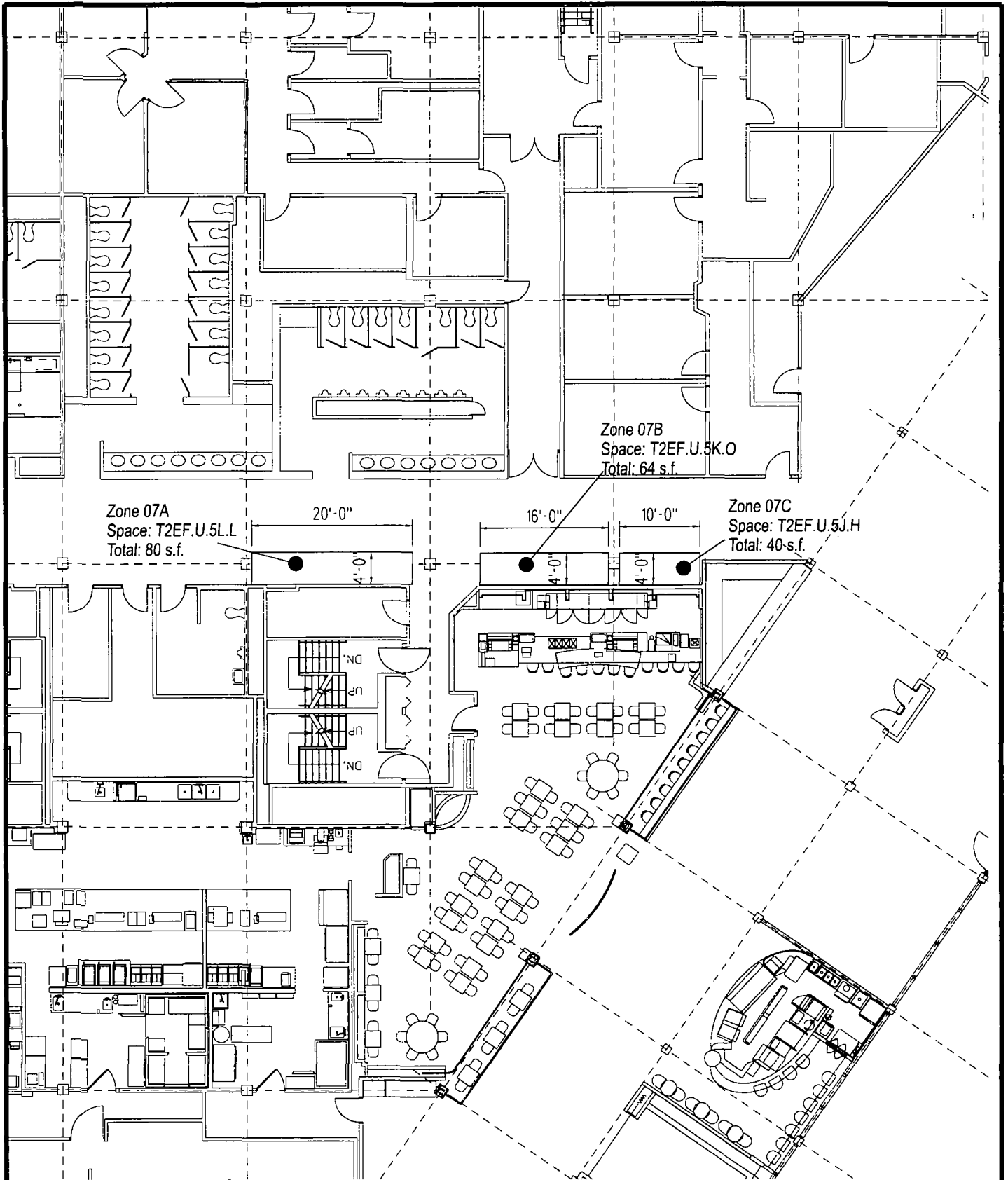
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KEY PLAN

Date: May, 2021

Created by CADD Services



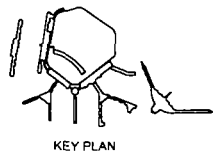
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MAN

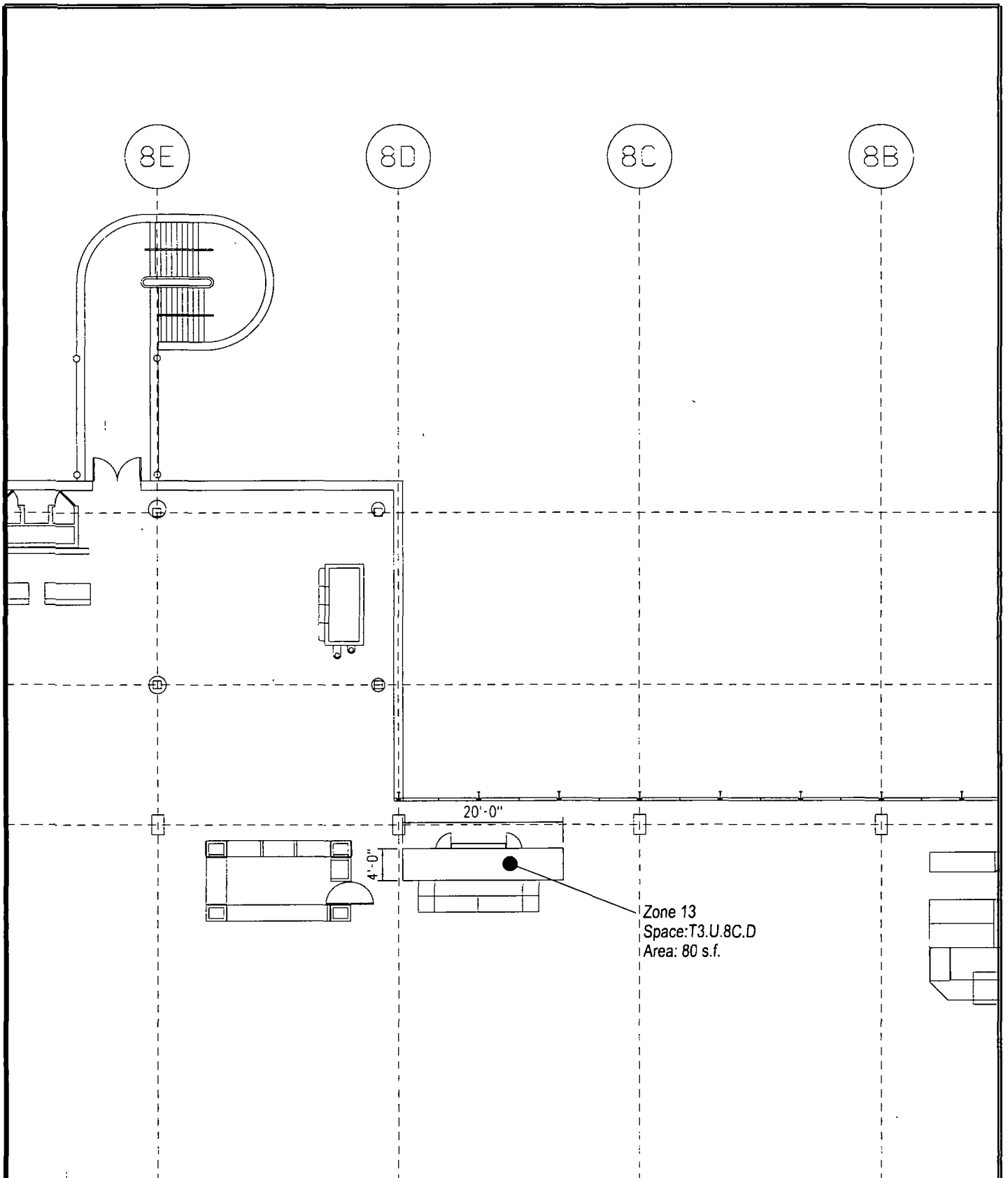
Terminal 2/Concourse EF Upper Level

Automated Retail  
Zone #07 A-B-C  
Space: TEF.U.5L.L  
Total: 184 s.f.



Date: May, 2021

Created by CADJ Services



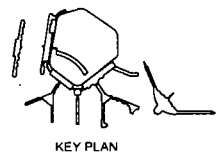
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"  
UNISON RETAIL MANAGEMENT

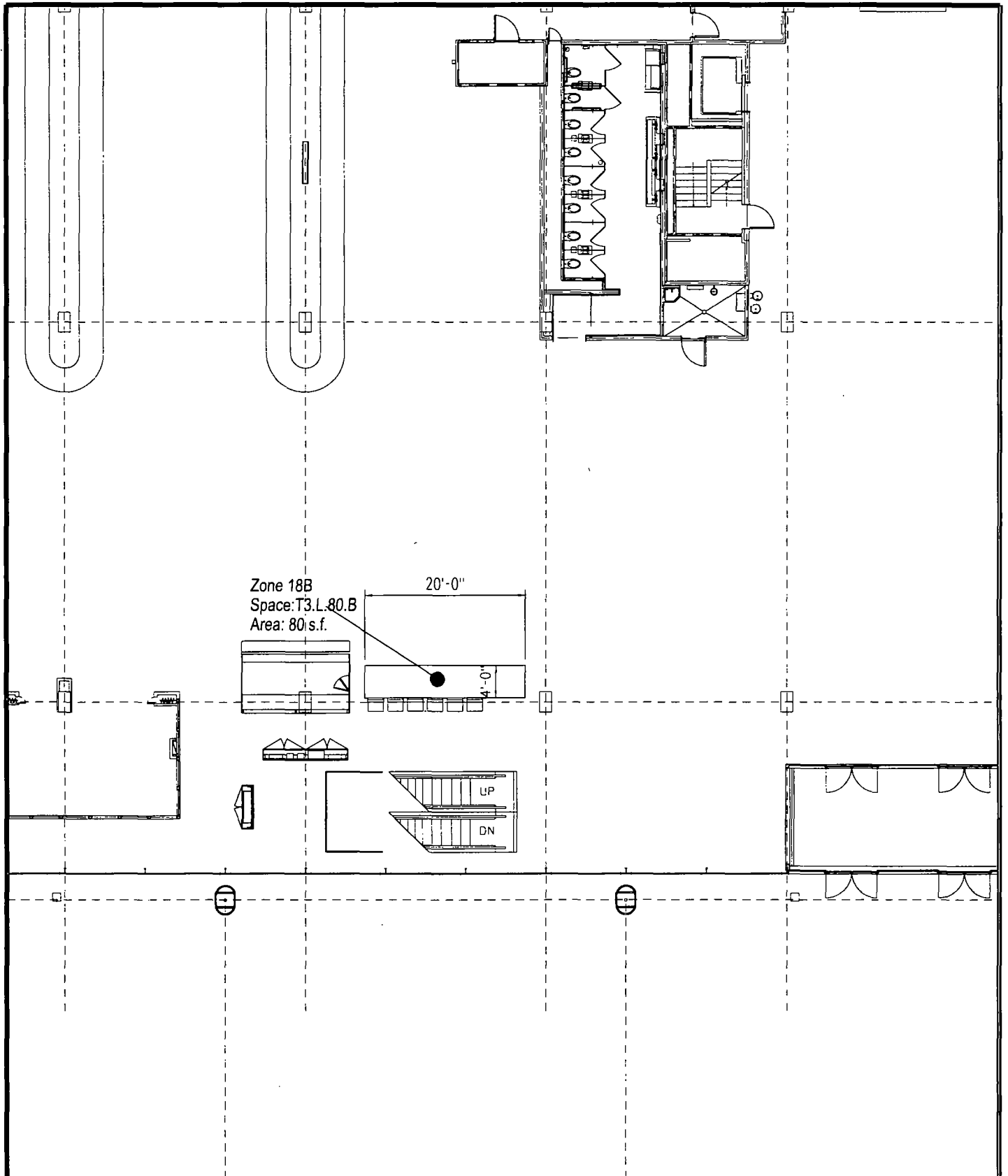
Terminal 3 Upper Level

Automated Retail  
Zone #13 (T3.U.8C.D)



Date May, 2021

Created by CADDO Services

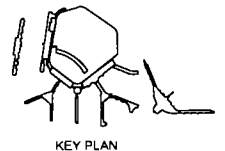


Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Terminal 3 Lower Level

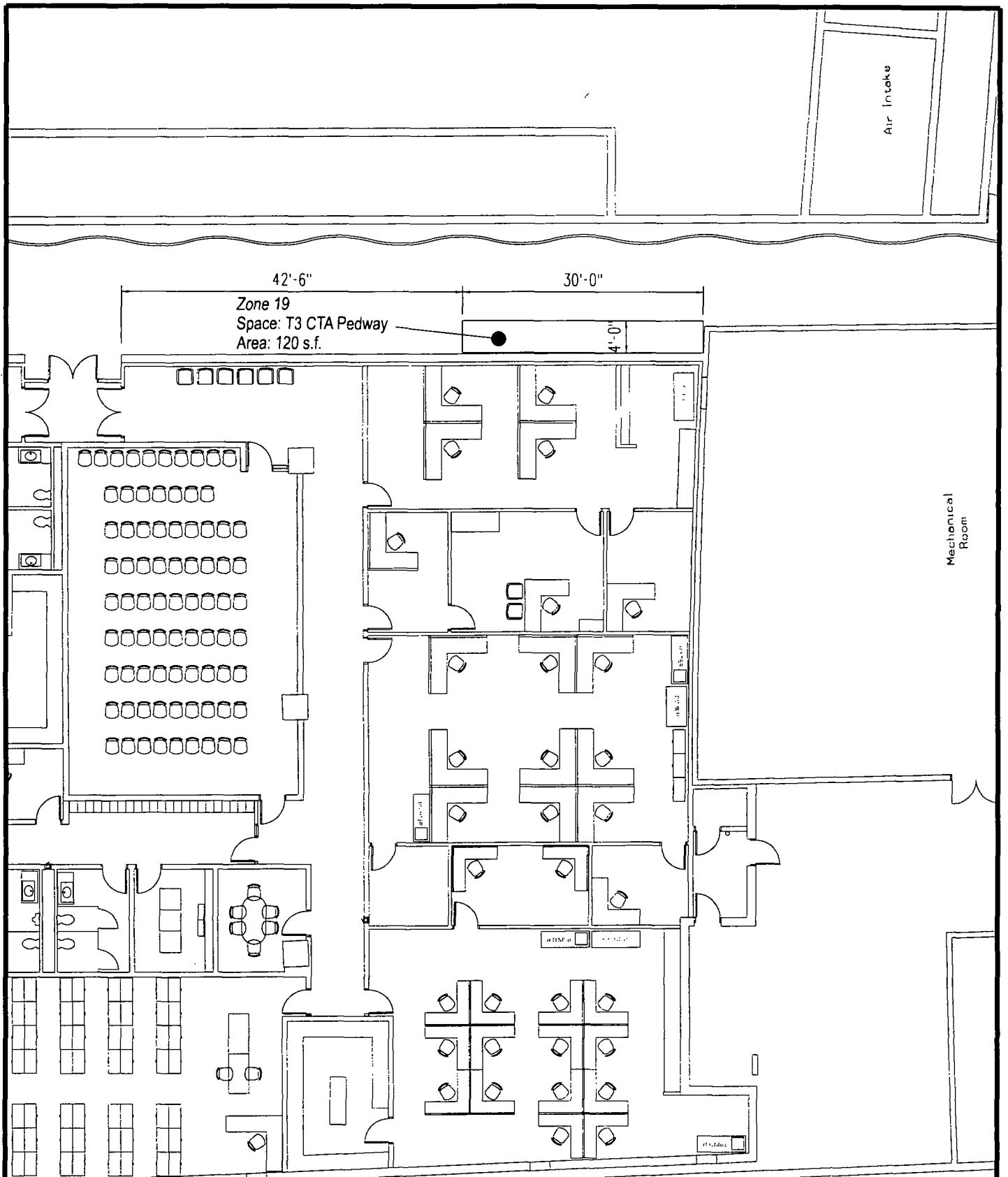
Automated Retail  
Zone #18B (T3.L.8Y.C)



Scale: 1" = 20'-0"  
H N E S G O S R T E R A I L A M A N A G E M E N T

Date: May, 2021

Created by CAD3 Services



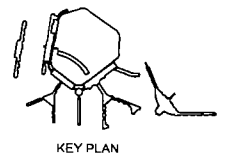
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"  
UNISON RETAIL MANAGEMENT

Terminal 3 CTA Pedestrian Tunnel

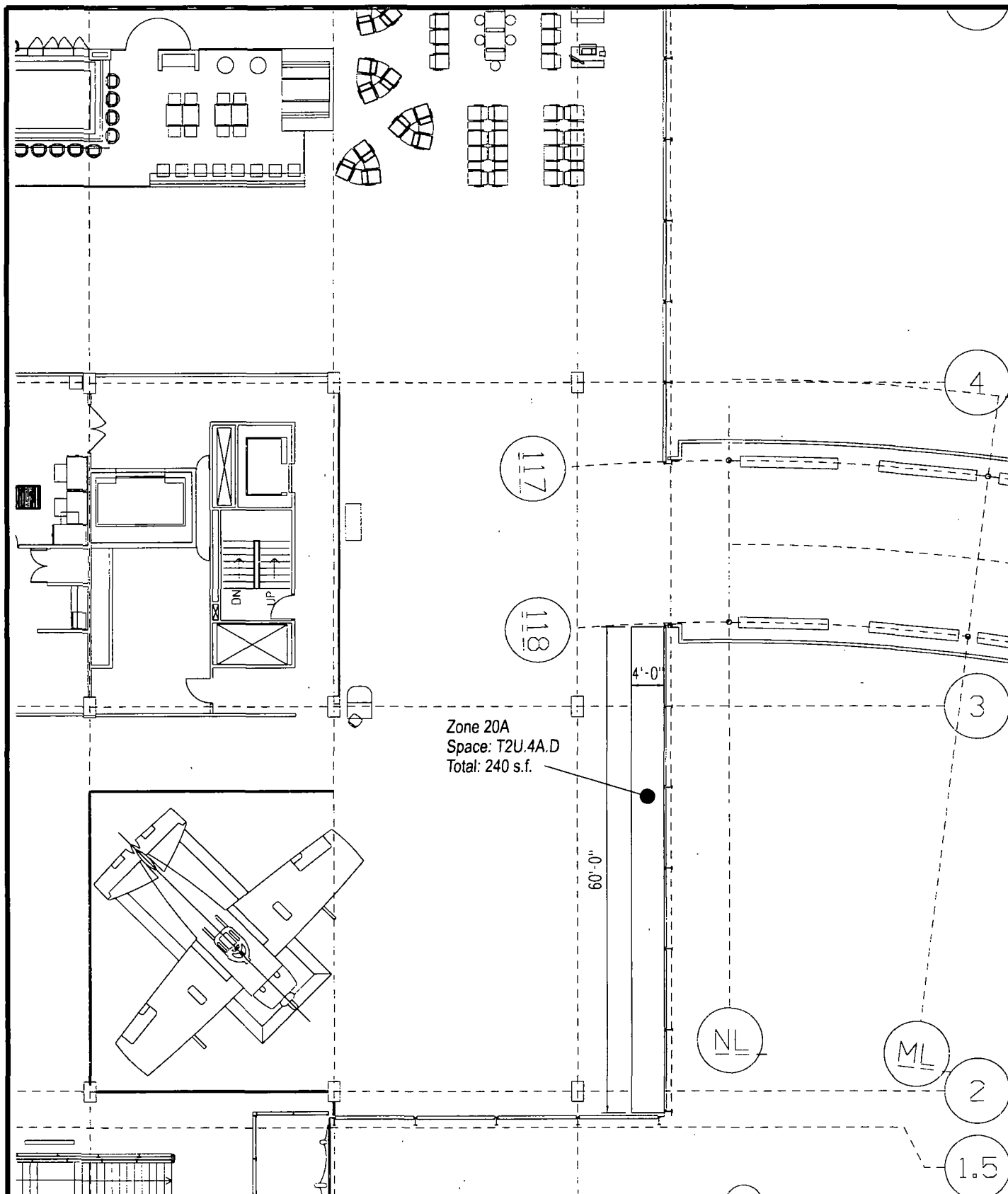
Automated Retail  
Zone #19



Date May, 2021

Created by CAD Services





Zone 20A  
Space: T2U.4A.D  
Total: 240 s.f.

Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

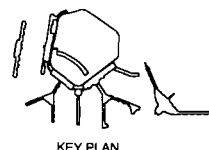
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

Automated Retail  
Zone #20A (T2.U.4A.D)

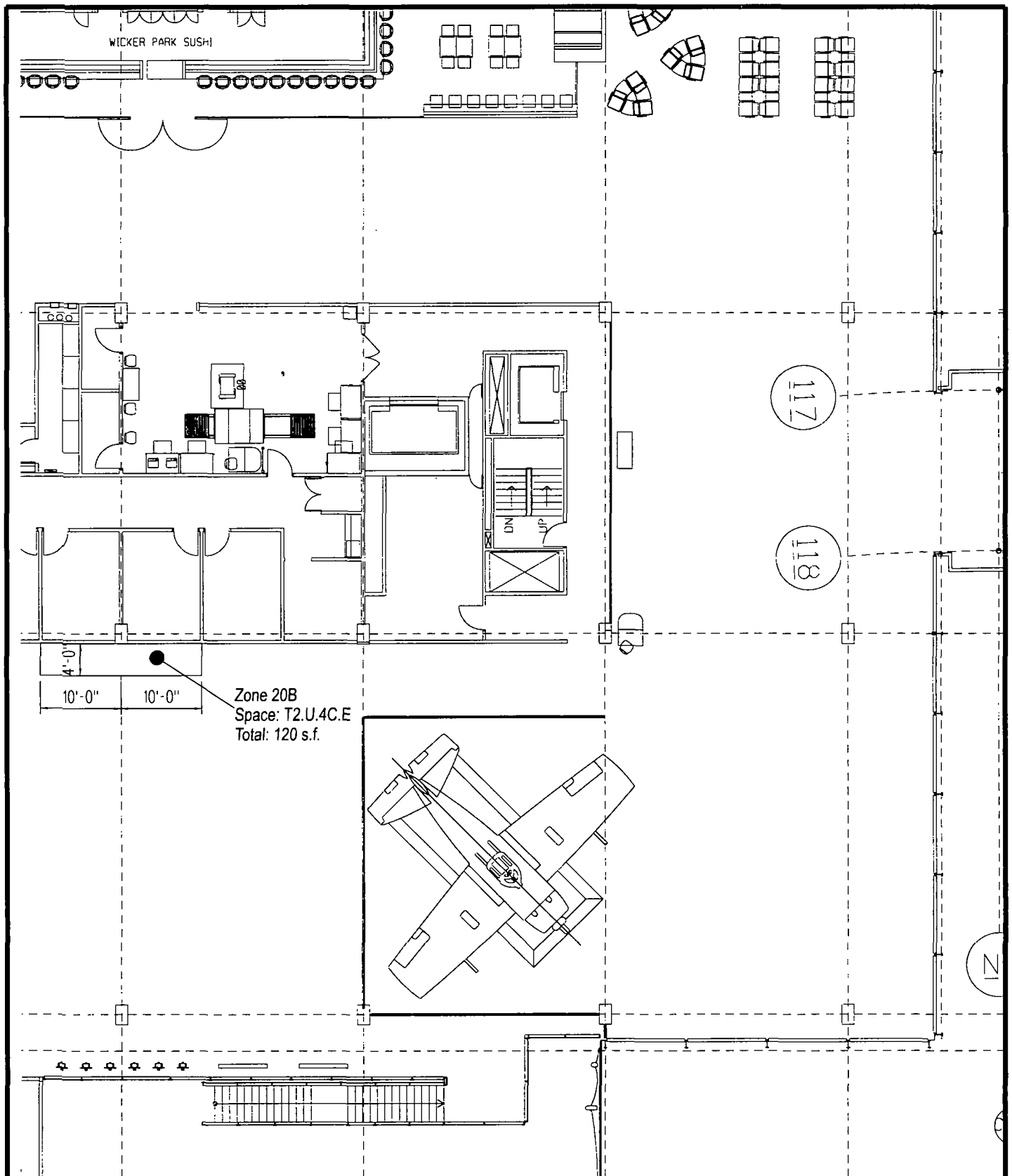
Scale: 1/16" = 1'-0"



KEY PLAN

Date May, 2021

Created by CADJ Services



Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

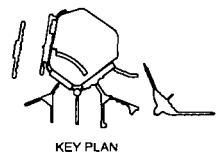
Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

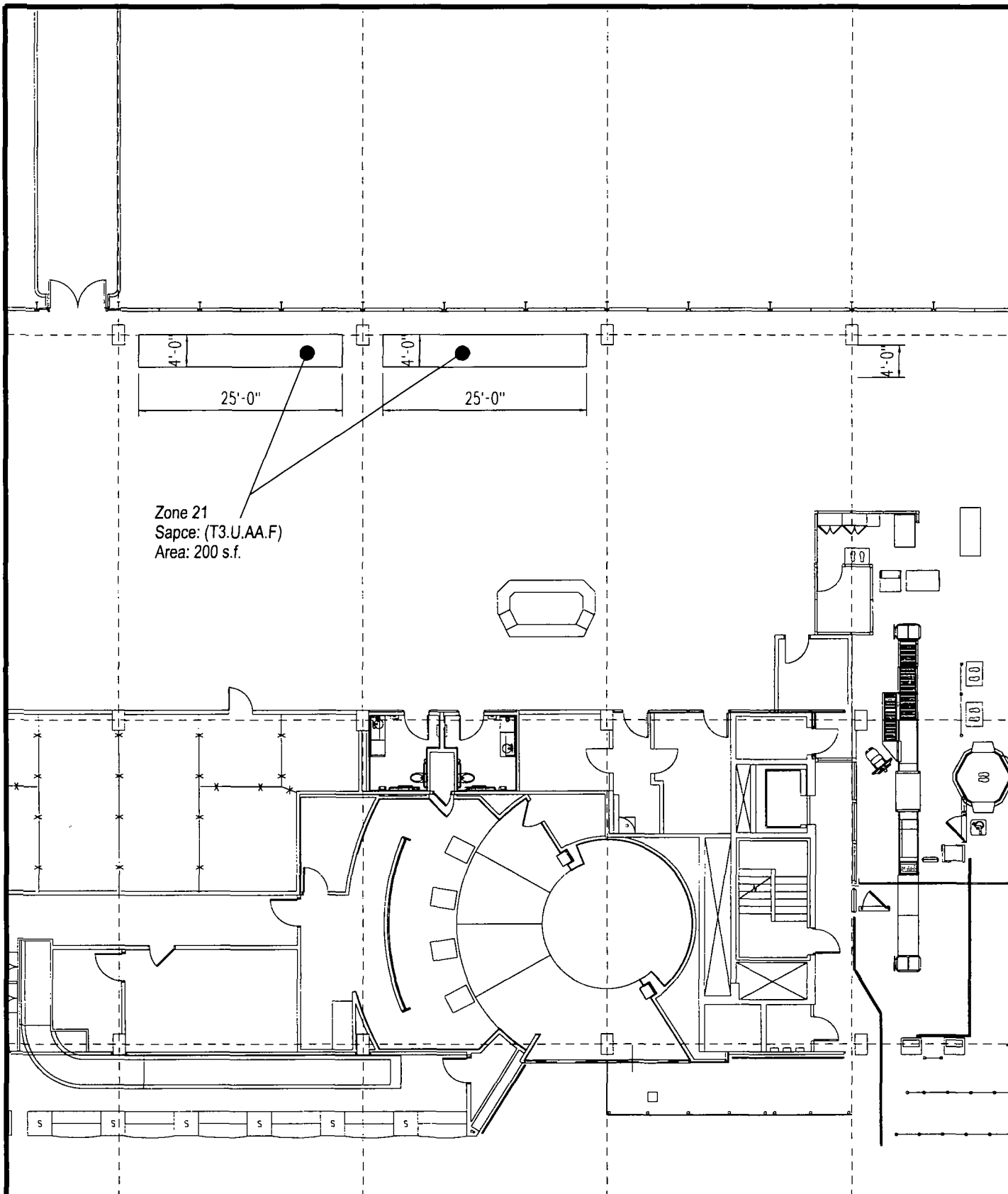
Automated Retail  
Zone # 20B (T2.U.4C.E)

Scale: 1/16" = 1'-0"



Date May, 2021

Created by CADDO Services



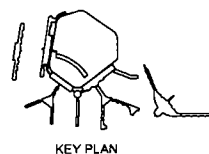
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale 1" = 20'-0"  
UNISON RETAIL MANAGEMENT

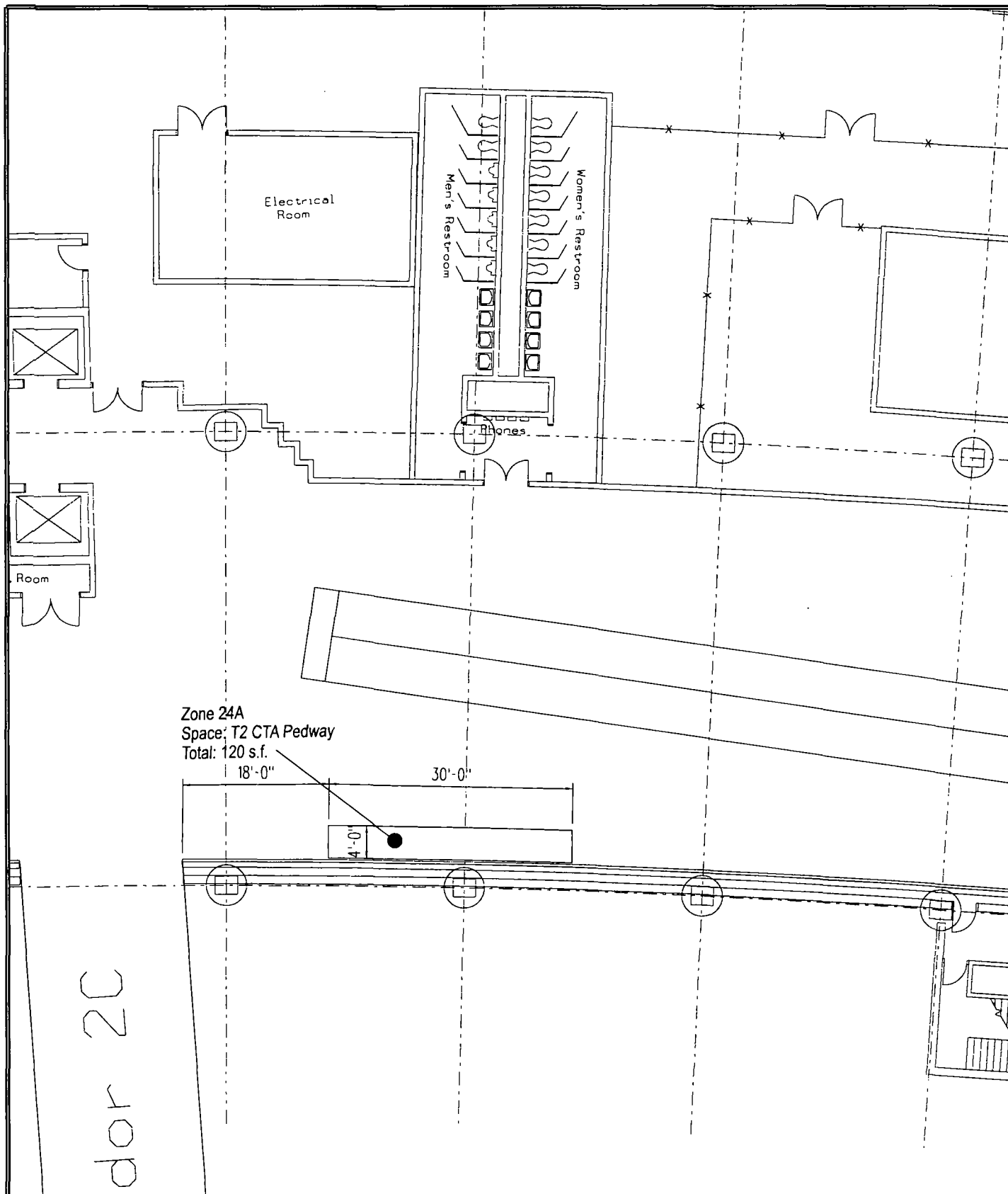
Terminal 3 Upper Level

Automated Retail  
Zone #21 (T3.U.8AA.F)



Date May, 2021

Created by CADDO Services



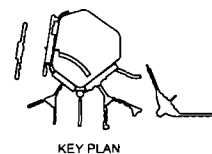
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

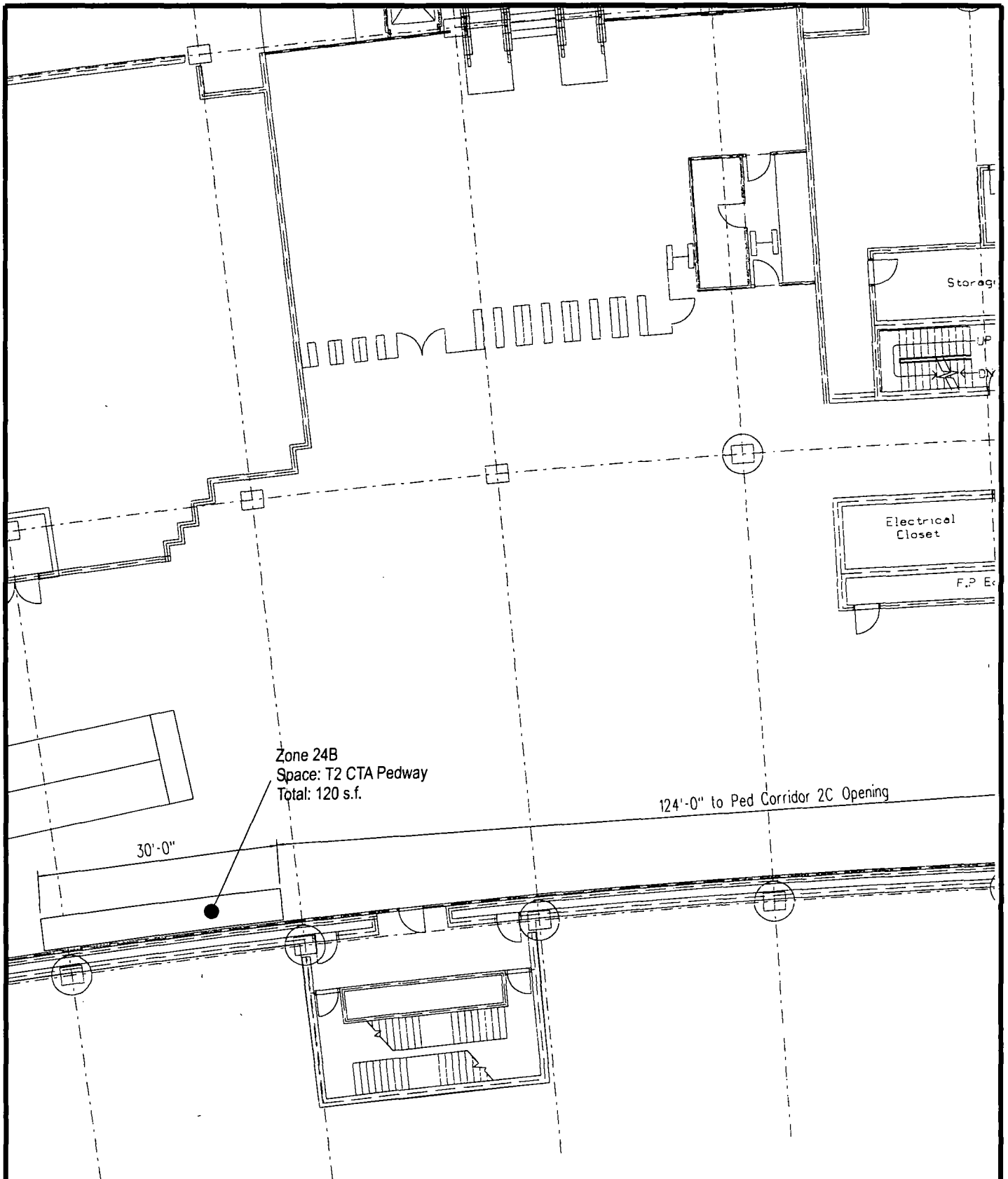
Terminal 2 CTA Pedestrian Tunnel

Automated Retail  
Zone #24A T2 CTA Pedway



Date May, 2021

Created by CAD3 Services



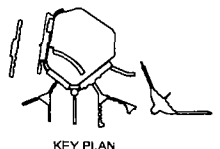
Chicago O'Hare International Airport  
Mayor • Lori Lightfoot

Chicago Department of Aviation  
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"  
UNISON RETAIL MANAGEMENT

Terminal 2 CTA Pedestrian Tunnel

Automated Retail  
Zone #24B T2 CTA Pedway



Date: May, 2021  
Created by CAD Services

**EXHIBIT 2**  
**FEEES**

## **EXHIBIT 2**

### **FEES**

1. **Percentage Fee: Canteen**

Concessions	Gross Revenues	Percentage Fee
Non-Perishable	All	35.0%
Farmer's Fridge	All	17.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

**EXHIBIT 3**  
**DEVELOPMENT**  
**PLAN**





# Concessions Development Plan

**Respondent must provide a detailed concessions development plan to cover the development of the proposed concession. Respondent should submit the following information for the location in enough detail to clearly define the proposed concession. This information should include the following detailed descriptions:**

**1. Concept/System and theme including why each component is best for ORD**

The Smart Market provides the convenience of a micro market with higher security. The Smart Market is a micro market that is secured. You swipe your credit card to unlock the door. Once the door is open, you can retrieve your product. Once the door closes, your credit card is charged based on the item that you grabbed. If you decide that you do not want the item anymore, all you have to do is swipe your credit card again, the door unlocks, return the product to the exact location in which you grabbed it, door closes and your card is refunded. This is the best option if you want the variety of a micro market with the security of a vending machine. The Smart Market is the perfect option for Package 2.

**2. Proposed menu of services and products and the approximate price range for each category.**

ITEM	PRICING
Assorted 20oz.	\$2.50-5.00
Carbonated Soft Drinks	\$3.00
Specialty Beverages (Kombucha, Starbucks, Cold Brew, Etc.)	\$4.00-8.00
Energy Drinks	\$3.00-6.00
Assorted Chips	\$2.00-4.00
Candy and Other Bar Products	\$2.50-4.00
Fresh Food	\$4.00-12.00

**3. Sources of merchandise, products, and supplies.**

Canteen utilizes a variety of Foodbuy suppliers for all merchandise, products and supplies.

**4. Narrative description of the proposed capital improvements.**

Canteen will provide state of the art equipment for each location stated in this RFP. We will outfit each location with our capital investment funds.

**5. Narrative description of the respondent's sustainability initiatives incorporated in the design and construction of the proposed tenant improvements.**

Our equipment is LED and energy efficient making them sustainable machines.

Through analytics and human centered design we actively explore the brand and culture of our clients. We listen to their needs, understand their intentions, and translate them into an exceptional space that inspires associates and creates value for their business

**6. Preliminary plans in sufficient detail to allow evaluation of the quality and design of the proposed tenant improvements**

Please see following pages.

**Marketing plans and conceptual designs. These plans should show how the concession is planning to market the services to the customer as well as educating the customer on how to use it. The marketing plan should include graphic examples.**

All of our equipment will have Kiosks that give details on how to use the given system. Signage and graphics will also be posted near the equipment

# FARMER'S FRIDGE

*Fresh finds for staff  
& visitors, day & night.*

## WHOLE SOME, DELICIOUS FOOD

Fridges offer a fresh, revolving menu of over 25 balanced meals, snacks and beverages, all to keep everybody surprised and delighted.

## LOW ENVIRONMENTAL IMPACT

Patented technology helps us stock Fridges based on real-time demand, meaning more happy customers and less food waste.

## MINIMAL FOOTPRINT

Small, 14-square foot footprint allows Fridges to fit in the same amount of space as 2 plants and a chair.



## SHIFT, SOLVED

Night shift at the airport doesn't have to mean a candy bar. Fridges make healthy food accessible day and night.

## MAKE IT EASY

We'll take care of Fridge maintenance, so your local staff can get some much-deserved time back in their day.

## PLUG & GO

Our user-friendly technology and app allow you to view a live inventory of all Fridges in real time, even if they're on a different floor.

## DIMENSIONS

4' W x 3.5' D x 7.2' H

## NOTABLE LOCATIONS

Northwestern Medicine  
Advocate Health  
NorthShore University HealthSystem  
Rush University Medical Center  
Presence Health

15,000+

Meals served weekly

150,000+

Meals donated since 2014



## SOURCING PARTNERS

Carr Valley Cheese  
I Heart Keenwah  
La Colombe  
Local Foods  
Mighty Vine Tomatoes  
Suker's  
Publican Quality Bread

CONCESSIONS DEVELOPMENT PLAN 20

FARMER'S FRIDGE

# Operating in the busiest airports in the US



*Terminals 1, 2, 3, 5*



*Concourse D*



*Terminal A & B*



*Terminal 8*

INDIANAPOLIS INTERNATIONAL AIRPORT



*Concourse A & B*



O'Hare International Airport



Philadelphia International Airport

## ARTISAN BAKED GOODS ON DEMAND

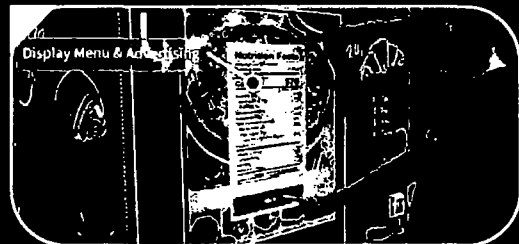
# Bake Express

How would you like to have artisan freshly baked pastries, flatbreads, and more available 24/7 at your location? Guests love the easy-to-use touchscreen interface and delicious fresh products.



### FEATURES

- Each machine holds 60-80 items
- Automatic micro bakery storing, baking and delivering fresh hot products 24/7 on demand
- State of art 55" touch screen for ordering and advertisement
- High quality artisan product via revolutionary automated process
- Accepts card and mobile payments



canteen

## Machine Model: Bake Xpress rev1 VMC-08855W0-NY

This machine is most suitable for high volume locations who want to offer hot, fresh, pasteries and pizza.

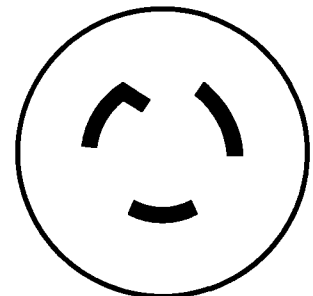
### Dimensions

Height: 22"  
Width: 21"  
Depth: 16"  
Weight: 77 lbs

	Power	Screen	Fridge	Oven (200°C)	Microwave
1	180	On	Off	Off	Off
2	680	On	On	Off	Off
3	2000	On	On	On	Off
4	3500	On	On	On	On

### Electrical

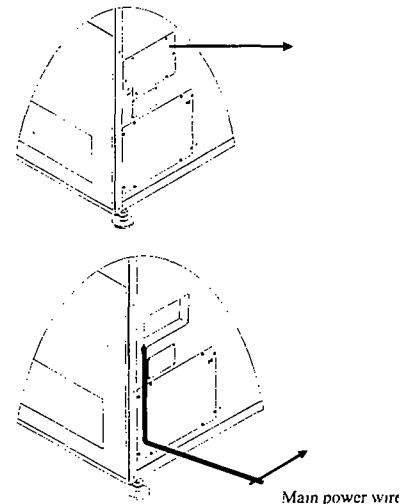
Rated Volts: 220 V  
Watts: 3500 W  
Maximum Power: 4 Kw  
Frequency: 60 Hz  
Plug: 30A rating for plug such as Nema L6-30



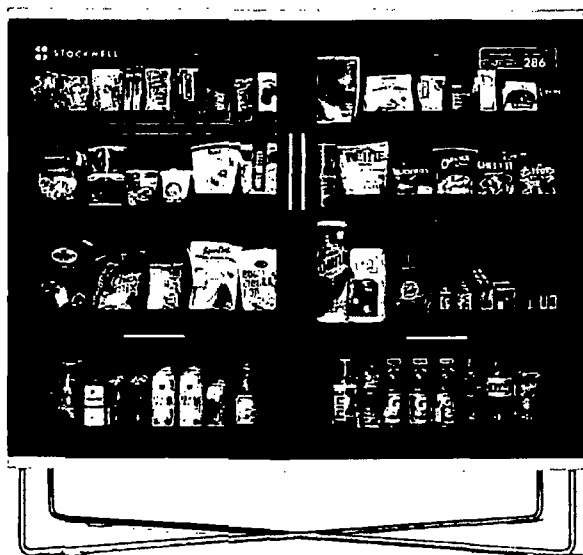
NEMA L6-20

### Main Power Cable

1. The main power wire of machine: Pull out the main power wire and connect it to the Power Outlet 220V (with ground). There is a part shown below the right rear of the machine, on which there are 6 cruciform pan head screws. The box inside contains the main power cord of the machine, the length is 3 meters.
2. Pull out the main power wire and connect it to the Power Outlet 220V (with ground).



# Smart Stores



## Shelving

Powder coated, with recessed LED lighting for easy browsing.

## Computer vision

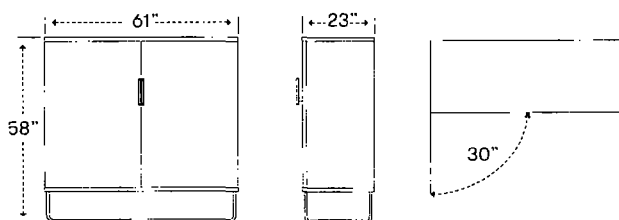
For transactions, restocking needs, and fraud detection.

## Product

Space for up to 60 products across categories that evolve over time.

## Exterior

Furniture-grade materials for a sleek, modern look.



## Technical requirements



### Connectivity

A reliable internet connection, either on-board 4G cellular connection or 2.4 GHz WiFi that doesn't have a splash page.



### Power source

Standard 120 Volt, 60 Hz, AC power. A busy store will use about 5-6 amps or 50 kWh per month.

## Location requirements\*

Where you place a store is critical to the success of Stockwell, and must meet these four criteria:



### Daily foot traffic

Placed along a path that shoppers use everyday.



### High visibility

Store should be easily seen when walking by.



### 24/7 access

Area must be accessible at all times, day or night.



### Bright, well lit area

The location must not be dark or hard to see.

\*Can't meet every requirement? Contact your rep to discuss options.



SECURE SHOPPING DESIGNED FOR YOU

# canteen Smart Market



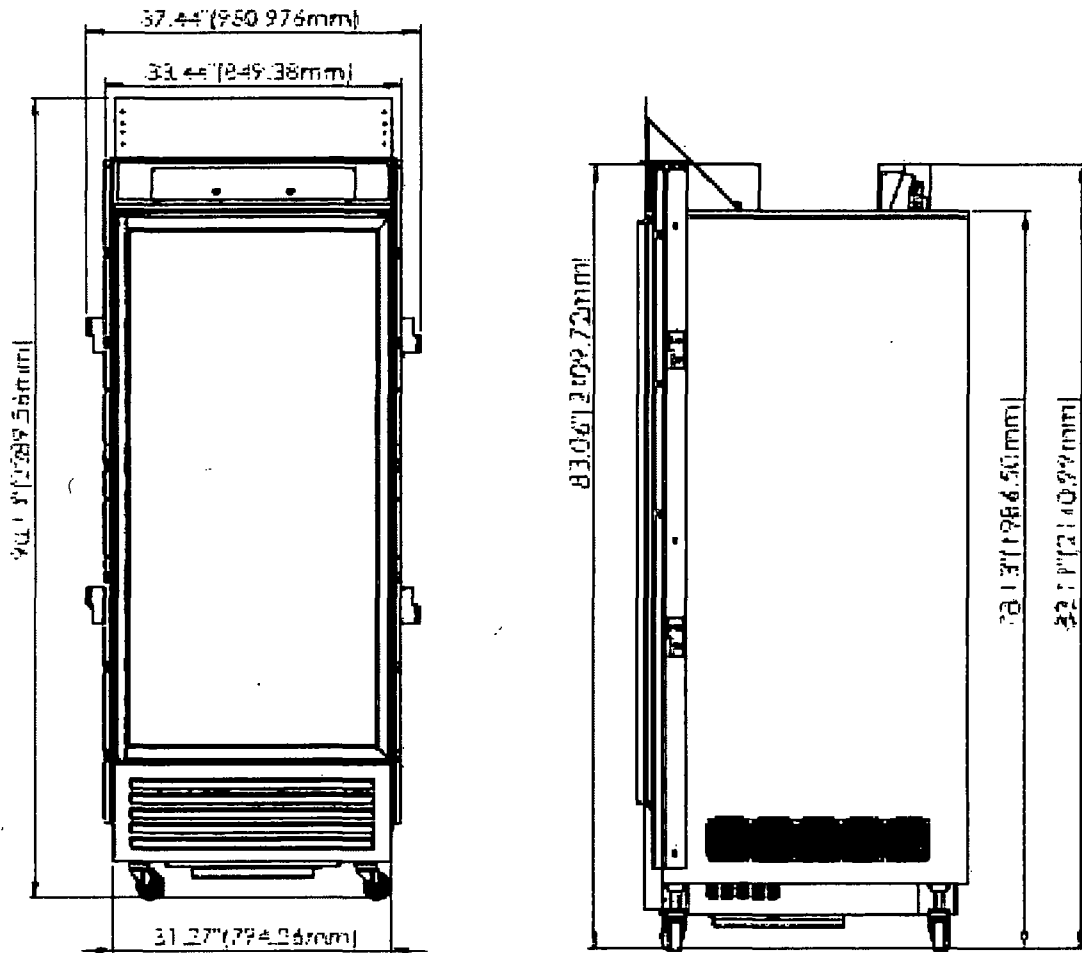
## FEATURES

Meet your robust, modular solution for secure snacking. Smart Market is our most secure market option, making it perfect for public or semi-public locations like hotels, hospitals, and higher education facilities.

- Large product selection
- Pay with your credit card or shopper account
- Flexible configurations to maximize your space
- Fresh brewed bean-to-cup coffee

Contact your Canteen Representative today.

## Plan Views and Specifications



Model	Doors	Shelves	W	D	H	Voltage	Amps	Cord Length	Crated Weight
Smart Market	2+	5	37.44"	34.25"	90.14"	115/60/1	10	8'	800 lbs.
			95.1 cm	87 cm	228.9 cm			2.44 m	363 kg

\* Minimum clearance height requirement of 108"

Powered by Infrared Technology

**canteen**

Contact your Canteen Representative today.

# MERCHANT MEDIA

## CONNECT

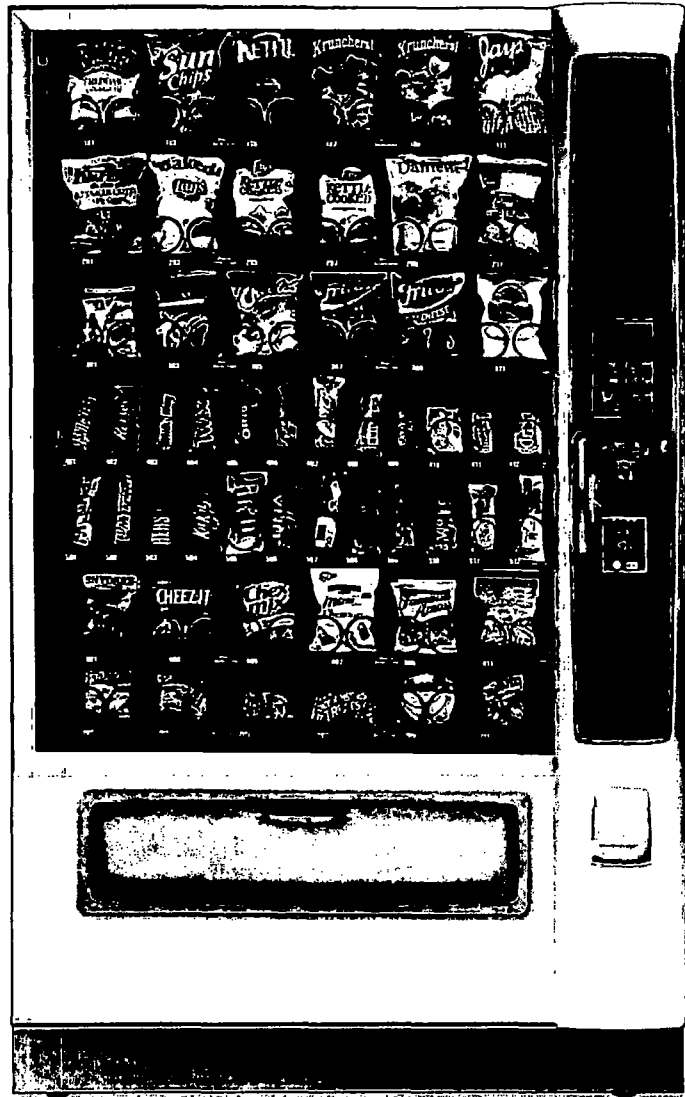
Modern Design Attracts  
Consumers with Custom Graphics  
and Screen Messaging

## ENGAGE

Color Touchscreen and  
Compelling Digital  
Advertising Drive Consumer  
Engagement

## SELL

Shopping Cart Feature and  
Integrated Payment Systems  
deliver 41% more Sales Than  
Machines with Just Cashless



**CRANE** MERCHANDISING SYSTEMS

3330 Crane Way Williston, SC 29853-0719 • Tel: (800) 688-9090 • crane.ms.com • MADE IN USA

# MERCHANT MEDIA



## CUSTOM GRAPHICS AVAILABLE

### Specifications

	Model 186	Model 187
Height:	72"	72"
Width:	33"	44"
Depth:	39"	38"
Weight:	510 lbs	610 lbs.
Electrical:	115 VAC 60Hz, 3A	115 VAC 60Hz, 3A

Certifications: UL, cUL, CE, FCC, NAMA

### Payment Options

- Integrated Credit Card Swipe
- Integrated Coin & Bill Validator
- Integrated NFC Reader with Apple Pay and Android Pay
- Standard Payment Opening 1
- Standard Payment Opening 2
- Other CPI and Crane Cashless Options

### Key Features

- Guaranteed Product Delivery with SureVend Technology
- Standard Cabinet LED Lighting
- 7" Touchscreen with Color Display or 3.5" Keypad
- Surround & Integrated Payment LED Option
- Custom Graphics
- Internal Tactile Keypad & Speaker Option (for visually impaired operators)



Meets ADA Requirements

### Spiral Configuration Options

#### Merchant Media 4-Wide

- Standard - 38 Selections
- Maximum - 56 Selections
- Shelf Options:
  - 4 dual-spiral snack/pastry shelf
  - 8 single-spiral candy shelf
  - 6-Shelf and 7-Shelf Configurations

#### Merchant Media 6-Wide

- Standard - 58 Selections
- Maximum - 84 Selections
- Shelf Options:
  - 6 dual-spiral snack/pastry shelf
  - 12 single-spiral candy shelf
  - 6-Shelf and 7-Shelf Configurations

### Built-In Telemetry Options

- CDMA (Sprint or Verizon)
- GSM (AT&T 3G or T-Mobile)
- Local Mesh Network

### Color Displays

Pick from two stunning user interfaces to grab consumer's attention.

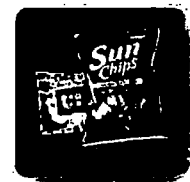


### Integrated Cashless

Built-in and intuitive cashless solution helps capture every sale.

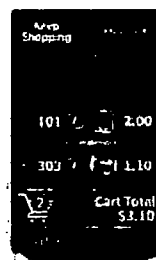
### Largest Variety

Increase sales and consumer satisfaction with the largest number of selections in the industry.



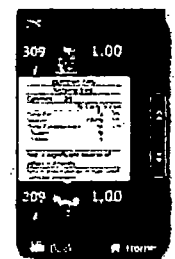
### Shopping Cart

Enables multi-product purchases in one, simple transaction. Consumers can pay before or after selection.



### Nutritional Information

Supports FDA nutritional requirements with easy-to-read facts for making better choices.



### Digital Advertising

Display advertisements and interactive promotions that encourage multiple sales, while building brand loyalty.

### Intelligent Store

MEDIA offers over-the-air delivery of software updates, screen messaging, planogram and price changes, as well as performance monitoring with Intelligent Store.



canteen

# PPE Vending

## 24/7 Safety



Provide convenient around-the-clock access to essential personal protective equipment—gloves, masks, hand sanitizer, wipes, etc. Equipped to accept credit card and mobile payments for added convenience, we keep these machines fully stocked and use industry-leading sanitation procedures to ensure the disinfection of machine surfaces during every service.

Get up and running immediately. Contact us today to schedule an installation.

- **Customizable Product Selection**
- **Cash, Credit and Mobile Payment**
- **ADA Compliant**
- **LED Energy Saver Technology**
- **Reliable Supply & Service**

Sanitary & Personal Protection Items

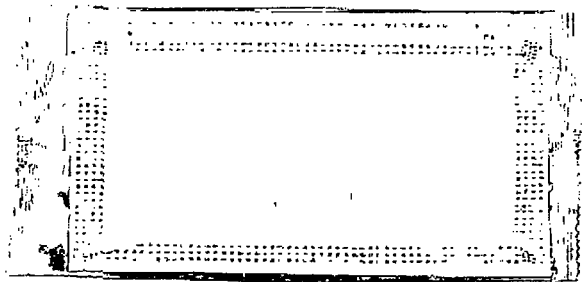
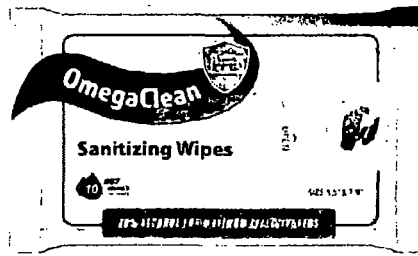
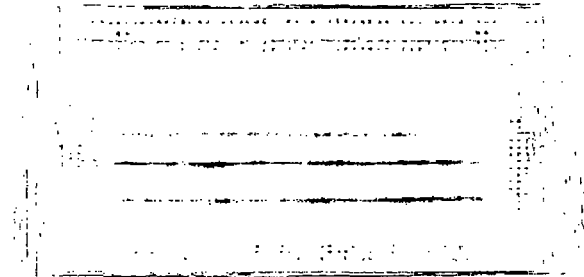


sani-center PPE

6 WEEK  
LEAD TIME

Visit [canteen.com](http://canteen.com) for more details

# FEATURED PRODUCTS



## STANDARD PPE VENDING

Item#	Brand	Description	Unit Size
10150	OmegaClean	Hand Sanitizer Tube, Flip-Top, 75% Alcohol	2oz
8780	OmegaClean	Canister, 75% Alcohol Wipes, 100ct	100ct
60100	OmegaClean	Laydown, 75% Alcohol Wipes, 50ct	50ct
70100	OmegaClean	Laydown, 75% Alcohol Wipes, 5ct	5ct
70110	OmegaClean	Laydown, 75% Alcohol Wipes, 10ct	10ct
70120	OmegaClean	Laydown, 75% Alcohol Wipes, 20ct	20ct
70150	OmegaClean	PPE Kit: 1 Mask + 1 Single Pack Wipes	1
70160	OmegaClean	PPE Kit: 1 Mask + 5 Wipes	1
70170	OmegaClean	PPE Kit: 1 Mask + 10 Wipes	1
10160	TravelShield	Medium Nitrile Gloves, Pair, Individually Packaged	1 pair
10170	TravelShield	Large Nitrile Gloves, Pair, Individually Packaged	1 pair
10180	TravelShield	X-Large Nitrile Gloves, Pair, Individually Packaged	1 pair
90100	Aiminde	KN95 Face Mask, Non-Medical	1
30100	YIXIN	3-Ply Disposable Mask, Individually Wrapped	1
91100	DR. MFYAN	KN95 Protective Respirator, Individually Wrapped	1

**EXHIBIT 4**  
**PRODUCTS AND PRICE**  
**LIST**

**Respondent must provide a detailed concessions development plan to cover the development of the proposed concession. Respondent should submit the following information for the location in enough detail to clearly define the proposed concession. This information should include the following detailed descriptions:**

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**2. Proposed menu of services and products and the approximate price range for each category.**

ITEM	PRICING
Assorted 20oz.	\$2.50-5.00
Carbonated Soft Drinks	\$3.00
Specialty Beverages (Kombucha, Starbucks, Cold Brew, Etc.)	\$4.00-8.00
Energy Drinks	\$3.00-6.00
Assorted Chips	\$2.00-4.00
Candy and Other Bar Products	\$2.50-4.00
Fresh Food	\$4.00-12.00

**3. Sources of merchandise, products, and supplies.**

Canteen utilizes a variety of Foodbuy suppliers for all merchandise, products and supplies.

**4. Narrative description of the proposed capital improvements.**

Canteen will provide state of the art equipment for each location stated in this RFP. We will outfit each location with our capital investment funds.



**EXHIBIT 5**  
**FORM OF LETTER OF**  
**CREDIT**

SAMPLE FORM OF LETTER OF CREDIT

*Issuing Bank Letterhead*  
(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_, 20

Chicago Department of Aviation  
Chicago's O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$\_\_\_\_\_ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on \_\_\_\_\_, 20\_\_\_\_, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_."

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CERTIFICATE FOR DRAWING

BY: \_\_\_\_\_  
Its: Commissioner of Aviation

**EXHIBIT 6  
INSURANCE  
REQUIREMENTS**

## EXHIBIT 6

### **INSURANCE REQUIREMENTS** **Chicago Department of Aviation**

#### **Automated Retail License Agreement** **Food, beverage, retail products gifts and vending merchandise at O'Hare** **(Vending Machines)**

#### **A. INSURANCE REQUIRED**

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

- 1) Workers Compensation and Employers Liability (Primary and Umbrella)  
Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: other state endorsement, voluntary compensation and alternate employer, when applicable.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 2) Commercial General Liability (Primary and Umbrella)  
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Licensee's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Licensee's acts or omissions, whether such liability is attributable to the Licensee or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Licensee with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insured on a primary, non-contributory basis.

Licensee may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Property

The Licensee must maintain All Risk Property Insurance for the licensed space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and loss payee, as its interest may appear. Licensee is responsible for all loss or damage to personal property including equipment, fixtures, contents, materials and supplies.

6) Cyber Liability

Cyber Liability Insurance must be maintained with limits of not less than \$2,000,000 for each occurrence or claim. Coverage must include, but not be limited to network security and privacy liability including computer or network system attacks (liability arising from the loss or disclosure of confidential information), privacy breach response coverage and costs, regulatory liability including fines and penalties, denial or loss of service, introduction, implantation and/or spread of malicious software code, unauthorized access to or use of computer systems, theft of data, and no exclusion/restriction for unencrypted portable devices/media may be on the policy. The City must be named as an additional insured and/or indemnified party. If the City is named as an additional insured and the policy contains an insured vs insured exclusion, the exclusion must be amended, and not be applicable to the City.

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) Builders Risk

When Licensee undertakes any construction, including improvements, betterments, upgrades and/or repairs, the Licensee must provide or cause to be provided, All Risk Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that will be part of the permanent facility/project. The City of Chicago is to be named as an additional insured and loss payee as its interest may appear.

The Licensee is responsible for all loss or damage to City of Chicago property at full replacement cost.

**B. Additional Requirements**

Evidence of Insurance. Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Licensee must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Licensee.

Waiver of Subrogation. Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance



herein for any loss arising from or relating to this Agreement. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

Licensee's Insurance Primary. All insurance required of Licensee under this Agreement must be endorsed to state that Licensee's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Licensee under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Licensee maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Licensee is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 7**  
**ACDBE SPECIAL CONDITIONS AND RELATED**  
**FORMS**

City of Chicago Department of Aviation

**Special Conditions Regarding  
Airport Concessions Disadvantaged Business Enterprise (ACDBE) Commitment**

**I. POLICY AND PROGRAM**

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration ("FAA"), the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance with Part 23 requirements will not diminish or supplant the Concessionaire's obligations to comply with nondiscrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at [www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr23\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html).

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an entity that has been certified as such under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless they have also been certified by the Illinois UCP.

In accordance with Part 23, Subparts B and D, the City submitted an ACDBE Program and ACDBE Goal for approval by the FAA. The FAA-approved ACDBE Program and ACDBE Goal are available upon request. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Concessionaire is deemed to be the "concessionaire or contractor" referenced.

I. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## II. PROGRAM GOALS

The City has established, and the Federal Aviation Administration has approved, aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (non-rental car concessions) and described further below.

The below aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City may or may not have established a contract-specific ACDBE aspirational goal at the time that the City issued the Request for Proposals for the concession ("RFP"). If the RFP included a contract-specific goal, Tenant's proposal either included participation by ACDBE(s) that met or exceeded the contract-specific goal or Concessionaire demonstrated "good faith efforts" to meet that contract-specific goal but was unable to do so. Guidance on "good faith efforts" can be found in Appendix A to 49 C.F.R. Part 26. Appendix A as it appears on the date of the Agreement is incorporated in Section VI.A. of these Special Conditions, but Concessionaire is responsible for compliance with federal regulations as they may be amended from time to time.

### A. All Concessions Except Rental Cars.

*O'Hare International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **30%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 7% and a race-conscious goal of 23%.

*Midway International Airport:* The City has determined that the appropriate aspirational goal for ACDBE participation in non-rental car concessions is **37%**. Historical data regarding ACDBE participation at the City's airports indicates that this aspirational goal should consist of a race-neutral goal of 5.5% and a race-conscious goal of 31.5%.

- B. Rental Car Concessions. Due to the lack of ACDBE rental car companies, the national or regional nature of rental car industry procurement practices and a general lack of reliable historical data, the City has determined that the aspirational goal for ACDBE participation in rental car concessions at both airports is **2.4%**. Nevertheless, rental car concessionaires are encouraged to use all reasonable efforts to maximize procurement of goods and services from ACDBEs that may be certified in the Illinois UCP or the UCPs of other states.

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

### **III. CONCESSIONAIRE'S ACDBE COMMITMENT**

#### **A. INITIAL ACDBE COMMITMENT**

The extent and nature of the ACDBE participation commitment by Concessionaire is documented in Schedules B, C and/or D attached to these Special Conditions ("ACDBE Commitment"). As used these Special Conditions and in Schedules B, C and D, "Concessionaire" means the entity with whom the City has entered into a concession agreement, whether that entity is referred to in that agreement as "Tenant," "Licensee" or other term.

The total ACDBE Commitment, stated as a percentage of the concessions gross revenues, must equal or exceed the percentage ACDBE participation required in the Agreement. If the Agreement indicates that there is no ACDBE participation requirement, it will be conclusive evidence that either (a) the RFP contained no contract-specific goal and Concessionaire did not propose any ACDBE participation or (b) the Concessionaire demonstrated, to the satisfaction of the City, that it exerted good faith efforts to obtain ACDBE participation to meet a contract-specific goal but was unable to obtain such participation. In either such event, there will be no Schedule B, C or D attached to these Special Conditions.

If there is ACDBE participation in the form of a joint venture member, the attached Schedule B sets forth the essential terms of that joint venture participation, including a representation as to the value of the ACDBE's activities in operating the concession as a percentage of gross revenues, and a copy of the joint venture agreement is attached to Schedule B. If there is ACDBE participation in the form of ACDBE(s) acting as sublicensee(s), subtenant(s) or subcontractor(s), it is documented in Schedules C and D. Schedule(s) C is the commitment by the ACDBE(s) to participate by providing the goods or services indicated, and Schedule D is the commitment by the non-ACDBE to such participation by the ACDBE(s).

#### **B. CHANGES IN ACDBE PARTICIPATION**

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment, as stated in terms of a percentage of gross revenues, or substitute or additional ACDBE(s) must be retained by Concessionaire pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Concessionaire and ACDBE(s) must complete revised Schedules B, C or D, as applicable.

These notice and consent requirements apply both pre- and post- award of the Agreement. Note that changes to a joint venture Concessionaire prior to award may result in rejection of the proposal if the City determines, in the sole discretion of the Commissioner, that those changes affect Concessionaire's qualifications.

#### C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

In the event that it appears that Concessionaire will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its performance under the ACDBE agreement through no fault of Concessionaire, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Concessionaire and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Concessionaire and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Concessionaire, then Concessionaire must promptly notify the ACDBE with a copy to the City, of its intent to terminate or substitute the ACDBE's participation and provide the ACDBE with a minimum of five days to respond, unless the City grants permission for a shorter response period as a matter of public necessity (i.e. safety). Concessionaire requests to the City for permission to terminate or substitute an ACDBE must specify one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Concessionaire shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Concessionaire must demonstrate those good faith efforts to the satisfaction of the Commissioner. Failure to comply with the foregoing shall be an event of default under the Agreement.

Concessionaire's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Concessionaire; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

#### **D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs**

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

Actual use of a substitute, replacement or additional ACDBE should not be made by Concessionaire before City approval is given. An ACDBE agreement between Concessionaire and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the ACDBE agreement must be submitted immediately to the City.

#### **E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES**

If the Agreement contains a term extension or if the Concessionaire proposes an assignment or sublease of the Agreement, as a condition precedent to the City's consent to such extension, assignment or sublease, the City and Concessionaire will revisit and possibly adjust the Concessionaire's ACDBE Commitment to reflect any possible change in ACDBE availability and to ensure compliance with Part 23 as it may have been amended in the interim. Concessionaire will be required to provide amended Schedules D, B, or C, along with amended ACDBE agreements, to reflect any required changes to the ACDBE Commitment or provide documentation of good faith efforts to achieve increased ACDBE participation.

### **IV. COUNTING ACDBE PARTICIPATION**

#### **A. CONCESSIONS OTHER THAN RENTAL CAR**

In order for participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted (but may be subject to goals for M/WBE or other types of participation under a local program as specified by the City). Otherwise, ACDBE participation in non-rental car concessions is counted in accordance with 49 CFR § 23.55 as follows:

1. *Concessionaire is an ACDBE.* When Concessionaire is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Concessionaire are counted. Gross receipts attributable to a non-ACDBE sublicensee of Concessionaire are not

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
  - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
  - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
  - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
  - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

#### B. RENTAL CAR CONCESSIONS

If Concessionaire is a rental car company, ACDBE participation counts in accordance with the provisions of 49 CFR §23.53. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar



services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;

2. The entire amount of the fee or commission charged by an ACDBE to manage a car rental concession under an agreement with the Concessionaire, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it may count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

## **V. CERTIFICATION, RECORDS, REPORTS AND MONITORING**

### **A. CERTIFICATION**

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Concessionaire's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

Each ACDBE must promptly notify Concessionaire if there is any change in the ACDBE's certification status. Concessionaire, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule B, C or D, must conform to its stated area of specialization. If, during the course of this Agreement, Concessionaire proposes to amend Schedules B, C or D so that an ACDBE performs additional work or supplies additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services.

### **B. RECORDKEEPING**

The Concessionaire must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Concessionaire grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized

representatives.

#### C. REPORTING

Concessionaire must file ACDBE utilization reports (monthly if non-rental car and quarterly if rental car), together with its concession license fee payment, delineating for the month or quarter, as applicable, and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Concessionaire's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Concessionaire and be notarized.

#### D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Concessionaire and the ACDBE in Schedules B, C or D, or that Concessionaire and/or ACDBE have misrepresented to the City either the payments to the ACDBE or the value of the ACDBE's participation in a joint venture, it shall be an event of default under the Agreement.

### VI. GOOD FAITH EFFORTS

#### A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Concessionaire must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Concessionaire must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

#### B. DOCUMENTATION

Whenever Concessionaire is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Concessionaire must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Concessionaire took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Concessionaire has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
  - a) names, address and telephone numbers of ACDBE firms contacted;
  - b) date and time of contact;
  - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
  - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
  - a) concession identification and location;
  - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
  - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
  - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
  - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
  - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
  - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

#### C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making

the determination regarding a Concessionaire's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Concessionaire has timely submitted. Within five days of being informed by the Department that Concessionaire has not documented sufficient good faith efforts, Concessionaire may request administrative reconsideration. The request must be made in writing to the following official:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Concessionaire did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

City of Chicago  
Department of Procurement Services  
City Hall, Room 806  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Procurement Officer

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner for Concessions

City of Chicago  
Department of Law  
30 North LaSalle Street, Room 1400  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Concessionaire will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not make adequate good faith efforts.

## **VII. NON-COMPLIANCE AND DAMAGES**

A. NON-COMPLIANCE GENERALLY

Concessionaire's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Concessionaire fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Concessionaire. At the City's option, any improvements added by Concessionaire must remain for the new tenant at no cost to the City or the new tenant.

B. NON-COMPLIANCE WITH ACDBE AGREEMENT

If Concessionaire has not complied with the requirements of an ACDBE agreement, the affected ACDBE may seek to recover from Concessionaire damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Concessionaire consents to have any disputes between Concessionaire and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Concessionaire's failure to comply with ACDBE agreements and grants ACDBEs specific third-party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Concessionaire until the City receives a copy of the final arbitration decision, but in no event will Concessionaire be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.

**EXHIBIT 8**  
**MBE/WBE SPECIAL CONDITIONS AND RELATED**  
**FORMS**

**SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION  
CONTRACTS**

**I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

**Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: 26%**  
**WBE Contract Specific Goal: 6%**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.



For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty directly related to the performance of the subject matter of the Construction Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

"Executive Director" means the executive director of the Office of Compliance or his or her designee.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Minority Business Enterprise" or "MBE" means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

“Women Business Enterprise” or “WBE” means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

#### **IV. Counting MBE and WBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals.** For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.

1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

H. If the MBE or WBE subcontracts out any of its work:

1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**V. Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

A. Schedule B: MBE/WBE Affidavit of Joint Venture

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed

original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

D. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

F. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
  - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.
  - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.



**VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
  - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  - 2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
  - 3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - 4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
  - 5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  - 6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  - 7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  - 8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
  5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

#### **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740

of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

#### **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

#### **XI. Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

**EXHIBIT 9**  
**ECONOMIC DISCLOSURE STATEMENTS AND**  
**AFFIDAVITS**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Compass Group USA Inc., by and through its Canteen Division

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: 2400 Yorkmont Road  
Charlotte, NC 28217

C. Telephone: 704-328-4000 Fax: \_\_\_\_\_ Email: Porter.Hinton@compass-usa.com

D. Name of contact person: Porter Hinton

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD automated retail, food servicing, vending units RFP

G. Which City agency or department is requesting this EDS? Chicago Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☒ Yes      ☐ No      ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
See Attached	

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2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a



**Compass Group USA, Inc.**

<b>Name</b>	<b>Title</b>	<b>Expires On</b>	<b>Term</b>
Briotte, Kristin Elizabeth	Assistant Secretary	12/31/2999	Perpetual
Delano, Deborah Kay	Assistant Secretary-Tax	12/31/2999	Perpetual
Glenn, David	Compliance Officer - Maryland	12/31/2999	Perpetual
McConnell, Jennifer	Director	12/31/2999	Perpetual
McConnell, Jennifer	Executive Vice President, General Counsel & Secretary	12/31/2999	Perpetual
Meredith, Adrian Llewelyn	Director	12/31/2999	Perpetual
Meredith, Adrian Llewelyn	President & CFO	12/31/2999	Perpetual
Rossitch, Richard James	Assistant Secretary	12/31/2999	Perpetual
Thomas, Daniel Malcolm	Sr. Vice President and Treasurer	12/31/2999	Perpetual

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Compass Group USA Investments Inc	103 Foulk Road, Suite 202, Wilmington DE 19803	100%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
Shari Wilson	8548 S Cottage Grove Ave. Chicago, IL 60619	ACDBE Supplier	32% of sales - estimated \$400,000 total purchase amount

(Add sheets if necessary)

☐ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☐ No    ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

See Attached

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

#### **Part B.11: Further Disclosures**

As the US subsidiary of a large multi-national company, Disclosing Party is subject to various state and local tax audits on a regular basis. From time to time, such audits have resulted in the imposition of a penalty. Penalties have not been material when compared to tax collected and remitted. Disclosing Party strives to fully comply with the tax laws in each jurisdiction in which it operates. Any deficiencies identified are corrected to ensure compliance on a prospective basis. Again, as a large company, *Disclosing Party has been a party to investigations related to civil proceedings and actions from time to time.* However, the actions in question are not material or out of the ordinary for a large employer and will not cause the Disclosing Party to be unable to perform or fulfill any of its obligations related to this proposed contract.

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
<hr/>		
<hr/>		
<hr/>		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.



## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded**, complete this Section VI. **If the Matter is not federally funded**, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes ☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes ☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes ☐ No ☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes ☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Compass Group USA Inc., by and through its Canteen Division

(Print or type exact legal name of Disclosing Party)

By: Kristin Briotte  
(Sign here)

Kristin Briotte

(Print or type name of person signing)

Assistant Secretary

(Print or type title of person signing)

Signed and sworn to before me on (date) July 14, 2021,

at Westchester County, NY (state).

Amanda M. Barkley  
Notary Public

Commission expires: 11/13/2022

AMANDA M BARKLEY  
Notary Public - State of New York  
No. 01BA0156308  
Qualified in Putnam County  
My Commission Expires on 11/13/2022

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

☐ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☒ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Compass Group USA Investments Inc.

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant  
OR

2. ☒ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: Compass Group USA Inc., by and through its Canteen Division

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:

B. Business address of the Disclosing Party: 2400 Yorkmont Road, Charlotte, NC 28217

C. Telephone: 704-328-4000 Fax: 704-328-7998 Email: Kristin.Briotte@compass-usa.com

D. Name of contact person: Kristin Briotte

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

ORD automated retail, food servicing, vending units RFP

G. Which City agency or department is requesting this EDS? Chicago Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_



## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Delaware

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3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☒ No ☐ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
See Attached	

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2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

**Compass Group USA Investments Inc**

<b>Name</b>	<b>Title</b>	<b>Expires On</b>	<b>Term</b>
Briotte, Kristin Elizabeth	Assistant Secretary	12/31/2999	Perpetual
Brown, Charles Palmer	Director	12/31/2999	Perpetual
Brown, Charles Palmer	Executive Vice President	12/31/2999	Perpetual
Delano, Deborah Kay	Assistant Secretary-Tax	12/31/2999	Perpetual
Green, Gary Richard	President and CEO	12/31/2999	Perpetual
McConnell, Jennifer	Executive Vice President, General Counsel & Secretary	12/31/2999	Perpetual
Meredith, Adrian Llewelyn	Chief Financial Officer	12/31/2999	Perpetual
Meredith, Adrian Llewelyn	Director	12/31/2999	Perpetual
Rossitch, Richard James	Assistant Secretary	12/31/2999	Perpetual
Thomas, Daniel Malcolm	Treasurer	12/31/2999	Perpetual

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Compass Group Holdings PLC	Compass House Guildford Street Chersey, Surrey KT16 9BQ United Kingdom	100%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) <b>NOTE:</b> "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☐ No    ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
  - b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
  - d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).
6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.
7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.
8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.
9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").
10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

N/A

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13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

N/A

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## C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
<hr/>		
<hr/>		
<hr/>		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.



## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII.** For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

- A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.
- B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.
- C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.
- D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.
- E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Compass Group USA Investments Inc.

(Print or type exact legal name of Disclosing Party)

By: Kristin Briotte  
(Sign here)

Kristin Briotte

(Print or type name of person signing)

Assistant Secretary

(Print or type title of person signing)

Signed and sworn to before me on (date) July 7, 2021.

at Westchester County, New York (state).

Amanda Barkley  
Notary Public

Commission expires: 11/13/2022

AMANDA M BARKLEY  
Notary Public - State of New York  
No. 018A6155358  
Qualified in Putnam County  
My Commission Expires on 11/13/22

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

☐ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☐ N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

The Disclosing Party is not the Applicant.

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**Company Registration No. 2090126**

**Compass Group Holdings PLC**

**Annual Report and Financial Statements**

**For the year ended 30 September 2020**





# **Compass Group Holdings PLC**

## **Annual report and financial statements 2020**

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# **Compass Group Holdings PLC**

## **Annual report and financial statements 2020**

### **Officers and professional advisers**

#### **Directors**

D W Blakemore  
K Wits  
A R Yapp

#### **Secretary**

A R Yapp

#### **Registered Office**

Compass House  
Guildford Street  
Chertsey  
Surrey  
KT16 9BQ

#### **Auditor**

KPMG LLP  
15 Canada Square  
London  
E14 5GL

# Compass Group Holdings PLC

## Strategic Report

The directors, in preparing this Strategic Report, have complied with section 414C of the Companies Act 2006 (CA 2006).

### Business review and principal activities

Compass Group Holdings PLC (the Company) manages and licenses trademarks to its subsidiary undertakings and it is the intention of the directors that the Company will continue to act in this capacity. Hospitality Holdings Limited holds 99.938% and Compass Group PLC holds 0.062% of the Ordinary shares of the Company.

The results for the Company show a pre-tax profit for the year of £42,800,000 (2019: £1,132,900,000) and net assets at 30 September 2020 of £4,560,600,000 (2019: £4,503,400,000). The future prospects of the Company remain in line with current results and the directors do not anticipate any material changes to the activities of the Company.

The Company's directors believe that analysis using key performance indicators is not necessary for an understanding of the position of the business. The performance of Compass Group PLC (the Group) is discussed in its Annual Report which does not form part of this Report. A copy of the Compass Group PLC Annual Report 2020 (annual report) can be found on the Compass Group PLC website at [www.compass-group.com](http://www.compass-group.com) or from the Company Secretarial Department at Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ. The Company will continue to act as a management company in the future.

### Principal risks and uncertainties

Whilst the Group's operations continue to be disrupted by the COVID-19 pandemic we have successfully implemented action plans to mitigate a significant proportion of our cost base to preserve the profitability and liquidity of the Group. Our priority has also continued to be the health, safety and wellbeing of our employees and customers. Sites that are open are operating with enhanced health and safety protocols. Personal protective equipment requirements are in line with local government and public health guidance and there is a continued focus on mental health awareness.

A post-Brexit deal on trade and other issues was agreed in December 2020 between the UK and the EU. While there is clearly more for the UK and EU to work through, we believe that the deal as agreed, coupled with our own contingency planning, means we do not expect any material financial or operational impact resulting from Brexit. We are confident that we can continue supporting and delivering great services for our UK and international clients and consumers.

The Company has only intra-group investments and balances, no third party debt and hence no external interest rate exposure. Certain investments in subsidiary undertakings and intra-group balances are denominated in foreign currency and so there is a gain/loss associated with the translation taken to the profit and loss account.

From the perspective of the Company, the principal risks and uncertainties are integrated with the principal risks of the Group and are not managed separately. The principal risks of the Group are discussed in Compass Group PLC's Annual Report 2020 and as subsequently updated in its 2021 half year results announcement which does not form part of this Report. Both of these documents can be viewed on the Compass Group PLC website [www.compass-group.com](http://www.compass-group.com).

### Section 172(1) statement – Compass Group Holdings PLC

Section 172 of the Companies Act 2006 requires a director of a company to act in the way he or she considers, in good faith, would most likely promote the success of the company for the benefit of its members as a whole. In doing this section 172 requires a director to have regard, amongst other matters, to the:

- likely consequences of any decisions in the long-term;
- interests of the company's employees;
- need to foster the company's business relationships with suppliers, customers and others;
- impact of the company's operations on the community and environment;
- desirability of the company maintaining a reputation for high standards of business conduct, and
- need to act fairly as between members of the company.

# Compass Group Holdings PLC

## Strategic Report (continued)

### Section 172(1) statement – Compass Group Holdings PLC (continued)

In discharging their duties under section 172 the directors have regards to both the factors set out above and others that may be considered relevant to the decisions being made. The directors acknowledge that every decision made will not necessarily result in a positive outcome for all of the Company's stakeholders. By considering the Company's purpose, vision and values together with its strategic priorities and having a process in place for decision-making, the directors aim to ensure that Board decisions are consistent and predictable.

As is normal for large companies, the directors delegate authority for day-to-day management of the Company to executives engaged in setting, approving and overseeing the execution of the business strategy and related policies of the Group. While there are cases where the board itself judges that it should engage directly with certain stakeholder groups or on certain issues, the size and spread of both our stakeholders and the Group means that generally stakeholder engagement best takes place at an operational or Group level. The directors consider that as well as being a more efficient and effective approach, this also helps achieve a greater positive impact on environmental, social and other issues than by working alone as an individual company. How the Group engages with its stakeholders is described on pages 28 and 29 of the Compass Group PLC Annual Report 2020 (the ARA).

The principal activity of the Company is to act as a holding company for other entities in the Group, and to manage and licence trademarks to its subsidiary undertakings. In this context the Company's main stakeholders are other companies within the Group, and the Company's employees. The views of and the impact of the Company's activities on those stakeholders are an important consideration for the directors when making relevant decisions. More information on how the directors engage with the Company's employees and take account of their interests, and how directors have engaged with suppliers, customers and others in a business relationship with the Company are described in the Directors' Report.

Examples of how the directors have had regard to the matters set out in section 172(1)(a)-(f) when discharging their section 172 duties, and the effect of those decisions, include the consideration of the adoption by the Company of the Compass Subsidiary Governance Code (the Code), and the Compass Group PLC Modern Slavery and Human Trafficking Statement (the MSA). In deciding whether to adopt the Code the directors considered whether its adoption would be in the best interests of its stakeholders, including its shareholders, employees and other group companies. It was concluded that formalising the governance arrangements of the Company, particularly with regard to the consideration of stakeholder views when taking decisions would be in the best interest of stakeholders as a whole. In adopting the MSA the directors considered whether appropriate controls and procedures were in place to mitigate the risk of human trafficking within the Company's supply chains. It was concluded that adoption of the MSA statement and the Company's continued efforts in this area was in the best interests of the Company's employees and its wider stakeholder community.

### Going Concern

After making enquiries and receiving a letter of support from the ultimate parent company, Compass Group PLC, the directors have a reasonable expectation that the Company, as part of the Compass Group, has adequate resources to continue in existence for the 12 months from the date of approval of this Report. For this reason, the directors continue to adopt the going concern basis in preparing the accounts.

Approved by the Board of Directors and signed on behalf of the Board



K Witts  
Director

24 June 2021

Compass Group Holdings PLC  
Registered in England and Wales No. 2090126

# Compass Group Holdings PLC

## Directors' Report

The directors present their Annual Report and the audited financial statements for the year ended 30 September 2020.

### Directors

The following served as directors during the year and were in office at the date of signing the Report and Financial Statements:

D W Blakemore  
K Witts  
A R Yapp

### Dividends

The Company did not pay interim dividends to the parent company during the year (2019: £532,723,000), more details of which can be found in note 8 on page 22. The directors do not recommend the payment of a final dividend in respect of the financial year ended 30 September 2020 (2019: £nil).

### Branches outside the UK

The Company has a branch in France with offices in Paris and Marseille.

### Employees

The Company and the Group places importance on employee engagement, keeping employees regularly informed on matters of concern to them as employees, issues affecting their performance, and promoting a common awareness of the financial and economic factors affecting the performance of the Company. For the Company's employees, engagement is achieved through management briefings, team meetings and town halls, bulletins and other in house publications and through the Group's internal communications channels. Employees are also represented on the Group's European Works Council, which provides a forum for exchanging information and engaging in consultation on the Group's performance and plans, and relevant transnational issues affecting those countries in the EEA and in the UK. Feedback from employee engagement informs the directors' decision making processes, and those decisions taken and policies made on a wider Group basis. For further information on how the Group engages with employees globally see pages 28 to 29, 51 to 57, 84 to 87 and 157 to 158 of the ARA.

Employees are offered a range of benefits, such as private medical cover, depending on the local environment. Priority is given to the training of employees and the development of their skills is of prime importance. Employment of disabled people is considered on merit with regard only to the ability of any applicant to carry out the function required. Arrangements to enable disabled people to carry out the function required will be made if it is reasonable to do so. An employee becoming disabled would, where appropriate, be offered retraining.

### Business Relationships

The Company has limited engagement with external parties such as suppliers, clients, consumers and others. In the limited circumstances where the Company does interact with external business partners, in line with the Group's policies and procedures the directors promote and ensure the highest standards of ethical behaviour and probity in the Company's business dealings. For further information on how the Group fosters business relationships with its business partners see pages 28 and 29 of the ARA.

### Directors' qualifying third party indemnity

A qualifying third party indemnity provision as defined in section 234(2) - (6) of the CA 2006 is and was in full force and effect for the benefit of each of the directors of the Company, both at the date of this Report and throughout the financial year to which this Report relates.

# Compass Group Holdings PLC

## Directors' Report (continued)

### Modern Slavery Act Statement

The Company falls within the scope of Section 54 (Transparency in Supply Chain requirements) of the Modern Slavery Act 2015 (the "Act") and consequently is obliged to prepare and publish a slavery and human trafficking statement for each financial year of the organisation.

In accordance with the Home Office guidance to the Act it is permissible for a parent company, where one or more subsidiaries in the same group are required to produce a statement, to produce one statement that subsidiaries can use to meet the requirements of the Act (provided that the statement fully covers the steps that each of the organisations required to produce a statement have taken in the relevant financial year).

In accordance with the requirements of the Act, the Company's ultimate parent, Compass Group PLC, prepared and published a slavery and human trafficking statement for the financial year ended 30 September 2020 (the Statement) which contemplated the steps that the Company, as part of the Compass Group of companies, had taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, or in any part of its own business and consequently, it was determined by the directors, that the Company would adopt the Statement issued by its ultimate parent and any such statements issued in subsequent financial years, so long as the directors considered that the steps contemplated by the statements continued to be relevant to the Company. A copy of the Statement can be found at [www.compass-group.com](http://www.compass-group.com).

### Statement of Corporate Governance Arrangements

In compliance with the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 as amended by The Companies (Miscellaneous Reporting) Regulations 2018, the Company hereby discloses its Statement of Corporate Governance Arrangements.

The Company's ultimate parent, Compass Group PLC, is subject to and complies with the UK Corporate Governance Code 2018. As a subsidiary of Compass Group PLC, the Company, together with other companies within the Group, is subject to and adheres with certain governance arrangements, structures and policies that are common throughout the Compass Group PLC group of companies. The specific governance arrangements adopted by the Company are defined by the 'Compass Subsidiary Governance Code' (the Subsidiary Code), the principles of which, and how the Company has applied them during the financial year ended 30 September 2020, are detailed below.

Code Principle	How the Company has applied the Subsidiary Code
<b>Purpose and Leadership</b> - The board will promote the purpose of the company, and ensure that its values, strategy and culture align with that of Compass Group PLC.	During the year, in accordance with their duties as directors of the Company, the directors promoted the purpose of the Company ensuring that its activities and goals were aligned to those of the Compass Group.
<b>Board Composition</b> - The board will be chaired effectively and composed of individuals with the requisite balance of skills, backgrounds, experience and knowledge. Individual directors will have sufficient capacity to make a valuable contribution.	The Board of the Company comprised Dominic Blakemore, Karen Witts and Alison Yapp, who respectively are the Group Chief Executive Officer, the Group Chief Finance Officer and the Group General Counsel and Company Secretary of the Company's ultimate parent, Compass Group PLC. Full details of each director's skills, backgrounds, experience and knowledge can be found on pages 72 and 73 of the Compass Group PLC Annual Report 2020. Each director demonstrated the capacity to make a valuable contribution during the year.
<b>Director Responsibilities</b> - The board and individual directors will have a clear understanding of their accountability and responsibilities. Board procedures will support effective decision-making and independent challenge.	A review of governance arrangements and directors' duties was undertaken during the year which refreshed the directors' knowledge of their responsibilities with respect to the Company. Board procedures were supported by the Compass Group Secretariat.
<b>Opportunity and Risk</b> - The board will promote the long-term sustainable success of the company by identifying opportunities to create and preserve	Opportunity and existing and emerging risks were managed in line with the strategy and risk profile of Compass Group PLC which prepares consolidated accounts for the Compass

# Compass Group Holdings PLC

## Directors' Report (continued)

value, and will establish and maintain oversight of the identification and mitigation of risks.	Group, further details of which can be found on pages 41 to 49 of the Compass Group PLC Annual Report 2020.
<b>Stakeholder Relationships and Engagement</b> - The board will be responsible for ensuring the maintenance of stakeholder relationships and the oversight of engagement with stakeholders, including the workforce. The board will have regard to stakeholder views when taking decisions.	The Board ensured that stakeholder relationships as were relevant to the status and purpose of the Company were maintained in line with Compass Group PLC policies and procedures. Details of how the directors considered stakeholders in the decision making process can be found in the S172 statement on pages 2 to 3.

### Post balance sheet events

A post-Brexit deal on trade and other issues was agreed in December 2020 between the UK and the EU. While there is clearly more for the UK and EU to work through, we believe that the deal as agreed, coupled with our own contingency planning, means we do not expect any material financial or operational impact resulting from Brexit.

### Directors' disclosure of information to the auditor

Each of the persons who is a director at the date of approval of this Report confirms that:

- so far as the director is aware, there is no relevant audit information of which the Company's auditor is unaware
- the director has taken all the steps that he/she ought to have taken as a director in order to make himself/herself aware of any relevant audit information and to establish that the Company's auditor is aware of that information

This confirmation is given and should be interpreted in accordance with the provisions of section 418 of the CA 2006.

### Auditor

In accordance with the provisions of section 485(2) of the CA 2006, the current appointment of KPMG LLP as the Company's auditor will end at the conclusion of the current period for appointing auditors.

Pursuant to Section 487 of the CA 2006, the auditor will be deemed to be reappointed and KPMG LLP will therefore continue in office.

Approved by the Board of Directors and signed on behalf of the Board



K Witts  
Director

24 June 2021

Compass Group Holdings PLC  
Registered in England and Wales No. 2090126

# Compass Group Holdings PLC

## Directors' Responsibilities Statement

The directors are responsible for preparing the Strategic Report, the Directors' Report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law they have elected to prepare the financial statements in accordance with UK Accounting Standards and applicable law (UK Generally Accepted Accounting Practice), including FRS 101 *Reduced Disclosure Framework*.

Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the Company and of the profit or loss of the Company for that period. In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable, relevant, reliable and prudent;
- state whether applicable UK accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- assess the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern; and
- use the going concern basis of accounting unless they either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the Company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the CA 2006. They are responsible for such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error, and have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the company and to prevent and detect fraud and other irregularities.

On behalf of the Board



K Witts  
Director

24 June 2021



# **Independent Auditor's Report to the Members of Compass Group Holdings PLC**

## **Opinion**

We have audited the financial statements of Compass Group Holdings PLC ("the Company") for the year ended 30 September 2020 which comprise:

- the Profit and loss account;
- Statement of comprehensive income;
- Balance sheet;
- Statement of changes in equity; and
- Related notes, including the accounting policies in note 1.

In our opinion the financial statements:

- give a true and fair view of the state of the Company's affairs as at 30 September 2020 and of its profit for the year then ended;
- have been properly prepared in accordance with UK accounting standards, including FRS 101 *Reduced Disclosure Framework*; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

## **Basis for opinion**

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities are described below. We have fulfilled our ethical responsibilities under, and are independent of the Company in accordance with UK ethical requirements including the FRC Ethical Standard. We believe that the audit evidence we have obtained is a sufficient and appropriate basis for our opinion.

## **Going concern**

The directors have prepared the financial statements on the going concern basis as they do not intend to liquidate the Company or to cease its operations, and as they have concluded that the Company's financial position means that this is realistic. They have also concluded that there are no material uncertainties that could have cast significant doubt over its ability to continue as a going concern for at least a year from the date of approval of the financial statements (the going concern period).

We are required to report to you if we have concluded that the use of the going concern basis of accounting is inappropriate or there is an undisclosed material uncertainty that may cast significant doubt over the use of that basis for a period of at least a year from the date of approval of the financial statements. In our evaluation of the directors' conclusions, we considered the inherent risks to the Company's business model and analysed how those risks might affect the Company's financial resources or ability to continue operations over the going concern period. We have nothing to report in these respects.

However, as we cannot predict all future events or conditions and as subsequent events may result in outcomes that are inconsistent with judgements that were reasonable at the time they were made, the absence of reference to a material uncertainty in this auditor's report is not a guarantee that the Company will continue in operation.

## **Strategic Report and Directors' Report**

The directors are responsible for the Strategic Report and the Directors' Report. Our opinion on the financial statements does not cover those reports and we do not express an audit opinion thereon.

Our responsibility is to read the Strategic Report and the Directors' Report and, in doing so, consider whether, based on our financial statements audit work, the information therein is materially misstated or inconsistent with the financial statements or our audit knowledge. Based solely on that work:

- we have not identified material misstatements in the Strategic Report and the Directors' Report;
- in our opinion the information given in those reports for the financial year is consistent with the financial statements; and
- in our opinion those reports have been prepared in accordance with the Companies Act 2006.

## **Independent Auditor's Report to the Members of Compass Group Holdings PLC (continued)**

### **Matters on which we are required to report by exception**

Under the Companies Act 2006 we are required to report to you if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit.

We have nothing to report in these respects.

### **Directors' responsibilities**

As explained more fully in their statement set out on page 7, the directors are responsible for: the preparation of the financial statements and for being satisfied that they give a true and fair view; such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error; assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern; and using the going concern basis of accounting unless they either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

### **Auditor's responsibilities**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue our opinion in an auditor's report. Reasonable assurance is a high level of assurance but does not guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

A fuller description of our responsibilities is provided on the FRC's website at [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities).

### **The purpose of our audit work and to whom we owe our responsibilities**

This Report is made solely to the Company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the Company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company's members, as a body, for our audit work, for this report, or for the opinions we have formed.

*John Withington*

**John Withington (Senior Statutory Auditor)**  
**for and on behalf of KPMG LLP, Statutory Auditor**  
*Chartered Accountants*  
15 Canada Square  
London  
E14 5GL  
25 June 2021

# Compass Group Holdings PLC

## Profit and loss account

For the year ended 30 September 2020

	Notes	2020 £m	2019 £m
<b>Turnover</b>	2	249.1	425.6
Operating expenses		(142.5)	(122.2)
Profit on disposal on investments		-	37.7
Provision against investment in subsidiary undertakings	12	(76.0)	(0.2)
<b>Operating profit</b>	2,3	30.6	340.9
Income from shares in Group undertakings		61.7	860.7
Other interest receivable and similar income	5	80.8	99.5
Other interest payable and similar expenses	6	(130.3)	(168.2)
<b>Profit before taxation</b>		42.8	1,132.9
Tax credit/(charge) on profit	7	3.3	(59.8)
<b>Profit for the financial year</b>		46.1	1,073.1

All amounts in the current and prior year relate to continuing activities.

The notes on pages 14 to 48 form part of these financial statements.

# Compass Group Holdings PLC

## Statement of other comprehensive income For the year ended 30 September 2020

	2020 £m	2019 £m
Profit for the financial year	46.1	1,073.1
Other comprehensive income		
Items that are not reclassified subsequently to the income statement		
Remeasurement of defined benefit pension obligations	-	(4.8)
	-	(4.8)
Items that may be reclassified subsequently to profit or loss		
Currency translation differences	11.7	(2.3)
	11.7	(7.1)
Total other comprehensive income/(loss) for the year	11.7	(7.1)
Total comprehensive income for the year	57.8	1,066.0

The notes on pages 14 to 48 form part of these financial statements.

# Compass Group Holdings PLC

## Balance Sheet

As at 30 September 2020

	Notes	2020 £m	2019 £m
<b>Fixed assets</b>			
Other intangible assets	9	82.6	45.8
Right of use assets	10	10.2	-
Property, plant and equipment	11	7.9	10.2
Investments	12	4,194.6	4,217.8
		<u>4,295.3</u>	<u>4,273.8</u>
<b>Current assets</b>			
Debtors: amounts falling due within one year	13	5,332.1	5,345.3
Debtors: amounts falling due after more than one year	13	27.2	15.0
Cash at bank and in hand		50.7	0.2
		<u>5,410.0</u>	<u>5,360.5</u>
<b>Current liabilities</b>			
Creditors: amounts falling due within one year	14	(5,067.3)	(5,075.4)
Short term lease liabilities	10	(1.7)	-
		<u>341.0</u>	<u>285.1</u>
<b>Net current assets</b>			
		<u>4,636.3</u>	<u>4,558.9</u>
<b>Total assets less current liabilities</b>			
Creditors: amounts falling due after more than one year	15	(0.4)	(0.4)
Long term lease liabilities	10	(11.0)	-
Pension liabilities	18	(51.3)	(52.3)
Provisions for liabilities	16	(13.0)	(2.8)
		<u>4,560.6</u>	<u>4,503.4</u>
<b>Total assets less total liabilities</b>			
<b>Capital and reserves</b>			
Called up share capital	17	467.8	467.8
Share premium		1,642.2	1,642.2
Capital reserve		750.0	750.0
Foreign exchange reserve		85.8	74.1
Share-based payment reserve		52.1	52.7
Profit and loss reserve		1,562.7	1,516.6
		<u>4,560.6</u>	<u>4,503.4</u>
<b>Total shareholders' Funds</b>			
		<u>4,560.6</u>	<u>4,503.4</u>

The financial statements of Compass Group Holdings PLC (registered number 2090126) were approved by the Board of Directors on 24 June 2021.

Signed on behalf of the Board of Directors



K Witts  
Director

The notes on pages 14 to 48 form part of these financial statements.

# Compass Group Holdings PLC

## Statement of changes in equity For the year ended 30 September 2020

	Called up share capital £m	Share premium £m	Capital reserve £m	Foreign exchange reserve £m	Share- based payment reserve £m	Profit and loss account <sup>1</sup> £m	Total Equity £m
<b>At 1 October 2018</b>	<b>467.8</b>	<b>1,642.2</b>	<b>750.0</b>	<b>76.4</b>	<b>46.5</b>	<b>981.0</b>	<b>3,963.9</b>
Profit for the financial year	-	-	-	-	-	1,073.1	1,073.1
<b>Other comprehensive income</b>							
Remeasurement of pension liabilities	-	-	-	-	-	(4.8)	(4.8)
Foreign exchange translation differences	-	-	-	(2.3)	-	-	(2.3)
Total other comprehensive loss	-	-	-	(2.3)	-	(4.8)	(7.1)
Fair value of share-based payments	-	-	-	-	6.2	-	6.2
Dividends paid on equity shares	-	-	-	-	-	(532.7)	(532.7)
<b>At 30 September 2019</b>	<b>467.8</b>	<b>1,642.2</b>	<b>750.0</b>	<b>74.1</b>	<b>52.7</b>	<b>1,516.6</b>	<b>4,503.4</b>
Profit for the financial year	-	-	-	-	-	46.1	46.1
<b>Other comprehensive income</b>							
Foreign exchange translation differences	-	-	-	11.7	-	-	11.7
Total other comprehensive income	-	-	-	11.7	-	-	11.7
Fair value of share-based payments	-	-	-	-	(0.6)	-	(0.6)
<b>At 30 September 2020</b>	<b>467.8</b>	<b>1,642.2</b>	<b>750.0</b>	<b>85.8</b>	<b>52.1</b>	<b>1,562.7</b>	<b>4,560.6</b>

<sup>1</sup> Included within the Profit and loss account balance are non-distributable reserves of £730.5m.

The notes on pages 14 to 48 form part of these financial statements.

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020

#### 1. Accounting policies

The Company is a public limited company and is incorporated and domiciled in the UK. The registered number is 2090126 and the address of its registered office is: Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ.

The significant accounting policies adopted in the preparation of the financial statements of the Company are set out below.

#### Basis of preparation

These financial statements have been prepared in accordance with the historical cost convention, Financial Reporting Standard 101 Reduced Disclosure Framework (FRS 101), and in accordance with applicable United Kingdom laws. The Company is exempt from the requirement to prepare consolidated financial statements as a subsidiary of Compass Group PLC, a Company registered in the United Kingdom and the ultimate parent which prepares consolidated financial statements (section 400 CA 2006). In preparing these financial statements, the Company applies the recognition, measurement and disclosure requirements of International Financial Reporting Standards as adopted by the EU (Adopted IFRSs) but makes amendments where necessary in order to comply with the CA 2006 and has set out below where advantage of the FRS 101 disclosure exemptions has been taken. These financial statements thus present information about the Company as an individual undertaking not as a Group undertaking. In the transition to FRS 101 in the year ended 30 September 2016, the Company applied IFRS 1 whilst ensuring that its assets and liabilities were measured in compliance with FRS 101.

In these financial statements, the Company has applied the exemptions under FRS 101 in respect of the following disclosures:

- a cash flow statement and related notes;
- disclosures in respect of transactions with wholly owned subsidiaries;
- the effect of new but not yet effective IFRSs; and
- disclosures in respect of compensation of Key Management Personnel.

The accounting policies set out below have, unless otherwise stated, been applied consistently to all periods presented in these financial statements.

#### Going concern

Notwithstanding the current economic uncertainties arising from the COVID-19 pandemic, the financial statements have been prepared on a going concern basis which the directors consider to be appropriate for the following reason:

- Compass Group PLC has indicated its intention to continue to make available funds as needed by the Company for a period of twelve months from the date of approval of the financial statements.

Consequently, the directors are confident that the Company will have sufficient funds to continue to meet its liabilities as they fall due for at least twelve months from the date of approval of the financial statements and therefore have prepared the financial statements on a going concern basis.

As with any company placing reliance on other group entities for financial support, the directors acknowledge that there can be no certainty that this support will continue although, at the date of approval of these financial statements, they have no reason to believe that it will not do so.

#### Adoption of new Accounting Standards

The Company has applied the new accounting standard IFRS 16 'Leases' using the modified retrospective transition approach, therefore the comparative information has not been restated and continues to be reported under IAS 17 'Leases'.

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 1. Accounting policies (continued)

##### Foreign currencies

The assets and liabilities of foreign branches are translated into sterling at the rates of exchange ruling at the year end. Gains and losses resulting from the realignment of the opening assets and liabilities of foreign branches to the year end rates are treated as movements on reserves.

The results of foreign branches are translated into sterling at the average rates of exchange for the accounting year. Gains or losses resulting from the translation of these results from the average rates to the year end rates are treated as movements on reserves.

Transactions in foreign currencies are translated to the Company's functional currency (sterling) at the foreign exchange rates ruling at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies at the balance sheet date are retranslated to sterling at the foreign exchange rates ruling at that date. Non-monetary assets and liabilities that are measured in terms of the historical cost in foreign currency are translated using the exchange rate at the date of the transaction. Non-monetary assets and liabilities denominated in foreign currency that are stated at fair value are retranslated to the sterling at the foreign exchange rates ruling at the dates that the fair value was determined. Foreign exchange differences arising on translation are recognised in the profit and loss account.

##### Intangible assets

Intangible assets are carried at cost less amortisation, which is provided on their book values at rates calculated to write down each asset to its residual value on a straight-line basis over the expected useful economic lives, within the following range:

- Brands: 10% per annum;
- Computer software: 6% to 33% per annum

##### Tangible fixed assets

Tangible fixed assets are carried at cost less depreciation, which is provided on their book values at rates calculated to write down each asset to its residual value over its estimated remaining useful life on a straight-line basis, within the following ranges:

- Equipment, fixtures and fittings: 10% to 25% per annum

##### Investments

Investments held by the Company are stated at historical currency cost, less provision for any impairment in value, and translated into sterling in accordance with the policy set out above.

##### Pension costs and other post-retirement benefits

The costs of the defined contribution scheme, the Compass Retirement Income Savings Plan, are charged to the profit and loss account as they become payable in accordance with the rules of the scheme.

The Company is the principal employer of the Compass Group Pension Plan (the Plan) which is a defined benefit scheme closed to new entrants. No employees of the Company have accrued any benefits under this scheme since 5 April 2010. Under the rules of the Plan, the Company does not have any liability to pay ongoing contributions, including deficit recovery contributions. The assets and liabilities of the Plan are reflected within the financial statements of another group subsidiary which is the main participating employer.

In addition, the Company has entered into commitments to pay ex-gratia pensions to a number of former employees. The liability in respect of these pensions is included within the Company's balance sheet under the caption pension liabilities.



# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 1. Accounting policies (continued)

##### Taxation

Current tax is the expected tax payable on the taxable income for the period, using tax rates that have been enacted or substantively enacted in respect of that period by the balance sheet date.

Deferred tax is provided at the anticipated tax rates on temporary differences arising from the inclusion of items of income and expenditure in tax computations in periods different from those in which they are included in the financial statements. Deferred tax assets and liabilities are not discounted. Deferred tax assets are recognised to the extent that it is regarded as more likely than not that they will be recovered.

##### Share-based payments

The parent company, Compass Group PLC, issues equity-settled share-based payments to certain employees. The equity-settled share-based payments are measured at fair value (excluding the effect of non-market-based vesting conditions) at the date of grant. The fair value determined at the grant date is expensed on a straight-line basis over the vesting period, based on Compass Group PLC's estimate of the shares that will eventually vest and adjusted for the effect of non-market-based vesting conditions. Fair value is measured using the binomial distribution, Black-Scholes or Monte Carlo simulation option pricing models as is most appropriate for each scheme. The expected life used in the models has been adjusted, based on management's best estimate, for the effects of exercise restrictions and behavioural considerations.

##### Leases

At the inception of a contract, the Company assesses whether a contract is, or contains, a lease. A contract is, or contains, a lease if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration. Control is conveyed where the Company has both the right to direct the identified asset's use and to obtain substantially all the economic benefits from that use. The Company allocates the consideration in the contract to each lease and non-lease component. The non-lease component, where it is separately identifiable, is not included in the right of use asset.

When a lease is recognised in a contract, the Company recognises a right of use asset and a lease liability at the lease commencement date. The Company recognises a right of use asset and a corresponding lease liability with respect to all lease arrangements in which it is the lessee, except for leases of low value assets with an initial fair value less than approximately £5,000 and short term leases of 12 months or less. For these leases, the lease rentals are charged to the income statement as an operating expense on a straight line basis over the period of the lease.

The right of use asset is initially measured at cost, comprising the initial lease liability adjusted for any lease payments already made, plus any initial direct costs incurred and an estimate of restoration costs, less any lease incentives received. The right of use asset is subsequently depreciated on a straight line basis over the shorter of the lease term or the useful life of the underlying asset. The estimated useful lives of right of use assets are determined on the same basis as those of property, plant and equipment. The right of use asset is tested for impairment if there are any indicators of impairment.

The lease liability is measured at the present value of the lease payments that are reasonably certain and not paid at the commencement date, discounted at the Group's incremental borrowing rate specific to the term, country and start date of the lease. The lease liability is subsequently measured at amortised cost using the effective interest rate method. The lease liability is remeasured, with a corresponding adjustment to the right of use asset, by discounting the revised lease payments as follows:

- using the initial discount rate at the inception of the lease when lease payments change as a result of changes to residual value guarantees and changes in an index other than a floating interest rate

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 1. Accounting policies (continued)

##### Leases (continued)

- using a revised discount rate when lease payments change as a result of the Group's reassessment of whether it is reasonably certain to exercise a purchase, extension or termination option, changes in the lease term or as a result of a change in floating interest rates

The lease term is the non-cancellable period beginning at the contract commencement date plus periods covered by an option to extend the lease, if it is reasonably certain that the Group will exercise the option, and periods covered by an option to terminate the lease, if it is reasonably certain that the Group will not exercise this option.

Variable lease payments that are not included in the measurement of the lease liability are recognised in the consolidated income statement in the period in which the event or condition that triggers payment occurs.

No reassessment was performed as to whether existing contracts are, or contain, a lease at the date of initial application.

##### Financial Assets and Liabilities

Financial assets and financial liabilities are recognised when the Company becomes a party to the contractual provisions and derecognised when it ceases to be party to such provisions. Such assets and liabilities are classified as current if they are expected to be realised or settled within 12 months of the balance sheet date. If not, they are recognised as non-current.

Financial assets and liabilities are initially recorded at fair value including, where permitted by IFRS 9, any directly attributable transaction costs. For those financial assets that are not subsequently held at fair value, the Company assesses whether there is evidence of impairment at each balance sheet date.

The Company classifies its financial assets and liabilities into the following categories:

- financial assets and liabilities at amortised cost,
- financial assets and liabilities at fair value through profit and loss.

Where financial assets or liabilities are eligible to be carried at either amortised cost or fair value the Company does not apply the fair value option.

The Company uses derivative financial instruments to manage its exposure to fluctuations in foreign exchange rates and interest rates. Derivative instruments utilised include interest rate swaps, currency swaps and forward currency contracts. The Company and Group policy is disclosed in the accounting policies to the consolidated financial statements of Compass Group PLC which can be viewed at [www.compass-group.com](http://www.compass-group.com).

Borrowings are recognised initially at fair value, net of transaction costs incurred. Borrowings are subsequently stated at amortised cost unless they are part of a fair value hedge accounting relationship. Borrowings that are part of a fair value hedge accounting relationship are measured at amortised cost adjusted for the fair value attributable to the risk being hedged.

Amounts owed by Group undertakings are initially measured at fair value and are subsequently reported at amortised cost. Allowance losses on intercompany receivables are calculated by reviewing 12-month expected credit losses using historic and forward-looking data on credit risk.

Amounts owed to Group undertakings are initially measured at fair value and are subsequently reported at amortised cost. Non-interest-bearing payables are stated at their nominal value as they are due on demand.

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 1. Accounting policies (continued)

##### Financial guarantees

Where the Company enters into financial guarantee contracts to guarantee the indebtedness of other companies within the Group, the Company considers these to be insurance arrangements and accounts for them as such. In this respect, the Company treats the guarantee contract as a contingent liability until such time as it becomes probable that the Company will be required to make a payment under the guarantee.

##### Turnover

Turnover represents income derived from contracts for the provision of services to third parties in exchange for consideration in the normal course of business. Turnover is recognised at an amount that reflects the consideration to which the Company expects to be entitled in exchange for these services and at a point when the performance obligations associated with these services have been satisfied.

#### 2. Turnover, operating profit and net assets

	2020 £m	2019 £m
<b>Turnover</b>		
Advice and consultancy services		
Geographical analysis		
- United Kingdom	249.1	425.6
	<u>249.1</u>	<u>425.6</u>
	2020 £m	2019 £m
<b>Operating Profit</b>		
Geographical analysis		
- United Kingdom	104.0	341.4
- Continental Europe	(73.4)	(0.5)
	<u>30.6</u>	<u>340.9</u>
	2020 £m	2019 £m
<b>Net assets</b>		
Geographical analysis		
- United Kingdom	4,223.5	4,176.4
- Continental Europe	337.1	327.0
	<u>4,560.6</u>	<u>4,503.4</u>

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 3. Operating profit

Operating profit is stated after charging:

	2020 £m	2019 £m
Staff costs	39.6	52.5
Depreciation of tangible fixed assets:		
- Owned assets	0.8	0.9
Depreciation of right of use assets:		
- Leased land and buildings	1.1	-
Amortisation of intangible assets		
- Owned assets	2.4	1.5
Profit on disposal on investment	-	(37.7)
Property lease rentals	-	1.3
Audit and non-audit services (see below)	1.3	2.0
Impairment losses – contract related non-current assets	0.4	-
Impairment of amounts owed by subsidiary undertakings	31.1	-

Fees of £23,000 (2019: £23,000) were received by the auditor in respect of the Company's statutory audit for the current year.

#### 4. Employees

##### Employee numbers and aggregate remuneration

	2020 Number	2019 Number
Average number of employees, including directors and part-time employees, was:		
- United Kingdom	243	180
- Overseas	20	53
	<u>263</u>	<u>233</u>
	2020 £m	2019 £m
Aggregate remuneration of all employees (including directors) comprised:		
Wages and salaries	33.4	39.7
Pension costs	3.3	3.2
Other social security costs	3.5	3.4
Share-based payments	(0.6)	6.2
	<u>39.6</u>	<u>52.5</u>

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 4. Employees (continued)

##### Directors' emoluments

The directors are remunerated for their services to the Group

	2020 £m	2019 £m
Remuneration of the Directors comprised:		
Wages and salaries	1.9	1.9
Bonus, supplement and benefits	0.5	2.9
Social security costs	0.9	1.2
Share-based payments	-	2.3
	<u>3.3</u>	<u>8.3</u>

Information on Compass Group PLC Directors' remuneration (including highest paid Director), equity incentive awards, pension contributions and entitlements is set out in pages 122 to 153 of the 2020 Annual Report of Compass Group PLC.

The aggregate of remuneration and amounts receivable under long term incentive schemes of the highest paid director was £1,162,000 (2019: £4,659,000), which includes Company pension contributions of £199,000 (2019: £191,000) were made to a money purchase scheme on his behalf. During the year, the highest paid director exercised share options and received shares under a long-term incentive scheme.

#### 5. Other interest receivable and similar income

	2020 £m	2019 £m
Interest receivable from Group undertakings	80.7	99.5
Other interest receivable	0.1	-
	<u>80.8</u>	<u>99.5</u>

#### 6. Other interest payable and similar expenses

	2020 £m	2019 £m
Interest payable to Group undertakings	128.6	166.8
Interest on defined benefit pension obligations	0.9	1.4
Interest payable on lease liabilities	0.8	-
	<u>130.3</u>	<u>168.2</u>

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 7. Tax charge on profit on ordinary activities

	2020 £m	2019 £m
UK corporation tax at 19.0% (2019: 19.0%)	(13.2)	(50.9)
Overseas tax	0.6	(8.8)
	<hr/>	<hr/>
Current tax charge on ordinary activities	(12.6)	(59.7)
UK deferred tax	(0.3)	0.7
Overseas deferred tax	12.1	-
	<hr/>	<hr/>
	(0.8)	(59.0)
Adjustments in respect of prior years:		
UK corporation tax	1.7	(0.8)
Overseas corporation tax	2.4	-
	<hr/>	<hr/>
	3.3	(59.8)
	<hr/>	<hr/>

With effect from 1 October 2010, the Company agreed to bear the corporate income tax costs of the French fiscal unity (of which the Paris branch is the lead member) without recharging the other members of the fiscal unity.

#### Reconciliation of the tax charge to the tax charge at the UK statutory rate:

	2020 £m	2019 £m
Profit on ordinary activities before taxation	42.8	1,132.9
	<hr/>	<hr/>
Tax charge on profit at the UK statutory rate of 19.0% (2019: 19.0%)	(8.1)	(215.3)
(Increase)/decrease resulting from:		
Permanent items	(0.5)	(6.4)
Transfer pricing adjustment	(0.5)	(0.1)
Non-taxable income from other Group companies	11.7	168.4
Non-deductible impairment of investment in subsidiaries	(14.4)	-
Non-taxable gain on disposal of business	-	7.2
Overseas tax of French subsidiaries borne	(12.9)	(8.7)
Impact of changes in statutory tax rates	1.9	-
Different rates of tax on overseas earnings	(3.8)	(4.1)
Prior year items	4.1	(0.8)
	<hr/>	<hr/>
Tax charge/(credit) on profit	3.3	(59.8)
	<hr/>	<hr/>

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 8. Dividends

The Company did not pay any interim dividends to the parent company during the year on the Ordinary shares of 2.5 pence each.

Date	Currency	Value	Pence per share	2020 £m	2019 £m
5 September 2019	Euro	200,000,000	0.01069	-	181.8
5 September 2019	US Dollars	423,220,996	0.02262	-	350.9
				<u>-</u>	<u>532.7</u>

#### 9. Other intangible assets

	Brands £m	Computer Software £m	Total £m
<b>Cost</b>			
At 1 October 2019	0.7	49.3	50.0
<b>Additions</b>	<b>21.2</b>	<b>16.7</b>	<b>37.9</b>
Transfers	-	4.4	4.4
Disposals	-	(0.4)	(0.4)
<b>At 30 September 2020</b>	<b>21.9</b>	<b>70.0</b>	<b>91.9</b>
<b>Accumulated amortisation</b>			
At 1 October 2019	0.6	3.6	4.2
Charge for the year	0.7	1.7	2.4
Transfers	-	2.7	2.7
<b>At 30 September 2020</b>	<b>1.3</b>	<b>8.0</b>	<b>9.3</b>
<b>Net book value</b>			
At 30 September 2019	0.1	45.7	45.8
At 30 September 2020	<u>20.6</u>	<u>62.0</u>	<u>82.6</u>

As a result of a Group acquisition, during the year the Company acquired the rights, title and interest to a number of Fazer trademarks and domain names. The total consideration for these trademarks was £20.8m.

The Company also acquired, from Foodbuy, LLC, a fellow group company, the rights to the Foodbuy trademark in a number of territories. The total consideration paid was £0.4m.

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 10. Leases

The Company's lease portfolio consists of office premises. Lease terms are negotiated on an individual basis and contain a broad range of terms and conditions.

	Total £m
<b>Right of use assets – Land and Buildings</b>	
At 1 October 2019	11.7
Additions	-
Depreciation expense	(1.1)
Impairment	(0.4)
<b>At 30 September 2020</b>	<b>10.2</b>

Impairment losses of £0.4million were recognised on right of use assets during the year (2019: £nil) reflecting reduced forecast cash flow assumptions due to the COVID-19 pandemic. The interest expense on lease liabilities for the year ended 30 September 2020 is detailed in note 6.

	2020 £m
<b>Lease liability maturity analysis</b>	
Less than 1 year	1.7
Between 1 and 5 years	6.2
Over 5 years	9.6
<b>Total undiscounted lease liabilities</b>	<b>17.5</b>

#### 11. Property, plant and equipment

	Total £m
<b>Cost</b>	
At 1 October 2019	23.0
Additions	0.2
Transfers	(4.4)
Disposals	(5.8)
<b>At 30 September 2020</b>	<b>13.0</b>
<b>Accumulated depreciation</b>	
At 1 October 2019	12.8
Charge for the year	0.8
Transfers	(2.7)
Disposals	(5.8)
<b>At 30 September 2020</b>	<b>5.1</b>
<b>Net book value</b>	
At 30 September 2019	10.2
At 30 September 2020	7.9



# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 12. Investments held as fixed assets

	Investment in subsidiary undertakings £m
<b>Cost</b>	
At 1 October 2019	4,262.9
Additions	27.5
Foreign currency movements	25.3
<b>At 30 September 2020</b>	<b>4,315.7</b>
<b>Provisions</b>	
At 1 October 2019	45.1
Provisions made in the year	76.0
<b>At 30 September 2020</b>	<b>121.1</b>
<b>Net book value</b>	
At 30 September 2019	4,217.8
At 30 September 2020	4,194.6

During the year, the Company provided a capital contribution of EUR 30,300,000 to its subsidiary investment, Compass Group Austria Holdings One GmbH.

At the end of each reporting period the Company reviews whether there is objective evidence that the carrying value of the Company's investments indicate an impairment. If such an indication exists, the asset's recoverable amount is estimated. Following the annual impairment review, the directors have identified impairments totalling £76,000,000.

Further details of the principal subsidiary undertakings are given in note 23.

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 13. Debtors

	2020 £m	2019 £m
<b>Amounts falling due within one year</b>		
Amounts owed by parent undertakings	1,133.7	1,225.7
Amounts owed by subsidiary undertakings	4,097.9	4,070.1
Corporation tax recoverable	66.5	-
Other tax and social security	2.1	1.6
Overseas tax recoverable	27.3	43.2
Other debtors	4.2	3.8
Prepayments and accrued income	0.4	0.9
	<u>5,332.1</u>	<u>5,345.3</u>
<b>Amounts falling due after more than one year</b>		
Deferred tax	27.2	15.0
	<u>27.2</u>	<u>15.0</u>
<b>Deferred tax analysis</b>		
	2020 £m	2019 £m
Deferred tax assets		
UK capital allowances in excess of tax depreciation	(2.7)	(0.3)
UK short term temporary differences	7.6	6.3
UK pensions and post-employment benefits	9.7	8.9
Overseas short term temporary differences	-	0.1
Overseas tax losses	12.6	-
	<u>27.2</u>	<u>15.0</u>
Net deferred tax		
	<u>27.2</u>	<u>15.0</u>

Deferred tax has been provided in accordance with the accounting policy shown in note 1.

There is no unprovided deferred tax (2019: £nil).

The potential tax liabilities which might arise in the event of the unappropriated profits or reserves of overseas subsidiary companies being distributed have not been disclosed as there is no intention to distribute such profits or reserves.

The movement on deferred tax is as follows:

<b>At 1 October 2019</b>	<b>15.0</b>
Exchange adjustment	0.4
Credited to profit and loss account	11.8
	<u>11.8</u>
<b>At 30 September 2020</b>	<b>27.2</b>

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 14. Current liabilities

	2020 £m	2019 £m
Amounts owed to parent undertaking	2,254.3	2,264.1
Amounts owed to subsidiary undertakings	2,766.4	2,766.1
Bank overdraft	2.2	1.3
Trade creditors	1.9	2.2
Corporation tax payable	-	0.2
Other tax and social security	3.3	1.4
Overseas tax payable	-	0.1
Other creditors	2.5	3.2
Accruals and deferred income	36.7	36.8
	<u>5,067.3</u>	<u>5,075.4</u>

#### 15. Non-current liabilities

	2020 £m	2019 £m
Retirement indemnity liabilities	<u>0.4</u>	<u>0.4</u>

#### 16. Provisions for liabilities

	Total £m
Balance at 1 October 2019	2.8
Additions	<u>10.2</u>
Balance at 30 September 2020	<u>13.0</u>

The provision represents liabilities in respect of claims and is essentially long-term in nature. The timing of the settlement of these claims is uncertain. Provisions are discounted to present value where the effect is material using Compass Group PLC's weighted average cost of capital.

#### 17. Called up share capital

	2020 £m	2019 £m
Allotted, called up and fully paid:		
Ordinary shares of 2.5p each – 18,711,213,926	467.8	467.8
Ordinary 'A' share of £1 each – 1	-	-
	<u>467.8</u>	<u>467.8</u>

The Ordinary 'A' share does not entitle the holder of the share to the payment of any dividends. On winding up or any other return of capital, the Ordinary 'A' share entitles the holder only to payment of the amount paid up on the share, after repayment to the holders of the Ordinary shares of the nominal amount paid up on the Ordinary shares held by them respectively and the payment of £100 on each Ordinary share. The Ordinary 'A' share entitles the holder to receive notice of and attend and speak at any general meeting of the Company. It also entitles the holder on a show of hands to cast one vote and on a poll to cast one more vote than the aggregate number of votes which can be cast on any resolution proposed thereat by the holders of the Ordinary shares in issue at the time of such meeting.

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 18. Post-employment benefit obligations

The Company operates a number of defined contribution and defined benefit plans relating to both the employees and Executive Directors, in which other UK subsidiaries also participate. The schemes are self-administered and the schemes' assets are held independently of the UK Group's assets. Pension costs are assessed in accordance with the advice of independent, professionally qualified actuaries. The Group makes employer contributions to the various schemes in existence within a range of 2% to 57% of pensionable salaries (2019: 2% to 46%).

Within the UK there are three main arrangements, the Compass Retirement Income Savings Plan (CRISP), the Compass Group Pension Plan (the Plan), and the UK Group's stakeholder pension arrangement.

CRISP was launched on 1 February 2003. This has been the main vehicle for pension provision for new joiners in the UK since that date but existing members of the Plan had continued to accrue benefits under those arrangements up until 5 April 2010. CRISP is a contracted-in money purchase arrangement whereby the Company will match employee contributions up to 6% of pay (minimum 3%). Within CRISP a new defined contribution section was established from April 2006 known as the Compass Higher Income Plan (CHIP). Senior employees who contribute to CRISP will receive an additional employer-only contribution into CHIP. The amount of contribution and eligibility for CHIP are decided annually at the Company's discretion. The payment towards CHIP may be taken in part, or in whole, as a cash supplement instead of a pension contribution.

CRISP has a corporate trustee. The Chairman is a former employee of the Group. The other five trustee directors are UK based employees of the Group, three of whom have been nominated by CRISP members.

The Plan is a defined benefit arrangement of which the Company is the principal employer. However, all active members of the Plan are employed by other UK subsidiaries and so the Company has no liability for payment of contributions, including deficit recovery payments, other than in relation to a guarantee described in note 20. Full details of the financial position of the Plan may be found in the financial statements of Compass Group PLC.

The Company is subject to the Pension Automatic Enrolment Regulations for its workforce in the UK. Both the Plan and CRISP are compliant arrangements under these regulations and have been registered as such.

All new UK employees who meet the statutory eligibility criteria and are not already in one of these registered compliant arrangements have been automatically enrolled into the National Employment Savings Trust (NEST). The Company considers that NEST provides the right type of service, communication material and investment choice for our employees and that it has the capabilities to support a company as large and diverse as Compass.

The pension cost for the Company in the year was £3.3 million (2019: £3.2 million). The Company receives pension contributions from other UK companies in the Group which it pays to the pension schemes. At 30 September 2020 in the accounts of the Company there were no accrued liabilities for payment of contributions (2019: £nil).

#### Unapproved pension liabilities

The Company has agreed to pay unapproved pensions to a number of former employees. The obligations for these pensions are included in the Company's balance sheet.

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 18. Post-employment benefit obligations (continued)

##### FRS 101 disclosures - Unapproved pension liabilities

Disclosures for the unapproved pension liabilities are set out below. These have been calculated on the following assumptions:

	At 30 September 2020	At 30 September 2019
Discount rate	1.7%	1.8%
Inflation	3.2%	3.3%
CPI inflation	2.2%	2.3%
Rates of increase of pensions for payment	3.1%	3.2%
Rates of increase for deferred pensions	2.2%	2.3%

The mortality assumptions used to value the current year unapproved pension liabilities are derived from the S3PA generational mortality tables (2019: S3PA generational mortality tables) with improvements in line with the 2019 projection model prepared by the Continuous Mortality Investigation of the UK actuarial profession (2019: 2018 model), with an S-kappa of 7.5, with 115% weighting for male non-pensioners, 111% for male pensioners (2019: 115% weighting for male non-pensioners, 111% for male pensioners) and 102% weighting for all females (2019: 102% weighting for all females), with a long term underpin of 1.5% p.a. (2019: 1.5% p.a.). These mortality assumptions take account of experience to date and assumptions for further improvements in the life expectancy of scheme members. The Company estimates the duration of the unapproved pension liabilities to be 13 years (2019: 14 years).

Examples of the resulting life expectancies are as follows:

##### Life expectancy at age 65

	2020		2019	
	Male years	Female years	Male years	Female years
Member aged 65 in 2020 (2019)	21.5	24.4	21.5	24.4
Member aged 65 in 2045 (2044)	23.4	26.6	23.4	26.5

Movements in the present value of unapproved pension liabilities have been assessed with the advice of independent, professionally qualified actuaries.

	Year ended 30 September 2020 £m	Year ended 30 September 2019 £m
<b>Unapproved pension liabilities</b>		
At beginning of the year	52.3	48.0
Interest expense on benefit obligations	0.9	1.4
Benefits paid by the Company	(1.9)	(1.9)
Remeasurements – financial assumptions	0.5	7.1
Remeasurements – demographic assumptions	(0.2)	(2.6)
Remeasurements – experience	(0.3)	0.3
<b>At 30 September</b>	<b>51.3</b>	<b>52.3</b>

Measurement of the unapproved pension liabilities is particularly sensitive to changes in certain key assumptions, including the discount rate and life expectancy. An increase or decrease of 0.5 percentage points in the UK discount rate would result in a £3.3 million decrease or £3.4 million increase in the UK defined benefit

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 18. Post-employment benefit obligations (continued)

obligations respectively. An increase by one year in the life expectancy of members from age 65 would result in a £2.8 million increase in the unapproved pension liabilities.

#### 19. Share-based payments

##### Income statement expense

The Company recognised a credit of £0.6 million (2019: charge £6.2 million) in respect of share-based payment transactions. All remaining share based payment plans are equity-settled.

The expense is broken down by share based payment scheme as follows:

	2020 £'m	2019 £'m
Long term incentive plans	(0.9)	5.5
Other share-based payment plans	0.3	0.7
	(0.6)	6.2

##### Long term incentive plans

Full details of The Compass Group PLC Long Term Incentive Plan 2010 and the Compass Group PLC Long Term Incentive Plan 2018 can be found in the Directors' Remuneration Report on pages 122 to 153 of the Compass Group PLC Annual Report.

The following table shows the movement in share awards during the year:

	2020 Number of shares	2019 Number of shares
Long term incentive plans		
Outstanding at 1 October	1,558,199	1,656,371
Awarded	538,794	631,595
Transfers (to)/from fellow subsidiaries	(54,418)	28,184
Vested	(342,596)	(492,229)
Cancelled	(132,620)	-
Lapsed	(49,204)	(265,722)
Outstanding at 30 September	1,518,155	1,558,199

The vesting conditions of the LTIP awards is included in the Remuneration Report in pages 122 to 153 of the Compass Group PLC annual report.

Assumptions - long term incentive plans	2020	2019
Expected volatility	29.1%	17.6%
Risk free interest rate	0.4%	1.2%
Dividend yield	2.2%	2.2%
Expected life	2.5 years	2.7 years
Weighted average share price at date of grant	1,409.73p	1,746.52p

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 19. Share based payments (continued)

##### Other share-based payment plans

The following table shows the movements in other smaller share based payments plans during the year:

	2020 Number of shares	2019 Number of shares
<b>Other share-based payment plans</b>		
<b>Outstanding at 1 October</b>	<b>141,872</b>	<b>191,995</b>
Awarded	113,984	73,590
Transfers (to)/from fellow subsidiaries	(6,688)	2,000
Vested, released and exercised	(62,898)	(90,215)
Lapsed (following net settlement)	-	(3,550)
Lapsed	(48,398)	(31,948)
<b>Outstanding at 30 September</b>	<b>137,872</b>	<b>141,872</b>

The expense relating to these plans is not significant and no further disclosure is necessary except for the general details provided below:

##### 1. Share options

Full details of The Compass Group Share Option Plan 2010 (CSOP 2010), the Compass Group Share Option Plan (CSOP 2000), the Compass Group Management Share Option Plan (Management Plan) (collectively the Executive and Management Share Option Plans) and the UK Sharesave Plan are set out in prior years' annual reports which are available on the Compass Group PLC website [www.compass-group.com](http://www.compass-group.com).

##### 2. Deferred annual bonus plan (DAB)

Certain senior executives participate in the DAB. A portion of the annual bonus awarded to certain executives is converted into shares. Subject to the achievement of local organic revenue growth and cumulative PBIT over the three-year deferral period, the number of deferred shares may be increased. Enhancements to the deferred shares are only released to the participants subject to the performance levels being met. The last award under this plan was made in November 2018.

##### 3. Restricted shares

The plan is designed to make occasional awards to certain employees in order to incentivise the achievement of particular business objectives under specific circumstances or where similar such shares have been forfeited by a new employee on joining the Company. The plan can take different forms such as an award of shares dependent on a service or achievement of specific performance conditions other than service.

#### 20. Guarantees

Compass Group Holdings PLC has entered into a guarantee with the trustees of the Compass Group Pension Plan (the Plan). Should the participating employers (which are subsidiaries of Compass Group Holdings PLC) fail to pay contributions due to the Plan under the terms of the agreed Schedule of Contributions and Deficit Recovery Plan, then the Company has guaranteed that it will meet those obligations. As at 30 September 2020, the Plan had net assets of £441 million (2019: £448 million).

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 21. Ultimate parent company and controlling entity

The ultimate parent company and controlling entity, Compass Group PLC, is the parent undertaking of the largest and smallest group of undertakings for which Group accounts are drawn up. The immediate parent companies are Hospitality Holdings Limited and Compass Group PLC.

Hospitality Holdings Limited and Compass Group PLC are incorporated in the United Kingdom and registered in England and Wales.

Copies of the Compass Group PLC financial statements are available from its registered address: Compass House, Guildford Street, Chertsey, Surrey KT16 9BQ or from the Compass Group PLC website at [www.compass-group.com](http://www.compass-group.com)

#### 22. Post balance sheet events

A post-Brexit deal on trade and other issues was agreed in December 2020 between the UK and the EU. While there is clearly more for the UK and EU to work through, we believe that the deal as agreed, coupled with our own contingency planning, means we do not expect any material financial or operational impact resulting from Brexit.

#### 23. Details of related undertakings of Compass Group Holdings PLC

All companies listed below are owned by the Company and all interests are in the ordinary share capital, except where otherwise indicated. All subsidiaries have been consolidated. All companies operate principally in their country of incorporation.

PRINCIPAL SUBSIDIARIES	COUNTRY OF INCORPORATION	% HOLDING	PRINCIPAL ACTIVITIES
<b>Ground Floor 35 - 51 Mitchell Street, McMahon's Point, NSW 2060, Australia</b>			
Compass Group (Australia) Pty Limited	Australia	100	Food and support services
<b>Chaussée de Haecht 1179, B-1130 Bruxelles, Belgium</b>			
Compass Group Belgilux S.A.	Belgium	100	Food services
<b>Rua Tutoia, 119, Vila Mariana, São Paulo, 04007-000, Brazil</b>			
GR Serviços e Alimentação Ltda. (i)	Brazil	100	Food and support services
<b>1 Prologis Boulevard, Suite 400, Mississauga, Ontario L5W 0G2, Canada</b>			
Compass Group Canada Ltd. Groupe Compass Canada Ltée (iii)(iv)(v)(vi)(viii)	Canada	100	Food and support services
<b>Av. del Valle 787, 5th floor, Huechuraba, Santiago, Chile</b>			
Compass Catering Y Servicios Chile Limitada	Chile	100	Food and support services
<b>Rued Langgards Vej 8, 1. sal, 2300 København S, DK, Denmark</b>			
Compass Group Danmark A/S	Denmark	100	Food services
<b>P.O. Box 210, FI-00281 Helsinki, Finland</b>			
Compass Group FS Finland Oy	Finland	100	Food services
<b>123 Avenue de la République – Hall A, 92320 Châtillon, France</b>			
Compass Group France Holdings SAS (i)	France	100	Holding company
Compass Group France SAS	France	100	Food and support services
<b>Helfmann-Park 2, 65760, Eschborn, Germany</b>			
Compass Group Deutschland GmbH	Germany	100	Holding company
Eurest Deutschland GmbH	Germany	100	Food service to business and industry



# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

Eurest Services GmbH	Germany	100	Support services to business and industry
Medirest GmbH & Co OHG	Germany	100	Food service to the healthcare and senior living market
<b>Via Angelo Scarsellini, 14, 20161, Milano, Italy</b> Compass Group Italia S.p.A.	Italy	100	Food and support services
<b>Hamarikyu Kensetsu Plaza, 5-5-12, Tsukiji, Chuo-ku, Tokyo 104-0045, Japan</b> Seiyo Food-Compass Group, Inc.	Japan	100	Food and support services
<b>Laarderhoogtweg 11, 1101 DZ, Amsterdam, Netherlands</b> Compass Group International B.V.	Netherlands	100	Holding company
Compass Group Nederland B.V.	Netherlands	100	Food and support services
Compass Group Nederland Holding B.V.	Netherlands	100	Holding company
<b>Drengsrudbekken 12, 1383, PO Box 74, NO-1371, Asker, Norway</b> Compass Holding Norge A/S	Norway	100	Holding company
<b>Calle Pinar de San José 98 planta 1ª 28054 Madrid, Spain</b> Eurest Colectividades S.L.U.	Spain	100	Food and support services
<b>Box 1222, 164 28, Kista, Sweden</b> Compass Group Sweden AB	Sweden	100	Holding company
<b>Box 30170, 104 25 Stockholm, Sweden</b> Compass Group FS Sweden AB	Sweden	100	Food services
<b>Oberfeldstrasse 14, 8302, Kloten, Switzerland</b> Compass Group (Schweiz) AG	Switzerland	100	Food and support services
Restorama AG	Switzerland	100	Food service
<b>İçlerenköy Mah. Yeşil vadi sokak, No: 3 D: 12-13-14, 34752 Atasehir, Istanbul, Turkey</b> Sofra Yemek Üretim Ve Hizmet A.Ş. (iii)	Turkey	100	Food and support services
<b>Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, B45 9PZ, United Kingdom</b> Compass Contract Services (U.K.) Limited	UK	100	Food and support services
Compass Group, UK and Ireland Limited	UK	100	Holding company
Foodbuy Europe Limited (iii)(iv)	UK	100	Client procurement services management in the UK
<b>2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833-3505, USA</b> Bon Appétit Management Co. (viii)	USA	100	Food service
<b>251 Little Falls Drive, Wilmington, DE 19808, USA</b> Compass Group USA Investments Inc.	USA	100	Holding company
Compass Group USA, Inc. (viii)	USA	100	Food and support services
Crothall Services Group	USA	100	Support services to the healthcare market
Foodbuy, LLC	USA	100	Purchasing services in North America
Restaurant Associates Corp.	USA	100	Fine dining facilities
<b>80 State Street, Albany, NY 12207-2543, USA</b> Flik International Corp.	USA	100	Fine dining facilities
<b>801 Adlai Stevenson Drive, Springfield, IL 62703, USA</b> Levy Restaurants Limited Partnership	USA	100	Fine dining and food service at sports and entertainment facilities
<b>40 Technology Pkwy South, #300, Norcross, GA 30092, USA</b> Morrison Management Specialists, Inc. (viii)	USA	100	Food service to the healthcare and senior living market

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

<b>OTHER WHOLLY OWNED SUBSIDIARIES</b>	<b>COUNTRY OF INCORPORATION</b>	<b>% HOLDING</b>
<b>Chez: Eurojapan Résidence No.23, RN n°3 BP 398, Hassi Messaoud, Algeria</b>		
Eurest Algeria SPA (i)	Algeria	100
<b>Condominio Dolce Vita, Via S8, Edificio 1D, Fração A &amp; B, 2º andar, Talatona, Município de Belas, Luanda, República de Angola</b>		
Express Support Services, Limitada	Angola	100
<b>Esteban Echeverría 1050, 6th floor, Vicente Lopez (1602), Buenos Aires, Argentina</b>		
Servicios Compass de Argentina S.A.	Argentina	100
<b>Ground Floor 35 – 51 Mitchell Street, McMahon's Point, NSW 2060, Australia</b>		
Compass Australia PTY Ltd (ii)	Australia	100
Compass (Australia) Catering & Services PTY Ltd (iii)(iv)	Australia	100
Compass Group B&I Hospitality Services PTY Ltd	Australia	100
Compass Group Defence Hospitality Services PTY Ltd	Australia	100
Compass Group Education Hospitality Services PTY Ltd	Australia	100
Compass Group Healthcare Hospitality Services PTY Ltd	Australia	100
Compass Group Health Services Pty Ltd	Australia	100
Compass Group Management Services PTY Ltd	Australia	100
Compass Group Relief Hospitality Services PTY Ltd	Australia	100
Compass Group Remote Hospitality Services PTY Ltd	Australia	100
Delta Facilities Management PTY Ltd	Australia	100
Delta FM Australia PTY Ltd	Australia	100
Eurest (Australia) – Victoria PTY Ltd	Australia	100
Eurest (Australia) Food Services – NSW Pty Ltd	Australia	100
Eurest (Australia) Food Services – Wollongong PTY Ltd	Australia	100
Eurest (Australia) Food Services PTY Ltd	Australia	100
Eurest (Australia) Licence Holdings PTY Ltd	Australia	100
Eurest (Australia) PTY Ltd	Australia	100
Foodbuy Pty Ltd	Australia	100
LAPG Education PTY Ltd	Australia	100
LAPG PTY Ltd	Australia	100
Life's A Party Group PTY Ltd	Australia	100
Life's A Party PTY Ltd	Australia	100
Omega Security Services PTY Ltd	Australia	100
Restaurant Associates (Australia) PTY Ltd	Australia	100
Sargem PTY Ltd	Australia	100
<b>Level 22, 135 King Street, Sydney, NSW 2000, Australia</b>		
MBM Integrated Services Pty (ii)	Australia	100
<b>IZD Tower, Wagramer Strasse 19/4. Stock, 1220 Wien, Austria</b>		
Compass Group Austria Holdings One GmbH	Austria	100
Compass Group Austria Holdings Two GmbH	Austria	100
Eurest Restaurationsbetriebsgesellschaft m.b.H	Austria	100
Kunz Gebäudereinigung GmbH	Austria	100
<b>Chaussée de Haecht 1179, B-1130 Brussels, Belgium</b>		
Compass Group Service Solutions S.A.	Belgium	100
F.L.R. Holding S.A. (ii)	Belgium	100
Xandrión Belgie BVBA	Belgium	100
<b>Rua Orissanga, 200, 1st Floor, Mirandópolis, São Paulo, 04.052-030, Brazil</b>		
Clean Mall Serviços Ltda.	Brazil	100

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

<b>Rua Orissanga, 200, 3rd Floor, Mirandópolis, São Paulo, 04.052-030, Brazil</b> GRSA Serviços LTDA.	Brazil	100
<b>Craigmuir Chambers, PO Box 71, Roadtown, Tortola, VG1110, British Virgin Islands</b> Compass Group Holdings (BVI) Limited	British Virgin Islands	100
<b>c/o Action Group Ltd., No.12, Street 614, Sangkat Boeung Kok II, Khan Tuol Kork, Phnom Penh City, Cambodia</b> Compass Group (Cambodia) Co. Ltd. (ii)	Cambodia	100
<b>100, Rue n° 1044 Hydrocarbures, Bonapriso, BP 5767, Douala, Cameroon</b> Eurest Cameroun SARL (ii)	Cameroon	100
Eurest Camp Logistics Cameroun SARL (ii)	Cameroon	100
<b>1 Prologis Boulevard, Suite 400, Mississauga, Ontario L5W 0G2, Canada</b> 1912219 Ontario Inc. (iii)(iv)(v)(vi)(viii)	Canada	100
Canteen of Canada Limited (iii)	Canada	100
Compass Canada Support Services Ltd (iii)(iv)(v)(vi)(viii)	Canada	100
Compass Group Ontario Ltd. (iii)	Canada	100
<b>Suite 2300, Bentall 5, 550 Burrard Street, Vancouver, BC V6C 2B5, Canada</b> Tejazz Management Services Inc. (iii)	Canada	100
<b>1969 Upper Water Street, Purdy's Wharf Tower II, Suite 1300, Halifax, NS B3J 3R7, Canada</b> Crothall Services Canada Inc. (iii)(iv)	Canada	100
<b>1959 Upper Water Street, Suite 1100, Halifax, Nova Scotia, B3J 3E5, Canada</b> East Coast Catering (NS) Limited (iii)	Canada	100
<b>30 Queen's Road, St. John's, Newfoundland and Labrador, A1C 2A5, Canada</b> East Coast Catering Limited (iii)(iv)(viii)(v)	Canada	100
Long Harbour Catering Limited Partnership (x)	Canada	100
Long Harbour Catering Limited (iii) (viii)	Canada	100
<b>421 7th Avenue SW, Suite 1600, Calgary, Alberta, T2P 4K9, Canada</b> Great West Catering Ltd. (iii)	Canada	100
Tamarack Catering Ltd. (iii)	Canada	100
<b>2580 Rue Dollard, Lasalle, Quebec, H8N 1T2, Canada</b> Groupe Compass (Québec) Ltée (iii)(iv)(v)(vi)(viii)	Canada	100
<b>550 Burrard Street, Suite 2300, Bentall 5, P.O. Box 30, Vancouver, British Columbia, V6C 2B5, Canada</b> Town Square Food Services Ltd. (iii)	Canada	100
<b>Av. del Valle 787, 5th floor, Huechuraba, Santiago, Chile</b> Cadelsur S.A.	Chile	100
Compass Catering S.A.	Chile	100
Compass Servicios S.A.	Chile	100
Scolarest S.A.	Chile	100
<b>No. 1999 Floor 2, Xin Zhu Road, Minhang District, 200237, China</b> Compass (China) Management Services Company Limited	China	100
<b>Room 401 No.2536, Pudong Avenue, Pudong District, Shanghai 200135, China</b> Shanghai Eurest Food Technologies Service Co., Ltd.	China	100
<b>Calle 98#11B – 29 Bogotá - Colombia</b> Compass Group Services Colombia S.A.	Colombia	100



# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

Eurest Köln GmbH	Germany	100
Eurest Süd GmbH	Germany	100
Food affairs GmbH	Germany	100
Kanne Café GmbH	Germany	100
Menke Menue GmbH	Germany	100
Royal Business Restaurants GmbH	Germany	100
S.B. Verwaltungs GmbH	Germany	100
<b>Konrad-Zuse-Platz 2, 81829 München, Germany</b>		
Leonardi EPM GmbH	Germany	100
Leonardi HPM GmbH	Germany	100
Leonardi Vermögensverwaltungs GmbH	Germany	100
Leonardi Betriebsverwaltungs GmbH	Germany	100
Leonardi GmbH & Co. KG	Germany	100
Leonardi Kaffee neu entdecken GmbH & Co. KG	Germany	100
Leonardi SVM GmbH	Germany	100
<b>Sankt-Florian-Weg 1, 30880, Laatzen, Germany</b>		
Eurest West GmbH & Co. KG	Germany	100
orgaMed Betriebsgesellschaft für Zentralsterilisationen GmbH	Germany	100
PLURAL Gebäudemanagement GmbH	Germany	100
PLURAL Personalservice GmbH	Germany	100
PLURAL servicepool GmbH	Germany	100
<b>Pfaffenwiese, 65929 Frankfurt/M., Germany</b>		
LPS Event Gastronomie GmbH	Germany	100
<b>Zum Fliegerhorst 1304, 63526 Erlensee, Germany</b>		
Foodbuy CE GmbH (ii)	Germany	100
M.S.G. Frucht GmbH	Germany	100
<b>PO Box 119, Martello Court, Admiral Park, St Peter Port, Guernsey, GY1 3HB</b>		
Compass Group Finance Ltd (i)	Guernsey	100
<b>Room 805, 8/F, New Kowloon Plaza, 38 Tai Kok Tsui Road, Kowloon, Hong Kong</b>		
Compass Group Hong Kong Ltd	Hong Kong	100
Encore Catering Ltd	Hong Kong	100
Shing Hin Catering Group Ltd	Hong Kong	100
<b>Irinyi József u. 4-20. B épület, H-1117 Budapest, Hungary</b>		
Eurest Étteremüzemeltető Korlátolt Felelősségű Társaság	Hungary	100
<b>Spaze I - Tech Park, Tower A, Sohna Road, Sector 49 Gurgaon, Gurgaon HR 122018 IN, India</b>		
Compass Group (India) Support Services Private Ltd	India	100
<b>Unit #401, 4th Floor, Tower A, Spaze I – Tech Park Sohna Road, Sector 49 Gurgaon, Gurgaon HR 122018 IN, India</b>		
Compass India Support Services Private Limited	India	100
<b>3rd Floor, 43a, Yeats Way, Parkwest Business Park, Dublin 12, Ireland</b>		
Catering Management Ireland Limited (ii)	Ireland	100
Cheyenne Limited (ii)	Ireland	100
<b>Tower House, Loch Promenade, Douglas, IM1 2LZ, Isle of Man</b>		
Queen's Wharf Insurance Services Limited (viii)	Isle of Man	100
<b>Shin-Hie Building 2nd Floor, 3-3-3, Hakataeki-Higashi, Hakata-ku, Fukuoka-City, Fukuoka-Prefecture, 812-0013 Japan</b>		
Eishoku-Medix, Inc.	Japan	100

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

<b>Hamarikyu Kensetsu Plaza, 5-5-12, Tsukiji, Chuo-ku, Tokyo 104-0045, Japan</b>		
Eurest Japan, Inc.	Japan	100
Fuyo, Inc.	Japan	100
MFS, Inc.	Japan	100
Nihon Kyushoku Service, Inc.	Japan	100
Seiyo Food-Compass Group Holdings, Inc.	Japan	100
<b>060011, Atyrauskaya Oblast, Atyrau City, Beibarys Sultan Avenue 506, Kazakhstan</b>		
Compass Kazakhstan LLP	Kazakhstan	100
Eurest Support Services Kazakhstan LLP	Kazakhstan	100
ESS Support Services LLP	Kazakhstan	100
<b>209/8919 Sigma Road Off Enterprises Road, PO BOX 14 662, Nairobi, Kenya</b>		
Kenya Oilfield Services Ltd (ii)	Kenya	100
<b>19, Rue Léon Laval, L-3372 Leudelange, Luxembourg</b>		
Eurest Luxembourg S.A.	Luxembourg	100
IMMO Capellen S.A.	Luxembourg	100
Innoclean S.A.	Luxembourg	100
Novelia Senior Services S.A.	Luxembourg	100
<b>Level 21, Suite 21.01, The Gardens South Tower, Mid Valley City, Lingkaran Syed Putra, 59200 Kuala Lumpur, Malaysia</b>		
Compass Group Malaysia Sdn Bhd	Malaysia	100
Riaaxis Sdn. Bhd. (ii)	Malaysia	100
Genviolet Sdn. Bhd. (ii)	Malaysia	100
<b>50-8-1, TKT.8, Wsima UOA Damansara, 50 Jalan. Dungun, Damansara Heights, Kuala Lumpur, 50490, Malaysia</b>		
S.H.R.M. Sdn. Bhd. (ii)	Malaysia	100
<b>Calle Jaime Balmes 11, Oficina 101 letra D, Colonia Los Morales Polanco, Alcaldía Miguel Hidalgo, 11510 Ciudad de México, Mexico</b>		
Compass México Servicios de Soporte, S.A. De C.V. (iii) (iv)	Mexico	100
Eurest Proper Meals de Mexico S.A. de C.V. (iii)(iv)	Mexico	100
Servicios Corporativos Eurest-Proper Meals de Mexico S.A. De C.V. (iii)(iv)	Mexico	100
<b>c/o 251 Little Falls Drive, Wilmington, DE 19808, USA</b>		
Food Works of Mexico, S. de R.L. de C.V. (ii)(iii)(iv)	Mexico	100
Food Works Services of Mexico, S. de R.L. De C.V. (ii)(iii)(iv)	Mexico	100
<b>Laarderhoogtweg 11, 1101 DZ, Amsterdam, Netherlands</b>		
Aurora HoldCo B.V.	Netherlands	100
CGI Holdings (2) B.V.	Netherlands	100
Compass Group Holding B.V.	Netherlands	100
Compass Group Finance Netherlands B.V.	Netherlands	100
Compass Group International 2 B.V.	Netherlands	100
Compass Group International 3 B.V.	Netherlands	100
Compass Group International 4 B.V.	Netherlands	100
Compass Group International 5 B.V.	Netherlands	100
Compass Group International 6 B.V. (ii)	Netherlands	100
Compass Group International 9 B.V.	Netherlands	100
Compass Group International 10 B.V. (ii)	Netherlands	100
Compass Group International ESS Shanghai B.V. (ii)	Netherlands	100
Compass Group International Finance 1 B.V.	Netherlands	100
Compass Group International Finance 2 B.V.	Netherlands	100
Compass Group Shanghai Eurest B.V. (ii)	Netherlands	100
Compass Group Vending Holding B.V.	Netherlands	100
Compass Hotels Chertsey B.V.	Netherlands	100

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

Eurest Services B.V.	Netherlands	100
Eurest Support Services (ESS) B.V.	Netherlands	100
Eurest Support Services Sakhalin B.V. (ii)	Netherlands	100
Stichting Forte International	Netherlands	100
<b>Luzernestraat 57, 2153 GM, Nieuw-Vennep, Netherlands</b>		
Famous Flavours B.V. (viii)	Netherlands	100
<b>Stationsweg 95, 6711 PM Ede, Netherlands</b>		
Xandrión B.V.	Netherlands	100
<b>85 Avenue du Général de Gaulle, Immeuble Carcopino 3000, BP 2353, 98846 Nouméa Cedex, New Caledonia</b>		
Eurest Caledonie SARL (ii)	New Caledonia	100
<b>Level 3, 15 Sultan Street, Ellerslie 1051, New Zealand</b>		
Compass Group New Zealand Limited	New Zealand	100
Crothall Services Group Limited (ii)	New Zealand	100
Eurest NZ Limited (ii)	New Zealand	100
<b>Drengsrudbekken 12, 1383, PO Box 74, NO-1371, Asker, Norway</b>		
Eurest A/S (iii)	Norway	100
Compass Group FS Norway A/S	Norway	100
<b>Forusparken 2, 4031 Stavanger, Postboks 8083 Stavanger Postterminal, 4068, Stavanger, Norway</b>		
ESS Mobile Offshore Units A/S	Norway	100
ESS Support Services A/S	Norway	100
<b>c/o Warner Shand Lawyers Waigani, Level 1 RH Hypermarket, Allotment 1 Section 479 (off Kennedy Road), Gordons NCD, Papua New Guinea</b>		
Eurest (PNG) Catering & Services Ltd (ii)	Papua New Guinea	100
<b>Unit 2410 24th flr, City &amp; Land Mega Plaza, ADB Ave., Ortigas Ctr., San Antonio, Pasig City 1605, Philippines</b>		
Compass Group Philippines Inc (ii)	Philippines	100
<b>Ul. Olbrachta 94, 01-102 Warszawa, Poland</b>		
Compass Group Poland Sp. Z o.o.	Poland	100
<b>Edifício Prime, Avenida da, Quinta Grande, 53-60, Alfragide 2614-521 Amadora, Portugal</b>		
Eurest (Portugal) – Sociedade Europeia de Restaurantes, Lda.	Portugal	100
Eurest Catering & Services Group Portugal, Lda.	Portugal	100
<b>București Sectorul 4, Strada Sold., Ilie Șerban, Nr. 8B., Romania</b>		
Eurest ROM SRL	Romania	100
<b>7 Gasheka Street, Bld. 1, 123056, Moscow, Russia</b>		
Aurora Rusco OOO	Russia	100
<b>20 Kulakova Street, Bld 1, Premises III, Floor 4, Room 2, Moscow, Russia</b>		
Compass Group Rus OOO	Russia	100
<b>11 Changi South Street 3, Builders Shop Building, #04-02/03, 486122, Singapore</b>		
Compass Group (Singapore) PTE Ltd (iii)(iv)	Singapore	100
SHRM Far East Pte Ltd (ii)	Singapore	100
<b>8 Marina Boulevard, # 05-02, Marina Bay Financial Centre, 018981, Singapore</b>		
Compass Group Asia Pacific PTE. Ltd (i)(ii)	Singapore	100
<b>Karadžičova 2, Staré mesto, 811 09 Bratislava, Slovakia</b>		
Compass Group Slovakia s. r. o.	Slovakia	100

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

<b>Calle Frederic Mompou 5, planta 5a, Edificio Euro 3, 08960, San Just Desvern, Barcelona, Spain</b>		
Asistentes Escolares, S.L.	Spain	100
Eurest Catalunya, S.L.U.	Spain	100
Medirest Social Residencias, S.L.U.	Spain	100
<b>Calle Castilla 8-10 – C.P. 50.009, Zaragoza, Spain</b>		
Servicios Renovados de Alimentacion, S.A.U.	Spain	100
<b>Calle Pinar de San José 98, Planta 1a, 28054, Madrid, Spain</b>		
Eurest Club de Campo, S.L.U.	Spain	100
Eurest Servicios FERIALES, S.L.U.	Spain	100
<b>Poligono Ugaldeguren 1, Parcela 7, 48160 Derio (Vizcaya), Spain</b>		
Eurest Euskadi S.L.U.	Spain	100
<b>Calle R, s/n, Mercapalma, 07007 Palma de Mallorca, Baleares, Spain</b>		
Compass Group Holdings Spain, S.L.U.	Spain	100
Levy Compass Group Holdings, S.L. (ii)	Spain	100
<b>Box 1222, 164 28, Kista, Sweden</b>		
Compass Group AB	Sweden	100
<b>c/o BDO AG, Industriestrasse 53 6312 Steinhausen, Switzerland</b>		
Creative New Food Dream Steam GmbH	Switzerland	100
<b>Oberfeldstrasse 14, 8302, Kloten, Switzerland</b>		
Eurest Services (Switzerland) AG	Switzerland	100
Royal Business Restaurants GmbH	Switzerland	100
<b>c/o Ueltschi Solutions GmbH, Gwattstrasse 8, CH-3185 Schmitten, Switzerland</b>		
Sevita AG (ii)	Switzerland	100
Sevita Group GmbH	Switzerland	100
<b>İçerenköy Mah. Yesil vadi sokak, No: 3 D: 9, 34752 Atasehir, Istanbul, Turkey</b>		
Euroserve Güvenlik A.Ş.	Turkey	100
<b>İçerenköy Mah. Yesil vadi sokak, No: 3 D: 10, 34752 Atasehir, Istanbul, Turkey</b>		
Euroserve Hizmet ve İşletmecilik A.Ş.	Turkey	100
<b>İçerenköy Mah. Yesil vadi sokak, No: 3 D: 13, 34752 Atasehir, Istanbul, Turkey</b>		
Turkaş Gıda Hizmet ve İşletmecilik A.Ş.	Turkey	100
<b>Dubai Airport Free Zone, Dubai, United Arab Emirates</b>		
Compass Camea FZE	UAE	100
<b>Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, B45 9PZ, United Kingdom</b>		
14Forty Limited (ii)	UK	100
Bateman Catering Limited (ii)(vii)	UK	100
Bateman Healthcare Services Limited (ii)	UK	100
Business Clean Limited (ii)	UK	100
Castle Independent Limited	UK	100
Caterskill Group Limited (ii)	UK	100
Caterskill Management Limited (ii)	UK	100
Chalk Catering Ltd (ii)	UK	100
Chartwells Limited (ii)	UK	100
Cleaning Support Services Limited (ii)	UK	100
Compass Experience Limited (ii)(vii)	UK	100
Compass Group Medical Benefits Limited (ii)	UK	100
Compass Mobile Catering Limited (ii)	UK	100



# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

Compass Payroll Services Limited (ii)	UK	100
Compass Purchasing Limited	UK	100
Compass Restaurant Properties Limited (ii)(vii)	UK	100
Compass Security Limited (ii)(vii)	UK	100
Compass Security Oldco Group Limited (ii)	UK	100
Compass Security Oldco Holdings Limited (ii)	UK	100
Compass Security Oldco Investments Limited (ii)	UK	100
Compass Services (Midlands) Limited (ii)	UK	100
Compass Services (U.K.) Limited	UK	100
Compass Staff Services Limited (ii)	UK	100
CRBS Resourcing Limited (ii)	UK	100
Cygnat Food Holdings Limited (ii)	UK	100
Cygnat Foods Limited	UK	100
Dine Contract Catering Limited	UK	100
Eaton Catering Limited (ii)	UK	100
Eaton Wine Bars Limited (ii)	UK	100
Eurest Airport Services Limited (ii)	UK	100
Eurest Offshore Support Services Limited (ii)(viii)	UK	100
Eurest Prison Support Services Limited (ii)	UK	100
Everson Hewett Limited (iii)(iv)	UK	100
Facilities Management Catering Limited (ii)	UK	100
Fairfield Catering Company Limited (ii)	UK	100
Fingerprint Managed Services Limited (ii)	UK	100
Goodfellows Catering Management Services Limited	UK	100
Gruppo Events Limited (ii)	UK	100
Hallmark Catering Management Limited (ii)	UK	100
Hamard Catering Management Services Limited (ii)(vii)	UK	100
Hamard Group Limited (ii)	UK	100
Hospital Hygiene Services Limited (ii)	UK	100
ICM Five Star Limited (ii)	UK	100
Integrated Cleaning Management Limited	UK	100
Integrated Cleaning Management Support Services Limited	UK	100
Keith Prowse Limited (ii)	UK	100
Knott Hotels Company of London (ii)	UK	100
Langston Scott Limited (ii)	UK	100
Leisure Support Services Limited (iii)(iv)	UK	100
Leith's Limited (ii)	UK	100
Letheby & Christopher Limited	UK	100
Meal Service Company Limited (ii)	UK	100
Milburns Catering Contracts Limited (ii)	UK	100
Milburns Restaurants Limited (ii)(iii)	UK	100
National Leisure Catering Limited (ii)	UK	100
NLC (Holdings) Limited (ii)	UK	100
NLC (Wembley) Limited (ii)	UK	100
P & C Morris Catering Group Limited (ii)	UK	100
Payne & Gunter Limited	UK	100
PDM Training and Compliance Services Limited (ii)	UK	100
Pennine Services Limited (ii)	UK	100
Peter Parfitt Leisure Overseas Travel Limited	UK	100
Peter Parfitt Sport Limited (ii)(vii)	UK	100
PPP Infrastructure Management Limited	UK	100
Reliable Refreshments Limited	UK	100
Roux Fine Dining Limited (ii)	UK	100
Security Office Cleaners Limited (ii)	UK	100
Solutions on Systems Ltd (ii)	UK	100

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

Sunway Contract Services Limited	UK	100
Sycamore Newco Limited	UK	100
The Bateman Catering Organization Limited (ii)(viii)	UK	100
The Cuisine Centre Limited (ii)	UK	100
Vendepac Holdings Limited (viii)	UK	100
Wembley Sports Arena Limited (ii)	UK	100
Woodin & Johns Limited	UK	100
<b>Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ, United Kingdom</b>		
Audrey (London) Limited (ii)	UK	100
Audrey Investments Limited (ii)	UK	100
Bateman Services Limited (ii)	UK	100
Compass Group Finance No.3 Limited	UK	100
Compass Group Finance No.5 Limited (ii)(xi)	UK	100
Compass Group North America Investments No.2	UK	100
Compass Group North America Investments Limited	UK	100
Compass Group Pension Trustee Company Limited (i)(ii)	UK	100
Compass Group Procurement Limited	UK	100
Compass Group Trustees Limited (i)(ii)	UK	100
Compass Healthcare Group Limited (i)(ii)(viii)	UK	100
Compass Hospitality Group Holdings Limited (i)(ii)	UK	100
Compass Hospitality Group Limited (ii)	UK	100
Compass Hotels Chertsey (iii)	UK	100
Compass Nominee Company Number Fourteen Limited (ii)	UK	100
Compass Overseas Holdings Limited (i)	UK	100
Compass Overseas Holdings No.2 Limited (i)	UK	100
Compass Overseas Services Limited (ii)	UK	100
Compass Pension Trustees Limited (i)(ii)	UK	100
Compass Quest Limited (i)(ii)	UK	100
Compass Secretaries Limited (i)(ii)	UK	100
Compass Site Services Limited (ii)(vii)	UK	100
Compass UK Pension Trustee Co Limited (i)(ii)	UK	100
Crisp Trustees Limited (i)(ii)	UK	100
Gogmore (ii)	UK	100
Meritglen Limited (ii)(vii)(viii)	UK	100
New Famous Foods Limited (ii)	UK	100
Nextonline Limited (iii)(iv)	UK	100
Riversdell (i)(ii)	UK	100
Sevita (UK) Limited	UK	100
The Compass Group Foundation	UK	100
The Excelsior Insurance Company Limited	UK	100
<b>Suite D, Pavilion 7 Kingshill Park, Venture Drive, Arnhill Business Park, Westhill, Aberdeenshire, AB32 6FL, United Kingdom</b>		
Coffee Partners Limited (ii)	UK	100
Compass Offshore Catering Limited (ii)(viii)	UK	100
Compass Scottish Site Services Limited (ii)	UK	100
Waseley (CVI) Limited (ii)	UK	100
Waseley (CVS) Limited (ii)	UK	100
<b>Wework, 119 Marylebone Road North West House, London, NW1 5PU, United Kingdom</b>		
Feedr Limited	UK	100
<b>8040 Excelsior Drive, Suite 400, Madison, WI 53717, USA</b>		
Ace Foods, Inc.	USA	100

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

##### 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833-3505, USA

Bon Appétit Management Company Foundation	USA	100
CulinArt of California, Inc.	USA	100

##### 211 E. 7th Street, Suite 620, Austin, TX 78701-3218, USA

Banco Restaurants of Texas LLC	USA	100
Levy Premium Foodservice, L.L.C. (ii)	USA	100
Morrison's Health Care of Texas, Inc.	USA	100
University Food Services, Inc.	USA	100

##### 2345 Rice Street, Suite 230, Roseville, MN 55113, USA

Canteen One Company, Inc.	USA	100
Canteen One Consolidation Services, LLC	USA	100
Canteen One, LLC	USA	100
Street Eats Limited	USA	100
Visinity, LLC	USA	100

##### 251 Little Falls Drive, Wilmington, DE 19808, USA

BenchWorks, Inc.	USA	100
Canteen One, Inc.	USA	100
CLS Par, LLC	USA	100
Compass LCS, LLC	USA	100
Compass LV, LLC	USA	100
Compass Paramount, LLC	USA	100
Concierge Consulting Services, LLC	USA	100
Convenience Foods International, Inc.	USA	100
Crothall Healthcare Inc.	USA	100
Crothall Laundry Services Inc.	USA	100
Eat Cloud LLC	USA	100
Eurest Services, Inc.	USA	100
Facilities Holdings, LLC	USA	100
Flik One, LLC	USA	100
Levy Oklahoma, Inc.	USA	100
Levy Prom Golf, LLC	USA	100
Morrison Investment Company, Inc.	USA	100
RAC Holdings Corp. (iii)	USA	100
Rank + Rally, LLC	USA	100
S-82 LLC	USA	100
SpenDifference LLC	USA	100
Touchpoint Support Services, LLC	USA	100
Unidine Lifestyles, LLC	USA	100
Unidine Nevada, LLC	USA	100
University Food Services, LLC	USA	100
Vendlink, LLC	USA	100
Yorkmont Four, Inc.	USA	100

##### 801 Adlai Stevenson Drive, Springfield, IL 62703, USA

Curiology, LLC	USA	100
E15, LLC	USA	100
Levy (Events) Limited Partnership	USA	100
Levy (IP) Limited Partnership	USA	100
Levy Food Service Limited Partnership	USA	100
Levy GP Corporation	USA	100
Levy Holdings GP, Inc.	USA	100
Levy Illinois Limited Partnership	USA	100
Levy Premium Foodservice Limited Partnership	USA	100

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

Levy R & H Limited Partnership	USA	100
Levy World Limited Partnership	USA	100
Professional Sports Catering, LLC	USA	100
Restaurant One Limited Partnership	USA	100
Superior Limited Partnership	USA	100
<b>7 St. Paul Street, Suite 820, Baltimore, MD 21202, USA</b>		
Bon Appétit Maryland, LLC	USA	100
<b>4000 Faber Place Drive STE. 300, North Charleston, SC 29405, USA</b>		
CGSC Capital, Inc.	USA	100
<b>501 Louisiana Avenue, Baton Rouge, LA 70802-5921, USA</b>		
Coastal Food Service, Inc.	USA	100
S.H.R.M. Catering Services, Inc.	USA	100
<b>80 State Street, Albany, NY 12207-2543, USA</b>		
Coffee Distributing Corp.	USA	100
CulinArt Group, Inc.	USA	100
CulinArt, Inc.	USA	100
Mazzone Hospitality, LLC	USA	100
Quality Food Management, Inc.	USA	100
RA Tennis Corp.	USA	100
RANYST, Inc.	USA	100
Restaurant Associates LLC	USA	100
Restaurant Associates, Inc.	USA	100
Restaurant Services Inc.	USA	100
<b>2626 Glenwood Avenue, Suite 550, Raleigh, NC 27608, USA</b>		
Compass 2K12 Services, LLC	USA	100
Compass HE Services, LLC	USA	100
Compass One, LLC	USA	100
Compass Two, LLC	USA	100
<b>2595 Interstate Drive, Suite 103, Harrisburg, PA 17110, USA</b>		
Crothall Facilities Management, Inc.	USA	100
Custom Management Corporation of Pennsylvania	USA	100
Morrison's Custom Management Corporation of Pennsylvania	USA	100
Newport Food Service, Inc.	USA	100
Williamson Hospitality Services, Inc.	USA	100
<b>50 West Broad Street, Suite 1330, Columbus, OH 43215, USA</b>		
Cuyahoga Dining Services, Inc.	USA	100
<b>40 Technology Pkwy South, #300, Norcross, GA 30092, USA</b>		
Food Services Management By Mgr, LLC	USA	100
Morrison Alumni Association, Inc.	USA	100
The M-Power Foundation, Inc.	USA	100
<b>221 Bolivar Street, Jefferson City, MO 65101, USA</b>		
Dynamic Vending, Inc.	USA	100
<b>Princeton South Corporate Ctr, Suite 160, 100 Charles Ewing Blvd, Ewing, NJ 08628, USA</b>		
Gourmet Dining, LLC	USA	100
<b>300 Deschutes Way SW, Suite 304, Tumwater, WA 98501, USA</b>		
Inter Pacific Management, Inc.	USA	100

# Compass Group Holdings PLC

## Notes to the accounts

For the year ended 30 September 2020 (continued)

### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

<b>2900 SW Wanamaker Drive, Suite 204, Topeka, KS 66614, USA</b>		
Myron Green Corporation	USA	100
PFM Kansas, Inc.	USA	100
Treat America Limited	USA	100
<b>8825 N. 23rd Avenue, Suite 100, Phoenix, AZ 85021, USA</b>		
Prodine, Inc.	USA	100
Sacco Dining Services, Inc.	USA	100
<b>2908 Poston Avenue, Nashville, TN 37203, USA</b>		
Southeast Service Corporation	USA	100
<b>1400 West Benson Blvd, Suite 370, Anchorage, AK 99503, USA</b>		
Statewide Services, Inc.	USA	100
<b>1709 North 19th Street, Suite 3, Bismarck, ND 58501-2121, USA</b>		
Compass ND, LLC	USA	100

<b>OTHER SUBSIDIARIES, JOINT ARRANGEMENTS, MEMBERSHIPS, ASSOCIATES AND OTHER SIGNIFICANT HOLDINGS</b>	<b>COUNTRY OF INCORPORATION OR ESTABLISHMENT</b>	<b>% HOLDING</b>
<b>Ground Floor 35 – 51 Mitchell Street, McMahon's Point, NSW 2060, Australia</b>		
ESS Eastern Guruma PTY Ltd	Australia	60
ESS NYFL PTY Ltd	Australia	60
<b>Level 3, 12 Newcastle Street, Perth 6000, Australia</b>		
ESS Thalanyji PTY Ltd	Australia	60
ESS Larrakia PTY Ltd	Australia	50
<b>30, 205 N. Narimanov avenue, Baku, AZ1065, Azerbaijan</b>		
ESS Support Services LLC	Azerbaijan	50
<b>12 Kodiak Crescent, Toronto, Ontario, M3J 3G5, Canada</b>		
Imperial Coffee and Services Inc. (iii)(iv)(v)	Canada	88
<b>1 Prologis Boulevard, Suite 400, Mississauga, Ontario, L5W 0G2, Canada</b>		
Chef's Hall, Inc. (iii)	Canada	67
Compass Group Sports and Entertainment – (Quebec) (x)	Canada	67
ECC – ESS Support Services (x)	Canada	50
2265668 Ontario Limited (iii)(iv)(v)(vi)(viii)	Canada	49
Amik Catering LP (x)	Canada	49
Dease River – ESS Support Services (x)	Canada	49
Dene West Limited Partnership (x)	Canada	49
ECC – Mi'kmaq Support Services (x)	Canada	49
ESS – DNDC Support Services (x)	Canada	49
ESS – East Arm Camp Services (x)	Canada	49
ESS – Kaatodh Camp Services (x)	Canada	49
ESS – Loon River Support Services (x)	Canada	49
ESS – Missanabie Cree Support Services (x)	Canada	49
ESS – Na Cho Nyak Dun Camp Services (x)	Canada	49
ESS – Ochapowace Support Services (x)	Canada	49
ESS – Pessamit Camp Services (x)	Canada	49
ESS – Wapan Manawan Services de Soutien (x)	Canada	49
ESS Haisla Support Services (x)	Canada	49
ESS HLFN Support Services (x)	Canada	49
ESS KNRA Support Services (x)	Canada	49
ESS Komatik Support Services (x)	Canada	49

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

ESS Liard First Nation Support Services (x)	Canada	49
ESS McKenzie Support Services (x)	Canada	49
ESS Okanagan Indian Band Support Services (x)	Canada	49
ESS Tataskweyak Camp Services (x)	Canada	49
ESS/Bushmaster Camp Services (x)	Canada	49
ESS/Fort a la Corne Support Services (x)	Canada	49
ESS/McLeod Lake Indian Band Support Services (x)	Canada	49
ESS/Mosakahiken Cree Nation Support Services (x)	Canada	49
ESS/Nuvumiut Support Services (x)	Canada	49
ESS/Takla Lake Support Services (x)	Canada	49
ESS/WEDC Support Services (x)	Canada	49
First North Catering (x)	Canada	49
KDM – ESS Support Services (x)	Canada	49
Mi'Kmaq-ECC Nova Scotia Support Services (x)	Canada	49
Nisga'a Village - ESS Support Services (x)	Canada	49
Poplar Point Camp Services (x)	Canada	49
Songhees Nation Support Services (x)	Canada	49
<b>30 Queen's Road, St. John's, Newfoundland and Labrador, A1C 2A5, Canada</b>		
Labrador Catering Inc. (iii)	Canada	49
Labrador Catering LP (x)	Canada	49
<b>Clearwater River Dene Nation Reserve No. 222, P.O. Box 5050, Clearwater, Saskatchewan, S0M 3H0, Canada</b>		
Clearwater Catering Limited (iii)(iv)(v)(vi)	Canada	49
<b>130 King Street West, Suite 1800, Toronto, Ontario, M5X 1E3, Canada</b>		
Umbrel Hospitality Group Inc. (iii)	Canada	49
<b>77 King Street West, No. 400, Toronto, Ontario, M5K 0A1, Canada</b>		
O&B Yonge Richmond LP*	Canada	33.4
<b>FO-110, Torshavn, Faroe Islands</b>		
P/F Eures Føroyar	Denmark	51
<b>Keskussairaalantie Opinkivi 2, 40600 Jyväskylä, Finland</b>		
Semma Oy	Finland	45
<b>Ruukinkatu 2-4 20540 Turku, Finland</b>		
Unica Oy	Finland	49
<b>123 Avenue de la République – Hall A, 92320 Châtillon, France</b>		
Sopregim SAS	France	80
<b>Le Puy Du Fou, 85590 Les Epesses, France</b>		
Puy Du Fou Restauration SAS	France	99.8
<b>Steenbeker Weg 25, 24106, Kiel, Germany</b>		
Lubinus – orgaMed Sterilgut GmbH	Germany	49
<b>HTC Aspire, 4th Floor (401) No. 19, Ali Asker Road, Bangalore, Karnataka, 560052, India</b>		
Bottle Lab Technologies Private Limited	India	75
<b>No. 407, 2nd Floor, 7th Cross, 1st D Main Road, Domlur Layout, Old Airport Road, Bengaluru, Karnataka, 560071, India</b>		
Nextup Technologies Private Limited	India	75
<b>Hamarikyu Kensetsu Plaza, 5-5-12, Tsukiji, Chuo-ku, Tokyo 104-0045, Japan</b>		
Chiyoda Kyushoku Services Co., Ltd	Japan	90

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

5-7-5, Chiyoda, Naka-ku, Nagoya-City, Aichi-Prefecture, 460-0012, Japan Seiyo General Food Co., Ltd	Japan	50
1-34-6, Sakura-Shinmachi, Setagaya-ku, Tokyo, 154-0015, Japan Highway Royal Co., Ltd.	Japan	50
060011, Atyrauskaya Oblast, Atyrau city, Beibarys Sultan avenue 506, Kazakhstan Eurest Support Services Company B LLP	Kazakhstan	50
060011, Old Airport Road 64, Atyrau City, Atyrau Oblast, Republic of Kazakhstan ESS Kazakhstan LLP	Kazakhstan	60
10A Rue Henri Schnadt, L-2530, Luxembourg Geria SA	Luxembourg	25
Level 18 The Gardena North Tower, Mid Valley City, Lingkaran Syed Putra, Kuala Lumpur, 59200, Malaysia EM-SSIS Services Sdn. Bhd. (ii)	Malaysia	42
Urusan Bakti Sdn. Bhd. (ii)	Malaysia	35
Suite 1301, 13th Floor, City Plaza Jalan Tebrau, 80300 Johor Bahru Johor, Malaysia Knusford Compass Sdn. Bhd.	Malaysia	49
1 Avenue Henri Dunant, Palais De La Scala, 3eme, Etage – No 1125, 98000 MC, Monaco Eurest Monaco S.A.	Monaco	99.99
Laarderhoogteweg 11, 1101 DZ, Amsterdam, Netherlands Compass Group International Coöperatief W.A. (x)	Netherlands	100
Compass Group International Coöperatief 2 W.A. (x)	Netherlands	100
Compass Group International Coöperatief 3 W.A. (x)	Netherlands	100
Compass Group International Finance C.V. (x)	Netherlands	100
Okesnoyveien 16, 1366, Lysaker, 1366, Norway Forplejningstjenester A/S	Norway	33.33
Harbitzalléen 2A, 0275 Oslo, PÅ Box 4148, Sjølyst, 0217 Oslo, Norway Gress-Gruppen A/S	Norway	33.33
c/o Warner Shand Lawyers Waigani, Level 1 RH Hypermarket, Allotment 1 Section 479 (off Kennedy Road), Gordons NCD, Papua New Guinea Eurest OKAS Catering Ltd (ii)	Papua New Guinea	55
Eurest Lotic (PNG) JV Ltd (ii)	Papua New Guinea	50
2 Floor, Al Mana Commercial Tower, C-Ring road, Doha, P O BOX 22481, Qatar Compass Catering Services WLL	Qatar	20
PO Box 31952, Al Khobar 31685 KSA, Saudi Arabia Compass Arabia LLC	Saudi Arabia	30
Calle Pinar de San José 98, Planta 1a, 28054, Madrid, Spain Gourmet on Wheels, S.L.U.	Spain	99
Office No. 204, Mawilah, Al Sharjah, P O Box: 1897, United Arab Emirates Abu Dhabi National Hotels – Compass LLC	UAE	50
Abu Dhabi National Hotels Company Building, Sheikh Rashid Bin Saeed Al Maktoum Street, Abu Dhabi, United Arab Emirates Abu Dhabi National Hotels Compass Middle East LLC	UAE	50
The Owner Saeed Ahmed Ghobash, Oud Metha, Street Bur Dubai, P.O. BOX 31769 Dubai, United Arab Emirates		

# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

Abu Dhabi National Hotels – Compass Emirates LLC	UAE	50
<b>Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, B45 9PZ, United Kingdom</b>		
Quaglino's Limited	UK	99
Quadrant Catering Limited (iii)(iv)	UK	49
<b>County Ground, Edgbaston, Birmingham, B5 7QU, United Kingdom</b>		
Edgbaston Experience Limited (iii)(iv)	UK	25
<b>The Oval, Kennington, London, SE11 5SS United Kingdom</b>		
Oval Events Holdings Limited (iv)(v)(vi)	UK	37.5
Oval Events Limited (iv)(v)(vi)	UK	37.5
<b>84 State Street, Boston, MA 02109, USA</b>		
Fame Food Management Inc.	USA	84
The Food Management Enterprise Corporation	USA	84
Levy Maryland, LLC	USA	74
<b>251 Little Falls Drive, Wilmington, DE 19808, USA</b>		
B & I Catering, LLC	USA	90
CMCA Catering, LLC	USA	90
HHP-MMS JVI, LLC	USA	90
PCHI Catering, LLC	USA	90
Wolfgang Puck Catering and Events, LLC	USA	90
WPL, LLC	USA	90
Community Living Holdings, LLC	USA	84
Coreworks, LLC	USA	84
Unidine Corporation	USA	84
Levy LA Concessions, LLC	USA	62.5
Learfield Levy Foodservice, LLC	USA	50
Restaurant Services I, LLC	USA	50
Parlay Solutions, LLC	USA	50
Thompson Facilities Services LLC	USA	49
Thompson Hospitality Services, LLC	USA	49
WP Casual Catering, LLC	USA	45
Chicago Restaurant Partners, LLC	USA	42
<b>2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833-3505, USA</b>		
C&B Holdings, LLC	USA	90
H & H Catering, L.P.	USA	90
Cosmopolitan Catering, LLC	USA	60
<b>2626 Glenwood Avenue, Suite 550, Raleigh, NC 27608, USA</b>		
Waveguide LLC	USA	57
<b>2215-B Renaissance Drive, Las Vegas, NV 89119, USA</b>		
GLV Restaurant Management Associates, LLC	USA	90
<b>211 E. 7th Street, Suite 620, Austin, TX 78701-3218, USA</b>		
Wolfgang Puck Catering & Events of Texas, LLC	USA	90
<b>980 N. Michigan Ave., Suite 400, Chicago, IL 60611, USA</b>		
Convention Hospitality Partners	USA	80
Atlanta Sports Catering	USA	50
Orlando Foodservice Partners	USA	50
<b>1400 West Benson Blvd, Suite 370, Anchorage, AK 99503, USA</b>		
KIJIK/ESS, LLC	USA	80
Statewide/GanaAYoo JV	USA	50



# Compass Group Holdings PLC

## Notes to the accounts

### For the year ended 30 September 2020 (continued)

#### 23. Details of related undertakings of Compass Group Holdings PLC (continued)

801 Adlai Stevenson Drive, Springfield, IL 62703, USA Park Concession Management, LLC	USA	50
40 Technology Pkwy South, #300, Norcross, GA 30092, USA Eversource LLC	USA	51
80 State Street, Albany, NY 12207-2543, USA RA Patina, LLC	USA	50
111 Eighth Avenue New York, NY 10011, USA RA Patina Management LLC	USA	50
Corporation Trust Centre, 1209 Orange Street, Wilmington, DE 19801, USA AEG Venue Management Holdings, LLC	USA	38
c/o Union Square Hospitality Group, LLC, 853 Broadway, 17th Floor, New York, NY, 10003 USA Hudson Yards Catering, LLC	USA	49
6055 Lakeside Commons Drive, Suite 440, Macon, GA 31210, USA Kimco Holdings, LLC (iv)	USA	24

#### NOTES

1. Unless otherwise stated, indirectly owned by Compass Group Holdings PLC, active status and ordinary shares issued.
2. In some of the jurisdictions where we operate, share classes are not defined and in these instances, for the purposes of disclosure, we have classified these holdings as ordinary.
3. A number of the companies listed are legacy companies which no longer serve any operational purpose.

#### CLASSIFICATIONS KEY

- (i) Directly owned by Compass Group Holdings PLC
- (ii) Dormant/non-trading
- (iii) A Ordinary shares
- (iv) B Ordinary shares
- (v) C Ordinary and/or Special shares
- (vi) D, E and/or F Ordinary shares
- (vii) Deferred shares
- (viii) Preference including cumulative, non-cumulative and redeemable shares
- (ix) Redeemable shares
- (x) No share capital, share of profits
- (xi) Limited by guarantee

**Company Registration No. ( )**

**Hospitality Holdings Limited**

**Annual Report and Financial Statements**

**For the year ended 30 September 2020**



# **Hospitality Holdings Limited**

## **Annual report and financial statements 2020**

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# **Hospitality Holdings Limited**

## **Annual report and financial statements 2020**

### **Officers and professional advisers**

#### **Directors**

D W Blakemore

K Witts

A R Yapp

#### **Secretary**

Compass Secretaries Limited

#### **Registered Office**

Compass House

Guildford Street

Chertsey

Surrey

KT16 9BQ

#### **Auditor**

KPMG LLP

15 Canada Square

London,

E14 5GL

# Hospitality Holdings Limited

## Strategic Report

The directors, in preparing this Strategic Report, have complied with section 414C of the Companies Act 2006 (CA 2006).

### Business review and principal activities

Hospitality Holdings Limited (the Company) is a wholly-owned subsidiary of Compass Group PLC. The Company acts as a holding and group financing company and the directors do not anticipate any changes in activities for the foreseeable future.

The results for the Company show a pre-tax loss for the year of £85,877,000 (2019: profit of £446,966,000) and net assets at 30 September 2020 of £3,084,412,000 (2019: £3,153,168,000).

The Company's directors believe that analysis using key performance indicators is not necessary for an understanding of the position of the Company. The performance of Compass Group PLC (the Group) is discussed in its Annual Report which does not form part of this Report. A copy of the Compass Group PLC Annual Report 2020 can be found on the Compass Group PLC website at [www.compass-group.com](http://www.compass-group.com) or from the Company Secretarial Department at Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ.

### Principal risks and uncertainties

Whilst the Group's operations continue to be disrupted by the COVID-19 pandemic we have successfully implemented action plans to mitigate a significant proportion of our cost base to preserve the profitability and liquidity of the Group. Our priority has also continued to be the health, safety and wellbeing of our employees and customers. Sites that are open are operating with enhanced health and safety protocols. Personal protective equipment requirements are in line with local government and public health guidance and there is a continued focus on mental health awareness.

A post-Brexit deal on trade and other issues was agreed in December 2020 between the UK and the EU. While there is clearly more for the UK and EU to work through, we believe that the deal as agreed, coupled with our own contingency planning, means we do not expect any material financial or operational impact resulting from Brexit. We are confident that we can continue supporting and delivering great services for our UK and international clients and consumers.

Hospitality Holdings Limited has only intra-group investments and balances, no third party debt and hence no external interest rate exposure. Certain investments in subsidiary undertakings and intra-group balances are denominated in foreign currency. The Company has the potential to hedge account for some of its currency borrowings against equity investments and any gain or loss associated with the translation of residual balances is taken to the profit and loss account.

From the perspective of the Company, the principal risks and uncertainties are integrated with the principal risks of the Group and are not managed separately. The principal risks of the Group are discussed in Compass Group PLC's Annual Report 2020 and as subsequently updated in its 2021 half year results announcement which does not form part of this Report. Both of these documents can be viewed on the Compass Group PLC website [www.compass-group.com](http://www.compass-group.com).

### Section 172(1) Statement

Section 172 of the Companies Act 2006 requires a director of a company to act in the way he or she considers, in good faith, would most likely promote the success of the Company for the benefit of its members as a whole. In doing this, section 172 requires directors to have regard to, amongst other matters, the:

- likely consequences of any decisions in the long-term;
- interests of the company's employees;
- need to foster the company's business relationships with suppliers, customers and others;
- impact of the company's operations on the community and environment;
- desirability of the company maintaining a reputation for high standards of business conduct; and
- need to act fairly as between members of the company.

In discharging their duties under section 172 the directors have regard to both the factors set out above and others that may be considered relevant to the decisions being made. The directors acknowledge that every decision made will not necessarily result in a positive outcome for all of the Company's stakeholders. By considering the Company's purpose,

# Hospitality Holdings Limited

## Strategic Report (continued)

### Section 172(1) Statement (continued)

vision and values together with its strategic priorities and having a process in place for decision-making, the directors aim to ensure that Board decisions are consistent and predictable.

As is normal for large companies, the directors delegate authority for day-to-day management of the Company to executives engaged in setting, approving and overseeing the execution of the business strategy and related policies of the Compass Group PLC group of companies. While there are cases where the board itself judges that it should engage directly with certain stakeholder groups or on certain issues, the size and spread of both our stakeholders and the Group means that generally stakeholder engagement best takes place at an operational or Group level. The directors consider that as well as being a more efficient and effective approach, this also helps achieve a greater positive impact on environmental, social and other issues than by working alone as an individual company. How the Group engages with its stakeholders is described on pages 28 and 29 of the Compass Group PLC Annual Report and Accounts 2020 (the ARA).

As the principal activity of the Company is to act as a holding and financing company for other entities in the Group, the Company has had no commercial business, and no employees, customers or suppliers other than other Group companies during the period and as such the breadth of stakeholder and other considerations that would often apply in operating or commercial trading companies have generally not applied to the decisions made by the directors.

### Going Concern

After making enquiries and receiving a letter of support from the ultimate parent company, Compass Group PLC, the directors have a reasonable expectation that the Company, as part of the Compass Group, has adequate resources to continue in existence for the 12 months from the date of this Report. For this reason, the directors continue to adopt the going concern basis in preparing the accounts.

Approved by the Board of Directors and signed on behalf of the Board



K Witts  
Director  
24 June 2021

Hospitality Holdings Limited  
Registered in England and Wales No. 03960462

# Hospitality Holdings Limited

## Directors' Report

The directors present their Annual report and the audited financial statements for the year ended 30 September 2020.

### Dividends

The directors do not propose a final dividend for the year ended 30 September 2020 (2019: £nil). The Company did not pay any interim dividends to the Parent Company during the year (2019: £432,392,000). Further details are set out in Note 10 on page 17.

### Directors

The following served as directors and were in office at the date of signing the Report and Financial Statements:

D W Blakemore  
K Witts  
A R Yapp

### Directors' qualifying third party indemnity

A qualifying third party indemnity provision as defined in section 234(2)-(6) of the CA 2006 (CA 2006) is and was in full force and effect for the benefit of each of the directors of the Company, both at the date of this Report and throughout the financial year to which this Report relates.

### Post balance sheet events

A post-Brexit deal on trade and other issues was agreed in December 2020 between the UK and the EU. While there is clearly more for the UK and EU to work through, we believe that the deal as agreed, coupled with our own contingency planning, means we do not expect any material financial or operational impact resulting from Brexit.

### Employee Engagement

The Company does not have employees of its own, but is a parent company within a Group that has over 250 UK employees. The Company and the Group places importance on employee engagement, keeping employees regularly informed on matters of concern to them as employees, issues affecting their performance, and promoting a common awareness of the financial and economic factors affecting the performance of the Company. Feedback from employee engagement informs the directors' decision making processes, and those decisions taken and policies made on a wider Group basis. For further information on how the Group engages with employees globally see pages 28 to 29, 51 to 57, 84 to 87 and 157 to 158 of the ARA.

### Business Relationships

The Company has limited engagement with external parties such as suppliers, clients, consumers and others. In the limited circumstances where the Company does interact with external business partners, in line with the Group's policies and procedures, the directors promote and ensure the highest standards of ethical behaviour and probity in the Company's business dealings. For further information on how the Group fosters business relationships with its business partners see pages 28 and 29 of the ARA.

### Directors' disclosure of information to auditor

Each of the persons who is a director at the date of approval of this Report confirms that:

- the directors have permitted the auditor to undertake whatever inspections it considers to be appropriate for the purpose of enabling the auditor to give its audit opinion
- the director has taken all the steps that he/she ought to have taken as a director in order to make himself/herself aware of any relevant audit information and to establish that the Company's auditor is aware of that information

This confirmation is given and should be interpreted in accordance with the provisions of section 418 of the CA 2006.

# **Hospitality Holdings Limited**

## **Directors' Report (continued)**

### **Auditor**

In accordance with the provisions of section 485(2) of the CA 2006, the current appointment of KPMG LLP as the Company's auditor will end at the conclusion of the current period for appointing auditors.

Pursuant to Section 487 of the CA 2006, the auditor will be deemed to be reappointed and KPMG LLP will therefore continue in office.

Approved by the Board of Directors and signed on behalf of the Board



K Witts  
Director

24 June 2021

Hospitality Holdings Limited  
Registered in England and Wales No. 03960462



# Hospitality Holdings Limited

## Directors' Responsibilities Statement

The directors are responsible for preparing the Strategic Report, the Directors' Report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law they have elected to prepare the financial statements in accordance with UK Accounting Standards and applicable law (UK Generally Accepted Accounting Practice), including FRS 101 *Reduced Disclosure Framework*.

Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the Company and of the profit or loss of the Company for that period. In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently
- make judgements and estimates that are reasonable, relevant, reliable and prudent
- state whether applicable UK accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements
- assess the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern; and
- use the going concern basis of accounting unless they either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the Company's transactions and disclose with reasonable accuracy at any time the financial position of the Company and enable them to ensure that the financial statements comply with the CA 2006. They are responsible for such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error, and have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the company and to prevent and detect fraud and other irregularities.

On behalf of the Board



K Witts  
Director

24 June 2021

# **Independent Auditor's Report to the Members of Hospitality Holdings Limited**

## **Opinion**

We have audited the financial statements of Hospitality Holdings Limited (the Company) for the year ended 30 September 2020 which comprise:

- the Profit and loss account;
- Balance sheet;
- Statement of changes in equity; and
- Related notes, including the accounting policies in note 1.

In our opinion the financial statements:

- give a true and fair view of the state of the Company's affairs as at 30 September 2020 and of its loss for the year then ended;
- have been properly prepared in accordance with UK accounting standards, including FRS 101 *Reduced Disclosure Framework*; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

## **Basis for opinion**

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities are described below. We have fulfilled our ethical responsibilities under, and are independent of the Company in accordance with UK ethical requirements including the FRC Ethical Standard. We believe that the audit evidence we have obtained is a sufficient and appropriate basis for our opinion.

## **Going concern**

The directors have prepared the financial statements on the going concern basis as they do not intend to liquidate the Company or to cease its operations, and as they have concluded that the Company's financial position means that this is realistic. They have also concluded that there are no material uncertainties that could have cast significant doubt over its ability to continue as a going concern for at least a year from the date of approval of the financial statements (the going concern period).

We are required to report to you if we have concluded that the use of the going concern basis of accounting is inappropriate or there is an undisclosed material uncertainty that may cast significant doubt over the use of that basis for a period of at least a year from the date of approval of the financial statements. In our evaluation of the directors' conclusions, we considered the inherent risks to the company's business model and analysed how those risks might affect the Company's financial resources or ability to continue operations over the going concern period. We have nothing to report in these respects.

However, as we cannot predict all future events or conditions and as subsequent events may result in outcomes that are inconsistent with judgements that were reasonable at the time they were made, the absence of reference to a material uncertainty in this auditor's report is not a guarantee that the Company will continue in operation.

## **Strategic Report and Directors' Report**

The directors are responsible for the Strategic Report and the Directors' Report. Our opinion on the financial statements does not cover these reports and we do not express an audit opinion thereon.

Our responsibility is to read the Strategic Report and the Directors' Report and, in doing so, consider whether, based on our financial statements audit work, the information therein is materially misstated or inconsistent with the financial statements or our audit knowledge. Based solely on that work:

- we have not identified material misstatements in the Strategic Report and the Directors' Report;
- in our opinion the information given in those reports for the financial year is consistent with the financial statements; and
- in our opinion those reports have been prepared in accordance with the Companies Act 2006.

# **Independent Auditor's Report to the Members of Hospitality Holdings Limited (continued)**

## **Matters on which we are required to report by exception**

Under the Companies Act 2006 we are required to report to you if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit.

We have nothing to report in these respects.

## **Directors' responsibilities**

As explained more fully in their statement set out on page 6, the directors are responsible for: the preparation of the financial statements and for being satisfied that they give a true and fair view; such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error; assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern; and using the going concern basis of accounting unless they either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

## **Auditor's responsibilities**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue our opinion in an auditor's report. Reasonable assurance is a high level of assurance, but does not guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

A fuller description of our responsibilities is provided on the FRC's website at [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities).

## **The purpose of our audit work and to whom we owe our responsibilities**

This Report is made solely to the Company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the Company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company's members, as a body, for our audit work, for this Report, or for the opinions we have formed.



**John Withington (Senior Statutory Auditor)**

**for and on behalf of KPMG LLP, Statutory Auditor**

*Chartered Accountants*

15 Canada Square

London

E14 5GL

25 June 2021

# Hospitality Holdings Limited

## Profit and loss account

For the year ended 30 September 2020

	Note	2020 £'000	2019 £'000
Other operating income	4	321	228
Other operating expenses	5	(4,386)	(437)
Provision against investment in subsidiary undertaking	12	(61)	(79)
Exchange gain		34	1,223
<b>Operating (loss)/profit</b>		<b>(4,092)</b>	<b>935</b>
Income from shares in Group undertakings	6	-	532,392
Interest receivable and similar income	7	45,677	56,717
Interest payable and similar expenses	8	(127,462)	(143,078)
<b>(Loss)/profit before taxation</b>		<b>(85,877)</b>	<b>446,966</b>
Tax credit on profit	9	17,121	15,960
<b>(Loss)/profit for the financial year after taxation</b>		<b>(68,756)</b>	<b>462,926</b>

All amounts in the current and prior year relate to continuing activities.

There are no recognised gains or losses for the current year other than those dealt with in the profit and loss account. Accordingly, no separate statement of other comprehensive income has been presented.

# Hospitality Holdings Limited

## Balance sheet

As at 30 September 2020

	Notes	2020 £'000	2019 £'000
<b>Fixed assets</b>			
Right of use assets	11	-	-
Investments	12	8,404,945	8,405,006
		<u>8,404,945</u>	<u>8,405,006</u>
<b>Current assets</b>			
Debtors: amounts falling due after more than one year	13	410	73
Debtors: amounts falling due within one year	14	854,180	1,151,748
Cash at bank and in hand		265	190
		<u>854,855</u>	<u>1,152,011</u>
<b>Current liabilities</b>			
Creditors: amounts falling due within one year	15	(6,171,231)	(6,403,849)
Short term discounted lease liabilities		(401)	-
		<u>(5,316,777)</u>	<u>(5,251,838)</u>
<b>Net current liabilities</b>			
<b>Non-Current liabilities</b>			
Long term discounted lease liabilities		(3,756)	-
		<u>(3,756)</u>	<u>-</u>
<b>Total assets less total liabilities</b>		<u>3,084,412</u>	<u>3,153,168</u>
<b>Capital and reserves</b>			
Called up share capital	16	3,088,504	3,088,504
Profit and loss account		(4,092)	64,664
		<u>3,084,412</u>	<u>3,153,168</u>
<b>Shareholders' Funds</b>			
		<u>3,084,412</u>	<u>3,153,168</u>

The financial statements of Hospitality Holdings Limited (registered number 03960462) were approved by the Board of Directors on 24 June 2021.

Signed on behalf of the Board of Directors.



K Witts  
Director

# Hospitality Holdings Limited

## Statement of changes in equity For the year ended 30 September 2020

	Note	Called up share capital £'000	Profit and loss account £'000	Total £'000
At 1 October 2018		3,088,504	34,130	3,122,634
Profit for the year		-	462,926	462,926
Dividends paid	10	-	(432,392)	(432,392)
<b>At 30 September 2019</b>		<b>3,088,504</b>	<b>64,664</b>	<b>3,153,168</b>
Loss for the year		-	(68,756)	(68,756)
<b>At 30 September 2020</b>		<b>3,088,504</b>	<b>(4,092)</b>	<b>3,084,412</b>

*The notes on pages 12 to 38 form part of these financial statements*

# Hospitality Holdings Limited

## Notes to the accounts

### For the year ended 30 September 2020

#### 1. Accounting policies

The Company is a private company and is incorporated and domiciled in the UK. The registered number is 03960462 and the address of its registered office is: Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ.

The significant accounting policies adopted in the preparation of the financial statements of the Company are set out below.

#### Basis of preparation

These financial statements have been prepared in accordance with the historical cost convention, Financial Reporting Standard 101 Reduced Disclosure Framework (FRS 101), and in accordance with applicable United Kingdom laws. The Company is exempt from the requirement to prepare consolidated financial statements as a subsidiary of Compass Group PLC, a Company registered in the United Kingdom and the ultimate parent which prepares consolidated financial statements (section 400 CA 2006). In preparing these financial statements, the Company applies the recognition, measurement and disclosure requirements of International Financial Reporting Standards as adopted by the EU (Adopted IFRSs), but makes amendments where necessary in order to comply with the CA 2006 and has set out below where advantage of the FRS 101 disclosure exemptions has been taken. These financial statements thus present information about the Company as an individual undertaking not as a Group undertaking.

In these financial statements, the Company has applied the exemptions under FRS 101 in respect of the following disclosures:

- a cash flow statement and related notes
- disclosures in respect of transactions with wholly owned subsidiaries
- the effect of new but not yet effective IFRSs; and
- disclosures in respect of compensation of Key Management Personnel

The accounting policies set out below have, unless otherwise stated, been applied consistently to all periods presented in these financial statements.

#### Going concern

Notwithstanding the current economic uncertainties arising from the COVID-19 outbreak and the net current liabilities as at 30 September 2020 of £5,316,777,000, the financial statements have been prepared on a going concern basis which the directors consider to be appropriate for the following reason:

- Compass Group PLC has indicated its intention to continue to make available funds as needed by the Company for a period of twelve months from the date of approval of the financial statements.

Consequently, the directors are confident that the Company will have sufficient funds to continue to meet its liabilities as they fall due for at least twelve months from the date of approval of the financial statements and therefore have prepared the financial statements on a going concern basis.

As with any company placing reliance on other group entities for financial support, the directors acknowledge that there can be no certainty that this support will continue although, at the date of approval of these financial statements, they have no reason to believe that it will not do so.

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 1. Accounting policies (continued)

#### Adoption of new Accounting Standards

The Company has applied the new accounting standard IFRS 16 'Leases' using the modified retrospective transition approach, therefore the comparative information has not been restated and continues to be reported under IAS 17 'Leases'.

#### Investments

Investments are stated at cost together with subsequent capital contributions, less any provision for impairment in value. In the opinion of the directors the value of such investments are not less than shown at the balance sheet date.

Investment income is measured at the fair value of the consideration received or receivable. It represents dividend income which is recognised when the right to receive payment is established.

#### Foreign currencies

Transactions in foreign currencies are translated to the Company's functional currency (sterling) at the foreign exchange rates ruling at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies at the balance sheet date are retranslated to sterling at the foreign exchange rates ruling at that date. Non-monetary assets and liabilities that are measured in terms of the historical cost in foreign currency are translated using the exchange rate at the date of the transaction. Non-monetary assets and liabilities denominated in foreign currency that are stated at fair value are retranslated to the sterling at the foreign exchange rates ruling at the dates that the fair value was determined. Foreign exchange differences arising on translation are recognised in the profit and loss account.

#### Financial instruments

Financial assets and financial liabilities are recognised when the Company becomes a party to the contractual provisions and derecognised when it ceases to be party to such provisions. Such assets and liabilities are classified as current if they are expected to be realised or settled within 12 months of the balance sheet date. If not, they are recognised as non-current.

Financial assets and liabilities are initially recorded at fair value including, where permitted by IFRS 9, any directly attributable transaction costs. For those financial assets that are not subsequently held at fair value, the Company assesses whether there is evidence of impairment at each balance sheet date.

The Company classifies its financial assets and liabilities into the following categories:

- financial assets and liabilities at amortised cost,
- financial assets and liabilities at fair value through profit and loss.

Where financial assets or liabilities are eligible to be carried at either amortised cost or fair value the Company does not apply the fair value option.

Amounts owed by Group undertakings are initially measured at fair value and are subsequently reported at amortised cost. Allowance losses on intercompany receivables are calculated by reviewing 12-month expected credit losses using historic and forward-looking data on credit risk.

Amounts owed to Group undertakings are initially measured at fair value and are subsequently reported at amortised cost.

Non-interest bearing payables are stated at their nominal value as they are due on demand.



# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 1. Accounting policies (continued)

#### Financial guarantees

Where the Company enters into financial guarantee contracts to guarantee the indebtedness of other companies within its group, the Company considers these to be insurance arrangements and accounts for them as such. In this respect, the Company treats the guarantee contract as a contingent liability until such time as it becomes probable that the Company will be required to make a payment under the guarantee.

#### Leases

At the inception of a contract, the Company assesses whether a contract is, or contains, a lease. A contract is, or contains, a lease if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration. Control is conveyed where the Company has both the right to direct the identified asset's use and to obtain substantially all the economic benefits from that use. The Company allocates the consideration in the contract to each lease and non-lease component. The non-lease component, where it is separately identifiable, is not included in the right of use asset.

When a lease is recognised in a contract, the Company recognises a right of use asset and a lease liability at the lease commencement date. The Company recognises a right of use asset and a corresponding lease liability with respect to all lease arrangements in which it is the lessee, except for leases of low value assets with an initial fair value less than approximately £5,000 and short term leases of 12 months or less. For these leases, the lease rentals are charged to the income statement as an operating expense on a straight line basis over the period of the lease.

The right of use asset is initially measured at cost, comprising the initial lease liability adjusted for any lease payments already made, plus any initial direct costs incurred and an estimate of restoration costs, less any lease incentives received. The right of use asset is subsequently depreciated on a straight line basis over the shorter of the lease term or the useful life of the underlying asset. The estimated useful lives of right of use assets are determined on the same basis as those of property, plant and equipment. The right of use asset is tested for impairment if there are any indicators of impairment.

The lease liability is measured at the present value of the lease payments that are reasonably certain and not paid at the commencement date, discounted at the Group's incremental borrowing rate specific to the term, country and start date of the lease. The lease liability is subsequently measured at amortised cost using the effective interest rate method. The lease liability is remeasured, with a corresponding adjustment to the right of use asset, by discounting the revised lease payments as follows:

- using the initial discount rate at the inception of the lease when lease payments change as a result of changes to residual value guarantees and changes in an index other than a floating interest rate
- using a revised discount rate when lease payments change as a result of the Group's reassessment of whether it is reasonably certain to exercise a purchase, extension or termination option, changes in the lease term or as a result of a change in floating interest rates

The lease term is the non-cancellable period beginning at the contract commencement date plus periods covered by an option to extend the lease, if it is reasonably certain that the Group will exercise the option, and periods covered by an option to terminate the lease, if it is reasonably certain that the Group will not exercise this option.

Variable lease payments that are not included in the measurement of the lease liability are recognised in the consolidated income statement in the period in which the event or condition that triggers payment occurs.

No reassessment was performed as to whether existing contracts are, or contain, a lease at the date of initial application.

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 1. Accounting policies (continued)

#### Taxation

Current tax is the expected tax payable on the taxable income for the accounting period, using tax rates that have been enacted or substantively enacted by the balance sheet date.

Deferred tax is provided at the anticipated rates on temporary differences arising from the inclusion of items of income and expenditure in tax computations in periods different from those in which they are included in the financial statements. Deferred tax assets are recognised to the extent that it is regarded as more likely than not that they will be recovered.

### 2. Auditor's remuneration

Fees of £3,000 (2019: £3,000) were received by the auditor in respect of the Company's statutory audit for the current and preceding years. These fees were borne and not recharged by another Group company.

No fees were received by the auditor in respect of any non-statutory audit services in either the current or preceding year.

### 3. Directors and employees

The directors received no emoluments from the Company during the current year (2019: £nil). There are no employees of Hospitality Holdings Limited (2019: none).

### 4. Other operating income

	2020 £'000	2019 £'000
Rent receivable	321	228
	<u>321</u>	<u>228</u>

### 5. Other operating expenses

	2020 £'000	2019 £'000
Rent payable	-	437
Depreciation of right of use assets – leased land and buildings	252	-
Impairment losses – contract related non-current assets	4,049	-
Provision for doubtful trade receivables	85	-
	<u>4,386</u>	<u>437</u>

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 6. Income from shares in Group undertakings

	2020 £'000	2019 £'000
Dividends received from subsidiary companies: Compass Group Holdings PLC	-	532,392
	<u>-</u>	<u>532,392</u>

Income from shares in Group undertakings is recognised on the date that the dividend is declared.

### 7. Other interest receivable and similar income

	2020 £'000	2019 £'000
Interest receivable from other Group companies	45,677	56,717
	<u>45,677</u>	<u>56,717</u>

### 8. Interest payable and similar expenses

	2020 £'000	2019 £'000
Interest payable to other Group companies	127,188	143,078
Interest payable on lease liabilities	274	-
	<u>127,462</u>	<u>143,078</u>

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 9. Tax credit on profit on ordinary activities

	2020 £'000	2019 £'000
UK corporation tax at 19.0% (2019: 19.0%)	20,075	14,261
Deferred tax	337	36
Current tax charge on ordinary activities	20,412	14,297
Adjustments in respect of prior years: UK corporation tax	(3,291)	1,663
<b>Tax credit on profit on ordinary activities</b>	<b>17,121</b>	<b>15,960</b>

### Reconciliation of the tax credit to the tax (charge)/credit at the UK statutory rate

	2020 £'000	2019 £'000
(Loss)/profit on ordinary activities before tax	(85,877)	446,966
Tax credit/(charge) on profit at the UK statutory rate of 19.0% (2019: 19.0%)	16,317	(84,924)
Increase/(decrease) resulting from:		
Permanent items	(355)	(7,889)
Impact of difference between current and deferred tax rates	-	(3)
Adjustments in respect of prior years	(3,291)	1,663
Transfer pricing adjustment	4,450	5,959
Non-taxable income from other Group companies	-	101,154
<b>Tax credit on loss/profit on ordinary activities</b>	<b>17,121</b>	<b>15,960</b>

### 10. Dividends

Interim dividends paid to the parent company on Ordinary shares of £1 each comprise:

Date of payment	Currency	Currency '000	Per share (pence)	2020 £'000	2019 £'000
5 September 2019	Euro	200,000	8.53	-	181,851
5 September 2019	US Dollar	302,203	5.47	-	250,541
				-	432,392

No final dividends were declared (2019: £nil).

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 11. Leases

The Company's lease portfolio consists of office premises. Lease terms are negotiated on an individual basis and contain a broad range of terms and conditions.

	Total £'000
Right of use assets	
At 1 October 2019	4,301
Depreciation expense	(252)
Impairment	(4,049)
At 30 September 2020	<u>-</u>

Impairment losses of £4,049,000 were recognised on right of use assets during the year (2019: £nil). Of which, £1,484,000 reflects a reduced forecast cash flow assumption due to an onerous lease and £2,565,000 reflects a reduced forecast cash flow assumption as a result of the COVID-19 pandemic. The interest expense on lease liabilities for the year ended 30 September 2020 is detailed in note 8.

	2020 £'000	2019 £'000
Un-discounted lease liability maturity analysis		
Less than 1 year	418	418
Between 1 and 5 years	1,672	1,672
Over 5 years	4,738	5,292
Total un-discounted lease liabilities	<u>6,828</u>	<u>7,382</u>

Balances relate to land and buildings operating leases for St James House, Horsefair, Birmingham expiring in 2034 and Coach and Horses, Trumpington, Cambridge, which expires in 2040.

### 12. Investments

	Investment in subsidiary companies £'000
Cost	
At 1 October 2019	8,407,271
Additions	-
At 30 September 2020	<u>8,407,271</u>
Provisions	
At October 2019	(2,265)
Provisions made in the year	(61)
At 30 September 2020	<u>(2,326)</u>
Net Book Amount	
At 1 October 2019	<u>8,405,006</u>
At 30 September 2020	<u>8,404,945</u>

During the year, the Company made an impairment provision against its subsidiary investment, Quaglino's Limited, of £60,553. Details of related undertakings of Hospitality Holdings Limited can be found in note 19, on page 20.

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 13. Debtors: amounts falling due after more than one year

	2020 £'000	2019 £'000
<b>Deferred tax</b>		
UK tax losses	410	73
	<u>410</u>	<u>73</u>

Deferred tax has been provided in accordance with the accounting policy shown in note 1.

There is no unprovided deferred tax (2019: nil). The potential tax liabilities which might arise in the event of the unappropriated profits or reserves of overseas subsidiary companies have not been disclosed as there is no intention to distribute such profits or reserves.

The movement on deferred tax is as follows:

	£'000
<b>At 1 October 2019</b>	73
Credited to profit and loss account	337
<b>At 30 September 2020</b>	<u>410</u>

### 14. Debtors: amounts falling due within one year

	2020 £'000	2019 £'000
Loans owed by fellow Group undertakings	-	303,759
Amounts owed by fellow Group undertakings	834,105	833,728
Trade receivables	85	-
Provision for doubtful trade receivables	(85)	-
Corporation tax recoverable	20,075	14,261
	<u>854,180</u>	<u>1,151,748</u>

The loans owed by fellow Group undertakings comprised of preference shares with COH Ireland Investments Unlimited Company. During the year, the preference shares were redeemed in full.

### 15. Creditors: amounts falling due within one year

	2020 £'000	2019 £'000
Amounts owed to fellow Group undertakings	<u>6,171,231</u>	<u>6,403,849</u>

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 16. Called up share capital

	2020 £'000	2019 £'000
Allotted, called up and fully paid		
3,088,504,208 Ordinary shares of £1 each	<u>3,088,504</u>	<u>3,088,504</u>

### 17. Ultimate parent company

The immediate and ultimate parent undertaking as at 30 September 2020 was Compass Group PLC, a company incorporated in England and Wales.

Compass Group PLC, is the parent undertaking of the largest of undertakings for which Group accounts are drawn up. Copies of the Compass Group PLC financial statements are available from its registered address: Compass House, Guildford Street, Chertsey, Surrey KT16 9BQ or from the Compass Group PLC website at [www.compass-group.com](http://www.compass-group.com).

### 18. Post balance sheet events

A post-Brexit deal on trade and other issues was agreed in December 2020 between the UK and the EU. While there is clearly more for the UK and EU to work through, we believe that the deal as agreed, coupled with our own contingency planning, means we do not expect any material financial or operational impact resulting from Brexit.

### 19. Details of related undertakings of Hospitality Holdings Limited

Details of Hospitality Holdings Limited's investments can be found in note 12 on page 18.

All companies listed below are owned by the Company and all interests are in the ordinary share capital, except where otherwise indicated. All companies operate principally in their country of incorporation.

PRINCIPAL SUBSIDIARIES	COUNTRY OF INCORPORATION	% HOLDING	PRINCIPAL ACTIVITIES
Ground Floor 35 - 51 Mitchell Street, McMahon's Point, NSW 2060, Australia Compass Group (Australia) Pty Limited	Australia	100	Food and support services
Chaussée de Haecht 1179, B-1130 Bruxelles, Belgium Compass Group Belgilux S.A.	Belgium	100	Food services
Rua Tutoia, 119, Vila Mariana, São Paulo, 04007-000, Brazil GR Serviços e Alimentação Ltda.	Brazil	100	Food and support services
1 Prologis Boulevard, Suite 400, Mississauga, Ontario L5W 0G2, Canada Compass Group Canada Ltd. Groupe Compass Canada Ltée (iii)(iv)(v)(vi)(viii)	Canada	100	Food and support services
Av. del Valle 787, 5th floor, Huechuraba, Santiago, Chile Compass Catering Y Servicios Chile Limitada	Chile	100	Food and support services
Rued Langgards Vej 8, 1. sal, 2300 København S, DK, Denmark Compass Group Danmark A/S	Denmark	100	Food services
P.O. Box 210, FI-00281 Helsinki, Finland Compass Group FS Finland Oy	Finland	100	Food services
123 Avenue de la République – Hall A, 92320 Châtillon, France Compass Group France Holdings SAS Compass Group France SAS	France France	100 100	Holding company Food and support services

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

<b>Helfmann-Park 2, 65760, Eschborn, Germany</b>			
Compass Group Deutschland GmbH	Germany	100	Holding company
Eurest Deutschland GmbH	Germany	100	Food service to business and industry
Eurest Services GmbH	Germany	100	Support services to business and industry
Medirest GmbH & Co OHG	Germany	100	Food service to the healthcare and senior living market
<b>Via Angelo Scarsellini, 14, 20161, Milano, Italy</b>			
Compass Group Italia S.p.A.	Italy	100	Food and support services
<b>Hamarikyu Kensetsu Plaza, 5-5-12, Tsukiji, Chuo-ku, Tokyo 104-0045, Japan</b>			
Seiyo Food-Compass Group, Inc.	Japan	100	Food and support services
<b>Laarderhoogtweg 11, 1101 DZ, Amsterdam, Netherlands</b>			
Compass Group International B.V.	Netherlands	100	Holding company
Compass Group Nederland B.V.	Netherlands	100	Food and support services
Compass Group Nederland Holding B.V.	Netherlands	100	Holding company
<b>Drengsrudbekken 12, 1383, PO Box 74, NO-1371, Asker, Norway</b>			
Compass Holding Norge A/S	Norway	100	Holding company
<b>Calle Pinar de San José 98 planta 1º 28054 Madrid, Spain</b>			
Eurest Colectividades S.L.U.	Spain	100	Food and support services
<b>Box 1222, 164 28, Kista, Sweden</b>			
Compass Group Sweden AB	Sweden	100	Holding company
<b>Box 30170, 104 25 Stockholm, Sweden</b>			
Compass Group FS Sweden AB	Sweden	100	Food services
<b>Oberfeldstrasse 14, 8302, Kloten, Switzerland</b>			
Compass Group (Schweiz) AG	Switzerland	100	Food and support services
Restorama AG	Switzerland	100	Food service
<b>İçlerenköy Mah. Yeşil vadi sokak, No: 3 D: 12-13-14, 34752 Atasehir, Istanbul, Turkey</b>			
Sofra Yemek Üretim Ve Hizmet A.Ş. (iii)	Turkey	100	Food and support services
<b>Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, B45 9PZ, United Kingdom</b>			
Compass Contract Services (U.K.) Limited	UK	100	Food and support services
Compass Group, UK and Ireland Limited	UK	100	Holding company
Foodbuy Europe Limited (iii)(iv)	UK	100	Client procurement services management in the UK
<b>Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ, United Kingdom</b>			
Compass Group Holdings PLC (i)(iii)	UK	100	Holding company and corporate activities
<b>2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833-3505, USA</b>			
Bon Appétit Management Co. (viii)	USA	100	Food service
<b>251 Little Falls Drive, Wilmington, DE 19808, USA</b>			
Compass Group USA Investments Inc.	USA	100	Holding company
Compass Group USA, Inc. (viii)	USA	100	Food and support services
Crothall Services Group	USA	100	Support services to the healthcare market
Foodbuy, LLC	USA	100	Purchasing services in North America
Restaurant Associates Corp.	USA	100	Fine dining facilities
<b>80 State Street, Albany, NY 12207-2543, USA</b>			
Flik International Corp.	USA	100	Fine dining facilities
<b>801 Adlai Stevenson Drive, Springfield, IL 62703, USA</b>			
Levy Restaurants Limited Partnership	USA	100	Fine dining and food service at sports and entertainment facilities



# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

40 Technology Pkwy South, #300, Norcross, GA 30092, USA

Morrison Management Specialists, Inc. (viii)

USA

100

Food service to the healthcare and senior living market

OTHER WHOLLY OWNED SUBSIDIARIES	COUNTRY OF INCORPORATION	% HOLDING
<b>Chez: Eurojapan Résidence No.23, RN n°3 BP 398, Hassi Messaoud, Algeria</b>		
Eurest Algerie SPA	Algeria	100
<b>Condominio Dolce Vita, Via S8, Edificio 1D, Fração A &amp; B, 2º andar, Talatona, Município de Belas, Luanda, República de Angola</b>		
Express Support Services, Limitada	Angola	100
<b>Esteban Echeverría 1050, 6th floor, Vicente Lopez (1602), Buenos Aires, Argentina</b>		
Servicios Compass de Argentina S.A.	Argentina	100
<b>Ground Floor 35 – 51 Mitchell Street, McMahon's Point, NSW 2060, Australia</b>		
Compass Australia PTY Ltd (ii)	Australia	100
Compass (Australia) Catering & Services PTY Ltd (iii)(iv)	Australia	100
Compass Group B&I Hospitality Services PTY Ltd	Australia	100
Compass Group Defence Hospitality Services PTY Ltd	Australia	100
Compass Group Education Hospitality Services PTY Ltd	Australia	100
Compass Group Healthcare Hospitality Services PTY Ltd	Australia	100
Compass Group Health Services Pty Ltd	Australia	100
Compass Group Management Services PTY Ltd	Australia	100
Compass Group Relief Hospitality Services PTY Ltd	Australia	100
Compass Group Remote Hospitality Services PTY Ltd	Australia	100
Delta Facilities Management PTY Ltd	Australia	100
Delta FM Australia PTY Ltd	Australia	100
Eurest (Australia) – Victoria PTY Ltd	Australia	100
Eurest (Australia) Food Services – NSW Pty Ltd	Australia	100
Eurest (Australia) Food Services – Wollongong PTY Ltd	Australia	100
Eurest (Australia) Food Services PTY Ltd	Australia	100
Eurest (Australia) Licence Holdings PTY Ltd	Australia	100
Eurest (Australia) PTY Ltd	Australia	100
Foodbuy Pty Ltd	Australia	100
LAPG Education PTY Ltd	Australia	100
LAPG PTY Ltd	Australia	100
Life's A Party Group PTY Ltd	Australia	100
Life's A Party PTY Ltd	Australia	100
Omega Security Services PTY Ltd	Australia	100
Restaurant Associates (Australia) PTY Ltd	Australia	100
Sargem PTY Ltd	Australia	100
<b>Level 22, 135 King Street, Sydney, NSW 2000, Australia</b>		
MBM Integrated Services Pty (ii)	Australia	100
<b>IZD Tower, Wagramer Strasse 19/4. Stock, 1220 Wien, Austria</b>		
Compass Group Austria Holdings One GmbH	Austria	100
Compass Group Austria Holdings Two GmbH	Austria	100
Eurest Restaurationsbetriebsgesellschaft m.b.H	Austria	100
Kunz Gebäudereinigung GmbH	Austria	100
<b>Chaussée de Haecht 1179, B-1130 Brussels, Belgium</b>		
Compass Group Service Solutions S.A.	Belgium	100
F.L.R. Holding S.A. (ii)	Belgium	100
Xandion Belgie BVBA	Belgium	100
<b>Rua Orissanga, 200, 1st Floor, Mirandópolis, São Paulo, 04.052-030, Brazil</b>		

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Clean Mall Serviços Ltda.	Brazil	100
Rua Orissanga, 200, 3rd Floor, Mirandópolis, São Paulo, 04.052-030, Brazil GRSA Serviços LTDA.	Brazil	100
Craigmuir Chambers, PO Box 71, Roadtown, Tortola, VG1110, British Virgin Islands Compass Group Holdings (BVI) Limited	British Virgin Islands	100
c/o Action Group Ltd., No.12, Street 614, Sangkat Boeung Kok II, Khan Tuol Kork, Phnom Penh City, Cambodia Compass Group (Cambodia) Co. Ltd. (ii)	Cambodia	100
100, Rue n° 1044 Hydrocarbures, Bonapriso, BP 5767, Douala, Cameroon Eurest Cameroun SARL (ii)	Cameroon	100
Eurest Camp Logistics Cameroun SARL (ii)	Cameroon	100
1 Prologis Boulevard, Suite 400, Mississauga, Ontario L5W 0G2, Canada 1912219 Ontario Inc. (iii)(iv)(v)(vi)(viii)	Canada	100
Canteen of Canada Limited (iii)	Canada	100
Compass Canada Support Services Ltd (iii)(iv)(v)(vi)(viii)	Canada	100
Compass Group Ontario Ltd. (iii)	Canada	100
Suite 2300, Bentall 5, 550 Burrard Street, Vancouver, BC V6C 2B5, Canada Tejazz Management Services Inc. (iii)	Canada	100
1969 Upper Water Street, Purdy's Wharf Tower II, Suite 1300, Halifax, NS B3J 3R7, Canada Crothall Services Canada Inc. (iii)(iv)	Canada	100
1959 Upper Water Street, Suite 1100, Halifax, Nova Scotia, B3J 3E5, Canada East Coast Catering (NS) Limited (iii)	Canada	100
30 Queen's Road, St. John's, Newfoundland and Labrador, A1C 2A5, Canada East Coast Catering Limited (iii)(iv)(viii)(v)	Canada	100
Long Harbour Catering Limited Partnership (x)	Canada	100
Long Harbour Catering Limited (iii) (viii)	Canada	100
421 7th Avenue SW, Suite 1600, Calgary, Alberta, T2P 4K9, Canada Great West Catering Ltd. (iii)	Canada	100
Tamarack Catering Ltd. (iii)	Canada	100
2580 Rue Dollard, Lasalle, Quebec, H8N 1T2, Canada Groupe Compass (Québec) Ltée (iii)(iv)(v)(vi)(viii)	Canada	100
550 Burrard Street, Suite 2300, Bentall 5, P.O. Box 30, Vancouver, British Columbia, V6C 2B5, Canada Town Square Food Services Ltd. (iii)	Canada	100
Av. del Valle 787, 5th floor, Huechuraba, Santiago, Chile Cadelsur S.A.	Chile	100
Compass Catering S.A.	Chile	100
Compass Servicios S.A.	Chile	100
Scolarest S.A.	Chile	100
No. 1999 Floor 2, Xin Zhu Road, Minhang District, 200237, China Compass (China) Management Services Company Limited	China	100
Room 401 No.2536, Pudong Avenue, Pudong District, Shanghai 200135, China Shanghai Eurest-Food Technologies Service Co., Ltd.	China	100
Calle 98#11B – 29 Bogotá - Colombia Compass Group Services Colombia S.A.	Colombia	100
Enceinte de Brometo Centre Ville, BP 5208, Pointe-Noire, The Democratic Republic of the Congo		

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Eurest Services Congo SARL (ii)	Congo	100
195, Arch. Makariou III Avenue, Neocleous House, 3030 Limassol, Cyprus ESS Design & Build Ltd (ii)	Cyprus	100
Jankovcova, 1603/47a, Holešovice 170 00, Prague 7, Czech Republic Compass Group Czech Republic s.r.o.	Czech Republic	100
SCOLAREST- zařízení školního stravování spol. s.r.o.	Czech Republic	100
Skibhusvej 52 A, 1, Postboks 49, 5000 Odense C, Denmark Compass Group FS Denmark A/S	Denmark	100
Harju maakond, Saku vald, Jälgimäe küla, Jälgimäe tee 14, 76404, Estonia Compass Group FS Estonia OÜ	Estonia	100
PO Box 210, FL-00281, Helsinki, Finland Compass Group Finland OY	Finland	100
123 Avenue de la République – Hall A, 92320 Châtillon, France 7000 Set Meal SAS	France	100
Academie Formation Groupe Compass SAS	France	100
Caterine Restauration SAS	France	100
Delisaveurs SAS	France	100
Eurest Sports & Loisirs SAS	France	100
La Puyfolaie de Restauration SAS	France	100
Levy Restaurants France SAS	France	100
Mediance SAS	France	100
Memonett SAS	France	100
Servirest SAS	France	100
SHRM Angola SAS (ii)	France	100
Société De Prestations En Gestion Immobiliere SAS	France	100
Société Nouvelle Lecocq SAS	France	100
Sud Est Traiteur SAS	France	100
Rue des Artisans, ZA de Bel Air, 12000 Rodez, France Central Restauration Martel (CRM)	France	100
Zone Artisanale, 40500 Bas Mauco, France Culinaire Des Pays de L'Adour SAS	France	100
40, Bd de Dunkerque, 13002 Marseille, France Société International D'Assistance SA (ii)	France	100
Lieu Dit la Prade, 81580 Soual, France Occitanie Restauration SAS	France	100
3 rue Camille Claudel Atlanparc Bat.M, Zone Kerluherne, CS 20043, 56890 Plescop, France Oceane de Restauration SAS	France	100
Rue Eugène Sué, Zone Industrielle de Blanzat, 03100 Montluçon, France Sogirest SAS	France	100
ZONE OPRAG, (Face à Bernabé Nouveau Port), BP 1292, Port Gentil, Gabon Eurest Support Services Gabon SA (ii)	Gabon	100
Helfmann-Park 2, 65760, Eschborn, Germany Compass Group GmbH	Germany	100
Eurest Bremen GmbH	Germany	100
Eurest Köln GmbH	Germany	100
Eurest Süd GmbH	Germany	100
Food affairs GmbH	Germany	100

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Kanne Café GmbH	Germany	100
Menke Menue GmbH	Germany	100
Royal Business Restaurants GmbH	Germany	100
S.B. Verwaltungs GmbH	Germany	100
<b>Konrad-Zuse-Platz 2, 81829 München, Germany</b>		
Leonardi EPM GmbH	Germany	100
Leonardi HPM GmbH	Germany	100
Leonardi Vermögensverwaltungs GmbH	Germany	100
Leonardi Betriebsverwaltungs GmbH	Germany	100
Leonardi GmbH & Co. KG	Germany	100
Leonardi Kaffee neu entdecken GmbH & Co. KG	Germany	100
Leonardi SVM GmbH	Germany	100
<b>Sankt-Florian-Weg 1, 30880, Laatzen, Germany</b>		
Eurest West GmbH & Co. KG	Germany	100
orgaMed Betriebsgesellschaft für Zentralsterilisationen GmbH	Germany	100
PLURAL Gebäudemanagement GmbH	Germany	100
PLURAL Personalservice GmbH	Germany	100
PLURAL servicepool GmbH	Germany	100
<b>Pfaffenwiese, 65929 Frankfurt/M., Germany</b>		
LPS Event Gastronomie GmbH	Germany	100
<b>Zum Fliegerhorst 1304, 63526 Erlensee, Germany</b>		
Foodbuy CE GmbH (ii)	Germany	100
M.S.G. Frucht GmbH	Germany	100
<b>PO Box 119, Martello Court, Admiral Park, St Peter Port, Guernsey, GY1 3HB</b>		
Compass Group Finance Ltd	Guernsey	100
<b>Room 805, 8/F, New Kowloon Plaza, 38 Tai Kok Tsui Road, Kowloon, Hong Kong</b>		
Compass Group Hong Kong Ltd	Hong Kong	100
Encore Catering Ltd	Hong Kong	100
Shing Hin Catering Group Ltd	Hong Kong	100
<b>Irinyi József u. 4-20. B épület, H-1117 Budapest, Hungary</b>		
Eurest Étteremüzemeltető Korlátolt Felelősségű Társaság	Hungary	100
<b>Spaze I - Tech Park, Tower A, Sohna Road, Sector 49 Gurgaon, Gurgaon HR 122018 IN, India</b>		
Compass Group (India) Support Services Private Ltd	India	100
<b>Unit #401, 4th Floor, Tower A, Spaze I – Tech Park Sohna Road, Sector 49 Gurgaon, Gurgaon HR 122018 IN, India</b>		
Compass India Support Services Private Limited	India	100
<b>3rd Floor, 43a, Yeats Way, Parkwest Business Park, Dublin 12, Ireland</b>		
Amstel Limited (ii)	Ireland	100
Catering Management Ireland Limited (ii)	Ireland	100
Cheyenne Limited (ii)	Ireland	100
Compass Catering Services, Ireland Limited	Ireland	100
COH Ireland Investments Unlimited Company (i)(viii)(ix)	Ireland	100
Drumburgh Limited (ii)	Ireland	100
Management Catering Services Limited	Ireland	100
National Catering Limited (ii)	Ireland	100
Rushmore Investment Company Limited (ii)(viii)	Ireland	100
Sutcliffe Ireland Limited	Ireland	100
Zadca Limited (i)(ii)	Ireland	100

**Tower House, Loch Promenade, Douglas, IM1 2LZ, Isle of Man**

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Queen's Wharf Insurance Services Limited (viii)	Isle of Man	100
<b>Shin-Hie Building 2nd Floor, 3-3-3, Hakataeki-Higashi, Hakata-ku, Fukuoka-City, Fukuoka-Prefecture, 812-0013 Japan</b> Eishoku-Medix, Inc.	Japan	100
<b>Hamarikyu Kensetsu Plaza, 5-5-12, Tsukiji, Chuo-ku, Tokyo 104-0045, Japan</b> Eurest Japan, Inc.	Japan	100
Fuyo, Inc.	Japan	100
MFS, Inc.	Japan	100
Nihon Kyushoku Service, Inc.	Japan	100
Seiyo Food-Compass Group Holdings, Inc.	Japan	100
<b>060011, Atyrauskaya Oblast, Atyrau City, Beibarys Sultan Avenue 506, Kazakhstan</b> Compass Kazakhstan LLP	Kazakhstan	100
Eurest Support Services Kazakhstan LLP	Kazakhstan	100
ESS Support Services LLP	Kazakhstan	100
<b>209/8919 Sigma Road Off Enterprises Road, PO BOX 14 662, Nairobi, Kenya</b> Kenya Oilfield Services Ltd (ii)	Kenya	100
<b>19, Rue Léon Laval, L-3372 Leudelange, Luxembourg</b> Eurest Luxembourg S.A.	Luxembourg	100
IMMO Capellen S.A.	Luxembourg	100
Innoclean S.A.	Luxembourg	100
Novelia Senior Services S.A.	Luxembourg	100
<b>Level 21, Suite 21.01, The Gardens South Tower, Mid Valley City, Lingkaran Syed Putra, 59200 Kuala Lumpur, Malaysia</b> Compass Group Malaysia Sdn Bhd	Malaysia	100
Riaaxis Sdn. Bhd. (ii)	Malaysia	100
Genviolet Sdn. Bhd. (ii)	Malaysia	100
<b>50-8-1, TKT.8, Wsima UOA Damansara, 50 Jalan. Dungun, Damansara Heights, Kuala Lumpur, 50490, Malaysia</b> S.H.R.M. Sdn. Bhd. (ii)	Malaysia	100
<b>Calle Jaime Balmes 11, Oficina 101 letra D, Colonia Los Morales Polanco, Alcaldía Miguel Hidalgo, 11510 Ciudad de México, Mexico</b> Compass México Servicios de Soporte, S.A. De C.V. (iii) (iv)	Mexico	100
Eurest Proper Meals de Mexico S.A. de C.V. (iii)(iv)	Mexico	100
Servicios Corporativos Eurest-Proper Meals de Mexico S.A. De C.V. (iii)(iv)	Mexico	100
<b>c/o 251 Little Falls Drive, Wilmington, DE 19808, USA</b> Food Works of Mexico, S. de R.L. de C.V. (ii)(iii)(iv)	Mexico	100
Food Works Services of Mexico, S. de R.L. De C.V. (ii)(iii)(iv)	Mexico	100
<b>Laarderhoogtweg 11, 1101 DZ, Amsterdam, Netherlands</b> Aurora HoldCo B.V.	Netherlands	100
CGI Holdings (2) B.V.	Netherlands	100
Compass Group Holding B.V.	Netherlands	100
Compass Group Finance Netherlands B.V.	Netherlands	100
Compass Group International 2 B.V.	Netherlands	100
Compass Group International 3 B.V.	Netherlands	100
Compass Group International 4 B.V.	Netherlands	100
Compass Group International 5 B.V.	Netherlands	100
Compass Group International 6 B.V. (ii)	Netherlands	100
Compass Group International 9 B.V.	Netherlands	100
Compass Group International 10 B.V. (ii)	Netherlands	100
Compass Group International ESS Shanghai B.V. (ii)	Netherlands	100
Compass Group International Finance 1 B.V.	Netherlands	100
Compass Group International Finance 2 B.V.	Netherlands	100

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Compass Group Shanghai Eurest B.V. (ii)	Netherlands	100
Compass Group Vending Holding B.V.	Netherlands	100
Compass Hotels Chertsey B.V.	Netherlands	100
Eurest Services B.V.	Netherlands	100
Eurest Support Services (ESS) B.V.	Netherlands	100
Eurest Support Services Sakhalin B.V. (ii)	Netherlands	100
Stichting Forte International	Netherlands	100
<b>Luzernestraat 57, 2153 GM, Nieuw-Vennep, Netherlands</b>		
Famous Flavours B.V. (viii)	Netherlands	100
<b>Stationsweg 95, 6711 PM Ede, Netherlands</b>		
Xandrión B.V.	Netherlands	100
<b>85 Avenue du Général de Gaulle, Immeuble Carcopino 3000, BP 2353, 98846 Nouméa Cedex, New Caledonia</b>		
Eurest Caledonie SARL (ii)	New Caledonia	100
<b>Level 3, 15 Sultan Street, Ellerslie 1051, New Zealand</b>		
Compass Group New Zealand Limited	New Zealand	100
Crothall Services Group Limited (ii)	New Zealand	100
Eurest NZ Limited (ii)	New Zealand	100
<b>Drengsrudbekken 12, 1383, PO Box 74, NO-1371, Asker, Norway</b>		
Eurest A/S (iii)	Norway	100
Compass Group FS Norway A/S	Norway	100
<b>Forusparken 2, 4031 Stavanger, Postboks 8083 Stavanger Postterminal, 4068, Stavanger, Norway</b>		
ESS Mobile Offshore Units A/S	Norway	100
ESS Support Services A/S	Norway	100
<b>c/o Warner Shand Lawyers Waigani, Level 1 RH Hypermarket, Allotment 1 Section 479 (off Kennedy Road), Gordons</b>		
Eurest (PNG) Catering & Services Ltd (ii)	Papua New Guinea	100
<b>Unit 2410 24th flr, City &amp; Land Mega Plaza, ADB Ave., Ortigas Ctr., San Antonio, Pasig City 1605, Philippines</b>		
Compass Group Philippines Inc (ii)	Philippines	100
<b>Ul. Olbrachta 94, 01-102 Warszawa, Poland</b>		
Compass Group Poland Sp. Z o.o.	Poland	100
<b>Edifício Prime, Avenida da, Quinta Grande, 53-60, Alfragide 2614-521 Amadora, Portugal</b>		
Eurest (Portugal) – Sociedade Europeia de Restaurantes, Lda.	Portugal	100
Eurest Catering & Services Group Portugal, Lda.	Portugal	100
<b>București Sectorul 4, Strada Sold., Ilie Șerban, Nr. 8B., Romania</b>		
Eurest ROM SRL	Romania	100
<b>7 Gasheka Street, Bld. 1, 123056, Moscow, Russia</b>		
Aurora Rusco OOO	Russia	100
<b>20 Kulakova Street, Bld 1, Premises III, Floor 4, Room 2, Moscow, Russia</b>		
Compass Group Rus OOO	Russia	100
<b>11 Changi South Street 3, Builders Shop Building, #04-02/03, 486122, Singapore</b>		
Compass Group (Singapore) PTE Ltd (iii)(iv)	Singapore	100
SHRM Far East Pte Ltd (ii)	Singapore	100
<b>8 Marina Boulevard, # 05-02, Marina Bay Financial Centre, 018981, Singapore</b>		
Compass Group Asia Pacific PTE. Ltd (ii)	Singapore	100
<b>Karadžičova 2, Staré mesto, 811 09 Bratislava, Slovakia</b>		
Compass Group Slovakia s. r. o.	Slovakia	100
<b>Calle Frederic Mompou 5, planta 5a, Edificio Euro 3, 08960, San Just Desvern, Barcelona, Spain</b>		

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Asistentes Escolares, S.L.	Spain	100
Eurest Catalunya, S.L.U.	Spain	100
Medirest Social Residencias, S.L.U.	Spain	100
<b>Calle Castilla 8-10 – C.P. 50.009, Zaragoza, Spain</b>		
Servicios Renovados de Alimentacion, S.A.U.	Spain	100
<b>Calle Pinar de San José 98, Planta 1a, 28054, Madrid, Spain</b>		
Eurest Club de Campo, S.L.U.	Spain	100
Eurest Servicios FERIALES, S.L.U.	Spain	100
<b>Poligono Ugaldeguren 1, Parcela 7, 48160 Derio (Vizcaya), Spain</b>		
Eurest Euskadi S.L.U.	Spain	100
<b>Calle R, s/n, Mercapalma, 07007 Palma de Mallorca, Baleares, Spain</b>		
Compass Group Holdings Spain, S.L.U.	Spain	100
Levy Compass Group Holdings, S.L. (ii)	Spain	100
<b>Box 1222, 164 28, Kista, Sweden</b>		
Compass Group AB	Sweden	100
<b>c/o BDO AG, Industriestrasse 53 6312 Steinhausen, Switzerland</b>		
Creative New Food Dream Steam GmbH	Switzerland	100
<b>Oberfeldstrasse 14, 8302, Kloten, Switzerland</b>		
Eurest Services (Switzerland) AG	Switzerland	100
Royal Business Restaurants GmbH	Switzerland	100
<b>c/o Ueltschi Solutions GmbH, Gwattstrasse 8, CH-3185 Schmitten, Switzerland</b>		
Sevita AG (ii)	Switzerland	100
Sevita Group GmbH	Switzerland	100
<b>İçerenköy Mah. Yesil vadi sokak, No: 3 D: 9, 34752 Atasehir, Istanbul, Turkey</b>		
Euroserve Güvenlik A.Ş.	Turkey	100
<b>İçerenköy Mah. Yesil vadi sokak, No: 3 D: 10, 34752 Atasehir, Istanbul, Turkey</b>		
Euroserve Hizmet ve işletmecilik A.Ş.	Turkey	100
<b>İçerenköy Mah. Yesil vadi sokak, No: 3 D: 13, 34752 Atasehir, Istanbul, Turkey</b>		
Turkaş Gıda Hizmet ve işletmecilik A.Ş.	Turkey	100
<b>Dubai Airport Free Zone, Dubai, United Arab Emirates</b>		
Compass Camea FZE	UAE	100
<b>Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, B45 9PZ, United Kingdom</b>		
14Forty Limited (ii)	UK	100
3 Gates Services Limited (ii)	UK	100
A.C.M.S. Limited (ii)	UK	100
Bateman Catering Limited (ii)(vii)	UK	100
Bateman Healthcare Services Limited (ii)	UK	100
Baxter and Platts Limited (iii)(iv)(v)	UK	100
Bromwich Catering Limited (ii)	UK	100
Business Clean Limited (ii)	UK	100
Capitol Catering Management Services Limited	UK	100
Carlton Catering Partnership Limited (ii)(iii)	UK	100
Castle Independent Limited	UK	100
Cataforce Limited (ii)	UK	100
Caterexchange Limited (i)(ii)	UK	100
Caterskill Group Limited (ii)	UK	100
Caterskill Management Limited (ii)	UK	100
Chalk Catering Ltd (ii)	UK	100

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Chartwells Hounslow (Feeding Futures) Limited (iii)(iv)	UK	100
Chartwells Limited (ii)	UK	100
Circadia Limited (ii)	UK	100
Cleaning Support Services Limited (ii)	UK	100
Compass Accounting Services Limited (ii)	UK	100
Compass Catering Services Limited (i)(ii)	UK	100
Compass Cleaning Services Limited (i)(ii)	UK	100
Compass Contract Services Limited (i)(ii)	UK	100
Compass Contracts UK Limited (ii)(viii)	UK	100
Compass Experience Limited (ii)(vii)	UK	100
Compass Food Services Limited	UK	100
Compass Group Medical Benefits Limited (ii)	UK	100
Compass Mobile Catering Limited (ii)	UK	100
Compass Office Cleaning Services Limited (ii)	UK	100
Compass Payroll Services Limited (ii)	UK	100
Compass Planning and Design Limited (i)(ii)	UK	100
Compass Purchasing Limited	UK	100
Compass Restaurant Properties Limited (ii)(vii)	UK	100
Compass Road Services Limited (ii)	UK	100
Compass Security Limited (ii)(vii)	UK	100
Compass Security Oldco Group Limited (ii)	UK	100
Compass Security Oldco Holdings Limited (ii)	UK	100
Compass Security Oldco Investments Limited (ii)	UK	100
Compass Services (Midlands) Limited (ii)	UK	100
Compass Services for Hospitals Limited (ii)(viii)	UK	100
Compass Services Group Limited (i)	UK	100
Compass Services Limited (ii)	UK	100
Compass Services Trading Limited (i)(ii)	UK	100
Compass Services, UK and Ireland Limited	UK	100
Compass Services (U.K.) Limited	UK	100
Compass Staff Services Limited (ii)	UK	100
Cookie Jar Limited (i)(ii)	UK	100
CRBS Resourcing Limited (ii)	UK	100
CRN 1990 (Four) Limited (i)(ii)	UK	100
Customised Contract Catering Limited (ii)	UK	100
Cyghet Food Holdings Limited (ii)	UK	100
Cyghet Foods Limited	UK	100
Dine Contract Catering Limited	UK	100
DRE Developments Limited (i)(ii)	UK	100
Eat Dot Limited (ii)(iii)	UK	100
Eaton Catering Limited (ii)	UK	100
Eaton Wine Bars Limited (ii)	UK	100
Eurest Airport Services Limited (ii)	UK	100
Eurest Defence Support Services Limited (i)(ii)	UK	100
Eurest Offshore Support Services Limited (ii)(viii)	UK	100
Eurest Prison Support Services Limited (ii)	UK	100
Eurest UK Limited (i)(ii)	UK	100
Everson Hewett Limited (iii)(iv)	UK	100
Facilities Management Catering Limited (ii)	UK	100
FADS Catering Limited (i)(ii)	UK	100
Fairfield Catering Company Limited (ii)	UK	100
Fingerprint Managed Services Limited (ii)	UK	100
Funpark Caterers Limited (i)(ii)(iii)	UK	100
Goodfellows Catering Management Services Limited	UK	100
Gruppo Events Limited (ii)	UK	100
Hallmark Catering Management Limited (ii)	UK	100



# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Hamard Catering Management Services Limited (ii)(vii)	UK	100
Hamard Group Limited (ii)	UK	100
Henry Higgins Limited (i)(ii)	UK	100
Hospital Hygiene Services Limited (ii)	UK	100
ICM Five Star Limited (ii)	UK	100
Integrated Cleaning Management Limited	UK	100
Integrated Cleaning Management Support Services Limited	UK	100
Keith Prowse Limited (ii)	UK	100
Kennedy Brookes Finance Limited (i)(ii)	UK	100
Knott Hotels Company of London (ii)	UK	100
Langston Scott Limited (ii)	UK	100
Leisure Support Services Limited (iii)(iv)	UK	100
Leith's Limited (ii)	UK	100
Letheby & Christopher Limited	UK	100
Meal Service Company Limited (ii)	UK	100
Milburns Catering Contracts Limited (ii)	UK	100
Milburns Limited (ii)	UK	100
Milburns Restaurants Limited (ii)(iii)	UK	100
National Leisure Catering Limited (ii)	UK	100
NLC (Holdings) Limited (ii)	UK	100
NLC (Wembley) Limited (ii)	UK	100
P & C Morris (Catering) Ltd (i)(ii)(vii)	UK	100
P & C Morris Catering Group Limited (ii)	UK	100
Payne & Gunter Limited	UK	100
PDM Training and Compliance Services Limited (ii)	UK	100
Pennine Services Limited (ii)	UK	100
Peter Parfitt Leisure Overseas Travel Limited	UK	100
Peter Parfitt Sport Limited (ii)(vii)	UK	100
PPP Infrastructure Management Limited	UK	100
Prideoak Limited (i)(ii)	UK	100
QCL Limited (ii)	UK	100
Reliable Refreshments Limited	UK	100
Rhine Four Limited (ii)(vii)	UK	100
Roux Fine Dining Limited (ii)	UK	100
Scolarest Limited	UK	100
Security Office Cleaners Limited (ii)	UK	100
Selkirk House (CVH) Limited (i)(ii)	UK	100
Selkirk House (FP) Limited (i)(ii)(iii)(iv)(v)	UK	100
Selkirk House (GHPL) Limited (i)(ii)(viii)	UK	100
Selkirk House (GTP) Limited (i)(ii)	UK	100
Selkirk House (WBRK) Limited (i)	UK	100
Shaw Catering Company Limited	UK	100
Ski Class Limited (ii)	UK	100
Solutions on Systems Ltd (ii)	UK	100
Summit Catering Limited	UK	100
Sunway Contract Services Limited	UK	100
Sutcliffe Catering Midlands Limited (ii)	UK	100
Sutcliffe Catering South East Limited (ii)	UK	100
Sycamore Newco Limited	UK	100
The Bateman Catering Organization Limited (ii)(viii)	UK	100
The Cuisine Centre Limited (ii)	UK	100
THF Oil Limited (i)(ii)	UK	100
Tunco (1999) 103 Limited (i)(ii)	UK	100
Vendepac Holdings Limited (viii)	UK	100
Waseley Fifteen Limited (i)(ii)	UK	100
Waseley Nominees Limited (i)(ii)	UK	100

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Wembley Sports Arena Limited (ii)	UK	100
Wheeler's Restaurants Limited (i)(ii)(vii)	UK	100
Woodin & Johns Limited	UK	100
<b>Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ, United Kingdom</b>		
Audrey (London) Limited (ii)	UK	100
Audrey Investments Limited (ii)	UK	100
Bateman Services Limited (ii)	UK	100
Compass Group Finance No.3 Limited	UK	100
Compass Group Finance No.5 Limited (ii)(xi)	UK	100
Compass Group North America Investments No.2	UK	100
Compass Group North America Investments Limited	UK	100
Compass Group Pension Trustee Company Limited (ii)	UK	100
Compass Group Procurement Limited	UK	100
Compass Group Trustees Limited (ii)	UK	100
Compass Healthcare Group Limited (ii)(viii)	UK	100
Compass Hospitality Group Holdings Limited (ii)	UK	100
Compass Hospitality Group Limited (ii)	UK	100
Compass Hotels Chertsey (iii)	UK	100
Compass Nominee Company Number Fourteen Limited (ii)	UK	100
Compass Overseas Holdings Limited	UK	100
Compass Overseas Holdings No.2 Limited	UK	100
Compass Overseas Services Limited (ii)	UK	100
Compass Pension Trustees Limited (ii)	UK	100
Compass Quest Limited (ii)	UK	100
Compass Secretaries Limited (ii)	UK	100
Compass Site Services Limited (ii)(vii)	UK	100
Compass UK Pension Trustee Co Limited (ii)	UK	100
Crisp Trustees Limited (ii)	UK	100
Gogmore (ii)	UK	100
Meritglen Limited (ii)(vii)(viii)	UK	100
New Famous Foods Limited (ii)	UK	100
Nextonline Limited (iii)(iv)	UK	100
Riversdell (ii)	UK	100
Sevita (UK) Limited	UK	100
The Compass Group Foundation	UK	100
The Excelsior Insurance Company Limited (i)	UK	100
<b>Suite D, Pavilion 7 Kingshill Park, Venture Drive, Arnhill Business Park, Westhill, Aberdeenshire, AB32 6FL, United Kingdom</b>		
CCG (UK) Ltd (ii)	UK	100
Coffee Partners Limited (ii)	UK	100
Compass Offshore Catering Limited (ii)(viii)	UK	100
Compass Scottish Site Services Limited (ii)	UK	100
Waseley (CVI) Limited (ii)	UK	100
Waseley (CVS) Limited (ii)	UK	100
<b>Wework, 119 Marylebone Road North West House, London, NW1 5PU, United Kingdom</b>		
Feedr Limited	UK	100
<b>1st Floor, 12 Cromac Quay, Cromac Wood, Belfast, Northern Ireland, BT7 2JD, United Kingdom</b>		
Lough Erne Holiday Village Limited (i)(ii)	UK	100
<b>8040 Excelsior Drive, Suite 400, Madison, WI 53717, USA</b>		
Ace Foods, Inc.	USA	100
<b>2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833-3505, USA</b>		
Bon Appétit Management Company Foundation	USA	100
CulinArt of California, Inc.	USA	100
<b>211 E. 7th Street, Suite 620, Austin, TX 78701-3218, USA</b>		

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Bamco Restaurants of Texas LLC	USA	100
Levy Premium Foodservice, L.L.C. (ii)	USA	100
Morrison's Health Care of Texas, Inc.	USA	100
University Food Services, Inc.	USA	100
<b>2345 Rice Street, Suite 230, Roseville, MN 55113, USA</b>		
Canteen One Company, Inc.	USA	100
Canteen One Consolidation Services, LLC	USA	100
Canteen One, LLC	USA	100
Street Eats Limited	USA	100
Visinity, LLC	USA	100
<b>251 Little Falls Drive, Wilmington, DE 19808, USA</b>		
BenchWorks, Inc.	USA	100
Canteen One, Inc.	USA	100
CLS Par, LLC	USA	100
Compass LCS, LLC	USA	100
Compass LV, LLC	USA	100
Compass Paramount, LLC	USA	100
Concierge Consulting Services, LLC	USA	100
Convenience Foods International, Inc.	USA	100
Crothall Healthcare Inc.	USA	100
Crothall Laundry Services Inc.	USA	100
Eat Cloud LLC	USA	100
Eurest Services, Inc.	USA	100
Facilities Holdings, LLC	USA	100
Flik One, LLC	USA	100
Levy Oklahoma, Inc.	USA	100
Levy Prom Golf, LLC	USA	100
Morrison Investment Company, Inc.	USA	100
RAC Holdings Corp. (iii)	USA	100
Rank + Rally, LLC	USA	100
S-82 LLC	USA	100
SpentDifference LLC	USA	100
Touchpoint Support Services, LLC	USA	100
Unidine Lifestyles, LLC	USA	100
Unidine Nevada, LLC	USA	100
University Food Services, LLC	USA	100
Vendlink, LLC	USA	100
Yorkmont Four, Inc.	USA	100
<b>801 Adlai Stevenson Drive, Springfield, IL 62703, USA</b>		
Curiology, LLC	USA	100
E15, LLC	USA	100
Levy (Events) Limited Partnership	USA	100
Levy (IP) Limited Partnership	USA	100
Levy Food Service Limited Partnership	USA	100
Levy GP Corporation	USA	100
Levy Holdings GP, Inc.	USA	100
Levy Illinois Limited Partnership	USA	100
Levy Premium Foodservice Limited Partnership	USA	100
Levy R & H Limited Partnership	USA	100
Levy World Limited Partnership	USA	100
Professional Sports Catering, LLC	USA	100
Restaurant One Limited Partnership	USA	100
Superior Limited Partnership	USA	100
<b>7 St. Paul Street, Suite 820, Baltimore, MD 21202, USA</b>		

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Bon Appétit Maryland, LLC	USA	100
4000 Faber Place Drive STE. 300, North Charleston, SC 29405, USA		
CGSC Capital, Inc.	USA	100
501 Louisiana Avenue, Baton Rouge, LA 70802-5921, USA		
Coastal Food Service, Inc.	USA	100
S.H.R.M. Catering Services, Inc.	USA	100
80 State Street, Albany, NY 12207-2543, USA		
Coffee Distributing Corp.	USA	100
CulinArt Group, Inc.	USA	100
CulinArt, Inc.	USA	100
Mazzone Hospitality, LLC	USA	100
Quality Food Management, Inc.	USA	100
RA Tennis Corp.	USA	100
RANYST, Inc.	USA	100
Restaurant Associates LLC	USA	100
Restaurant Associates, Inc.	USA	100
Restaurant Services Inc.	USA	100
2626 Glenwood Avenue, Suite 550, Raleigh, NC 27608, USA		
Compass 2K12 Services, LLC	USA	100
Compass HE Services, LLC	USA	100
Compass One, LLC	USA	100
Compass Two, LLC	USA	100
2595 Interstate Drive, Suite 103, Harrisburg, PA 17110, USA		
Crothall Facilities Management, Inc.	USA	100
Custom Management Corporation of Pennsylvania	USA	100
Morrison's Custom Management Corporation of Pennsylvania	USA	100
Newport Food Service, Inc.	USA	100
Williamson Hospitality Services, Inc.	USA	100
50 West Broad Street, Suite 1330, Columbus, OH 43215, USA		
Cuyahoga Dining Services, Inc.	USA	100
40 Technology Pkwy South, #300, Norcross, GA 30092, USA		
Food Services Management By Mgr, LLC	USA	100
Morrison Alumni Association, Inc.	USA	100
The M-Power Foundation, Inc.	USA	100
221 Bolivar Street, Jefferson City, MO 65101, USA		
Dynamic Vending, Inc.	USA	100
Princeton South Corporate Ctr, Suite 160, 100 Charles Ewing Blvd, Ewing, NJ 08628, USA		
Gourmet Dining, LLC	USA	100
300 Deschutes Way SW, Suite 304, Tumwater, WA 98501, USA		
Inter Pacific Management, Inc.	USA	100
2900 SW Wanamaker Drive, Suite 204, Topeka, KS 66614, USA		
Myron Green Corporation	USA	100
PFM Kansas, Inc.	USA	100
Treat America Limited	USA	100
8825 N. 23rd Avenue, Suite 100, Phoenix, AZ 85021, USA		
Prodine, Inc.	USA	100
Sacco Dining Services, Inc.	USA	100
2908 Poston Avenue, Nashville, TN 37203, USA		

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Southeast Service Corporation	USA	100
1400 West Benson Blvd, Suite 370, Anchorage, AK 99503, USA Statewide Services, Inc.	USA	100
1709 North 19th Street, Suite 3, Bismarck, ND 58501-2121, USA Compass ND, LLC	USA	100

OTHER SUBSIDIARIES, JOINT ARRANGEMENTS, MEMBERSHIPS, ASSOCIATES AND OTHER SIGNIFICANT HOLDINGS	COUNTRY OF INCORPORATION OR ESTABLISHMENT	% HOLDING
Ground Floor 35 – 51 Mitchell Street, McMahon's Point, NSW 2060, Australia	Australia	60
ESS Eastern Guruma PTY Ltd	Australia	60
ESS NYFL PTY Ltd		
Level 3, 12 Newcastle Street, Perth 6000, Australia	Australia	60
ESS Thalanyji PTY Ltd	Australia	50
ESS Larrakia PTY Ltd		
30, 205 N. Narimanov avenue, Baku, AZ1065, Azerbaijan	Azerbaijan	50
ESS Support Services LLC		
12 Kodiak Crescent, Toronto, Ontario, M3J 3G5, Canada	Canada	88
Imperial Coffee and Services Inc. (iii)(iv)(v)		
1 Prologis Boulevard, Suite 400, Mississauga, Ontario, L5W 0G2, Canada	Canada	67
Chef's Hall, Inc. (iii)	Canada	67
Compass Group Sports and Entertainment – (Quebec) (x)	Canada	50
ECC – ESS Support Services (x)	Canada	49
2265668 Ontario Limited (iii)(iv)(v)(vi)(viii)	Canada	49
Amik Catering LP (x)	Canada	49
Dease River – ESS Support Services (x)	Canada	49
Dene West Limited Partnership (x)	Canada	49
ECC – Mi'kmaq Support Services (x)	Canada	49
ESS – DNDC Support Services (x)	Canada	49
ESS – East Arm Camp Services (x)	Canada	49
ESS – Kaatodh Camp Services (x)	Canada	49
ESS – Loon River Support Services (x)	Canada	49
ESS – Missanabie Cree Support Services (x)	Canada	49
ESS – Na Cho Nyak Dun Camp Services (x)	Canada	49
ESS – Ochapowace Support Services (x)	Canada	49
ESS – Pessamit Camp Services (x)	Canada	49
ESS – Wapan Manawan Services de Soutien (x)	Canada	49
ESS Haisla Support Services (x)	Canada	49
ESS HLFN Support Services (x)	Canada	49
ESS KNRA Support Services (x)	Canada	49
ESS Komatik Support Services (x)	Canada	49
ESS Liard First Nation Support Services (x)	Canada	49
ESS McKenzie Support Services (x)	Canada	49
ESS Okanagan Indian Band Support Services (x)	Canada	49
ESS Tataskweyak Camp Services (x)	Canada	49
ESS/Bushmaster Camp Services (x)	Canada	49
ESS/Fort a la Corne Support Services (x)	Canada	49
ESS/McLeod Lake Indian Band Support Services (x)	Canada	49
ESS/Mosakahiken Cree Nation Support Services (x)	Canada	49
ESS/Nuvumiut Support Services (x)	Canada	49
ESS/Takla Lake Support Services (x)	Canada	49
ESS/WEDC Support Services (x)	Canada	49

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

First North Catering (x)	Canada	49
KDM – ESS Support Services (x)	Canada	49
Mi'Kmaq-ECC Nova Scotia Support Services (x)	Canada	49
Nisga'a Village - ESS Support Services (x)	Canada	49
Poplar Point Camp Services (x)	Canada	49
Songhees Nation Support Services (x)	Canada	49
<b>30 Queen's Road, St. John's, Newfoundland and Labrador, A1C 2A5, Canada</b>		
Labrador Catering Inc. (iii)	Canada	49
Labrador Catering LP (x)	Canada	49
<b>Clearwater River Dene Nation Reserve No. 222, P.O. Box 5050, Clearwater, Saskatchewan, S0M 3H0, Canada</b>		
Clearwater Catering Limited (iii)(iv)(v)(vi)	Canada	49
<b>130 King Street West, Suite 1800, Toronto, Ontario, M5X 1E3, Canada</b>		
Umbrel Hospitality Group Inc. (iii)	Canada	49
<b>77 King Street West, No. 400, Toronto, Ontario, M5K 0A1, Canada</b>		
O&B Yonge Richmond LP*	Canada	33.4
<b>FO-110, Torshavn, Faroe Islands</b>		
P/F Euresst Føroyar	Denmark	51
<b>Keskussairaalantie Opinkivi 2, 40600 Jyväskylä, Finland</b>		
Semma Oy	Finland	45
<b>Ruukinkatu 2-4 20540 Turku, Finland</b>		
Unica Oy	Finland	49
<b>123 Avenue de la République – Hall A, 92320 Châtillon, France</b>		
Sopregim SAS	France	80
<b>Le Puy Du Fou, 85590 Les Epesses, France</b>		
Puy Du Fou Restauration SAS	France	99.8
<b>Steenbeker Weg 25, 24106, Kiel, Germany</b>		
Lubinus – orgaMed Sterilgut GmbH	Germany	49
<b>HTC Aspire, 4th Floor (401) No. 19, Ali Asker Road, Bangalore, Karnataka, 560052, India</b>		
Bottle Lab Technologies Private Limited	India	75
<b>No. 407, 2nd Floor, 7th Cross, 1st D Main Road, Domlur Layout, Old Airport Road, Bengaluru. Karnataka, 560071, India</b>		
Nextup Technologies Private Limited	India	75
<b>Hamarikyu Kensetsu Plaza, 5-5-12, Tsukiji, Chuo-ku, Tokyo 104-0045, Japan</b>		
Chiyoda Kyushoku Services Co., Ltd	Japan	90
<b>5-7-5, Chiyoda, Naka-ku, Nagoya-City, Aichi-Prefecture, 460-0012, Japan</b>		
Seiyo General Food Co., Ltd	Japan	50
<b>1-34-6, Sakura-Shinmachi, Setagaya-ku, Tokyo, 154-0015, Japan</b>		
Highway Royal Co., Ltd.	Japan	50
<b>060011, Atyrauskaya Oblast, Atyrau city, Beibarys Sultan avenue 506, Kazakhstan</b>		
Eurest Support Services Company B LLP	Kazakhstan	50
<b>060011, Old Airport Road 64, Atyrau City, Atyrau Oblast, Republic of Kazakhstan</b>		
ESS Kazakhstan LLP	Kazakhstan	60
<b>10A Rue Henri Schnadt, L-2530, Luxembourg</b>		
Geria SA	Luxembourg	25
<b>Level 18 The Gardena North Tower, Mid Valley City, Lingkaran Syed Putra, Kuala Lumpur, 59200, Malaysia</b>		

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

EM-SSIS Services Sdn. Bhd. (ii)	Malaysia	42
Urusan Bakti Sdn. Bhd. (ii)	Malaysia	35
Suite 1301, 13th Floor, City Plaza Jalan Tebrau, 80300 Johor Bahru Johor, Malaysia Knusford Compass Sdn. Bhd.	Malaysia	49
1 Avenue Henri Dunant, Palais De La Scala, 3eme, Etage – No 1125, 98000 MC, Monaco Eurest Monaco S.A.	Monaco	99.99
Laarderhoogtweg 11, 1101 DZ, Amsterdam, Netherlands Compass Group International Coöperatief W.A. (x)	Netherlands	100
Compass Group International Coöperatief 2 W.A. (x)	Netherlands	100
Compass Group International Coöperatief 3 W.A. (x)	Netherlands	100
Compass Group International Finance C.V. (x)	Netherlands	100
Okesnoyveien 16, 1366, Lysaker, 1366, Norway Forplejningstjenester A/S	Norway	33.33
Harbitzalléen 2A, 0275 Oslo, PÅ Box 4148, Sjølyst, 0217 Oslo, Norway Gress-Gruppen A/S	Norway	33.33
c/o Warner Shand Lawyers Waigani, Level 1 RH Hypermarket, Allotment 1 Section 479 (off Kennedy Road), Gordons NCD, Papua New Guinea Eurest OKAS Catering Ltd (ii)	Papua New Guinea	55
Eurest Lotic (PNG) JV Ltd (ii)	Papua New Guinea	50
2 Floor, Al Mana Commercial Tower, C-Ring road, Doha, P O BOX 22481, Qatar Compass Catering Services WLL	Qatar	20
PO Box 31952, Al Khobar 31685 KSA, Saudi Arabia Compass Arabia LLC	Saudi Arabia	30
Calle Pinar de San José 98, Planta 1a, 28054, Madrid, Spain Gourmet on Wheels, S.L.U.	Spain	99
Office No. 204, Mawilah, Al Sharjah, P O Box: 1897, United Arab Emirates Abu Dhabi National Hotels – Compass LLC	UAE	50
Abu Dhabi National Hotels Company Building, Sheikh Rashid Bin Saeed Al Maktoum Street, Abu Dhabi, United Arab Emirates Abu Dhabi National Hotels Compass Middle East LLC	UAE	50
The Owner Saeed Ahmed Ghobash, Oud Metha, Street Bur Dubai, P.O. BOX 31769 Dubai, United Arab Emirates Abu Dhabi National Hotels – Compass Emirates LLC	UAE	50
Parklands Court, 24 Parklands, Birmingham Great Park, Rubery, Birmingham, B45 9PZ, United Kingdom Quaglino's Limited	UK	99
Quadrant Catering Limited (iii)(iv)	UK	49
County Ground, Edgbaston, Birmingham, B5 7QU, United Kingdom Edgbaston Experience Limited (iii)(iv)	UK	25
The Oval, Kennington, London, SE11 5SS United Kingdom Oval Events Holdings Limited (iv)(v)(vi)	UK	37.5
Oval Events Limited (iv)(v)(vi)	UK	37.5
84 State Street, Boston, MA 02109, USA Fame Food Management Inc.	USA	84
The Food Management Enterprise Corporation	USA	84
Levy Maryland, LLC	USA	74

251 Little Falls Drive, Wilmington, DE 19808, USA

# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

B & I Catering, LLC	USA	90
CMCA Catering, LLC	USA	90
HHP-MMS JV1, LLC	USA	90
PCHI Catering, LLC	USA	90
Wolfgang Puck Catering and Events, LLC	USA	90
WPL, LLC	USA	90
Community Living Holdings, LLC	USA	84
Coreworks, LLC	USA	84
Unidine Corporation	USA	84
Levy LA Concessions, LLC	USA	62.5
Learfield Levy Foodservice, LLC	USA	50
Restaurant Services I, LLC	USA	50
Parlay Solutions, LLC	USA	50
Thompson Facilities Services LLC	USA	49
Thompson Hospitality Services, LLC	USA	49
WP Casual Catering, LLC	USA	45
Chicago Restaurant Partners, LLC	USA	42
<b>2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833-3505, USA</b>		
C&B Holdings, LLC	USA	90
H & H Catering, L.P.	USA	90
Cosmopolitan Catering, LLC	USA	60
<b>2626 Glenwood Avenue, Suite 550, Raleigh, NC 27608, USA</b>		
Waveguide LLC	USA	57
<b>2215-B Renaissance Drive, Las Vegas, NV 89119, USA</b>		
GLV Restaurant Management Associates, LLC	USA	90
<b>211 E. 7th Street, Suite 620, Austin, TX 78701-3218, USA</b>		
Wolfgang Puck Catering & Events of Texas, LLC	USA	90
<b>980 N. Michigan Ave., Suite 400, Chicago, IL 60611, USA</b>		
Convention Hospitality Partners	USA	80
Atlanta Sports Catering	USA	50
Orlando Foodservice Partners	USA	50
<b>1400 West Benson Blvd, Suite 370, Anchorage, AK 99503, USA</b>		
KIJIK/ESS, LLC	USA	80
Statewide/GanaAYoo JV	USA	50
<b>801 Adlai Stevenson Drive, Springfield, IL 62703, USA</b>		
Park Concession Management, LLC	USA	50
<b>40 Technology Pkwy South, #300, Norcross, GA 30092, USA</b>		
Eversource LLC	USA	51
<b>80 State Street, Albany, NY 12207-2543, USA</b>		
RA Patina, LLC	USA	50
<b>111 Eighth Avenue New York, NY 10011, USA</b>		
RA Patina Management LLC	USA	50
<b>Corporation Trust Centre, 1209 Orange Street, Wilmington, DE 19801, USA</b>		
AEG Venue Management Holdings, LLC	USA	38
<b>c/o Union Square Hospitality Group, LLC Attn: Chief Legal Officer, 853 Broadway, 17th Floor, New York, NY, 10003 USA</b>		
Hudson Yards Catering, LLC	USA	49
<b>6055 Lakeside Commons Drive, Suite 440, Macon, GA 31210, USA</b>		



# Hospitality Holdings Limited

## Notes to the accounts (continued) For the year ended 30 September 2020

### 19. Details of related undertakings of Hospitality Holdings Limited (continued)

Kimco Holdings, LLC (iv)	USA	24
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### NOTES

1. Unless otherwise stated, indirectly owned by Hospitality Holdings Limited, active status and ordinary shares issued.
2. In some of the jurisdictions where we operate, share classes are not defined and in these instances, for the purposes of disclosure, we have classified these holdings as ordinary.
3. A number of the companies listed are legacy companies which no longer serve any operational purpose.

### CLASSIFICATIONS KEY

- (i) Directly owned by Hospitality Holdings Limited
- (ii) Dormant/non-trading
- (iii) A Ordinary shares
- (iv) B Ordinary shares
- (v) C Ordinary and/or Special shares
- (vi) D, E and/or F Ordinary shares
- (vii) Deferred shares
- (viii) Preference including cumulative, non-cumulative and redeemable shares
- (ix) Redeemable shares
- (x) No share capital, share of profits
- (xi) Limited by guarantee

**REPORT AND UNAUDITED FINANCIAL STATEMENTS - YEAR ENDED 30 SEPTEMBER 2020****DIRECTORS' REPORT**

This Directors' Report has been prepared in accordance with the provisions applicable to companies entitled to the small companies' exemption. Compass Secretaries Limited (the Company) has been dormant as defined in section 1169 of the Companies Act 2006 (CA 2006) throughout the year and preceding year.

**Board of Directors**

The following individuals served as directors throughout the year and up to the date of this Report, unless indicated otherwise:

K Dunham (resigned 31 January 2020)

J Z Kachel (appointed 13 May 2021)

J Lea

S K Pain (resigned 30 April 2021)

S J Sergeant

A R Yapp

The directors acknowledge their responsibilities for complying with the requirements of the CA 2006 with respect to accounting records and the preparation of accounts.

**Parent Undertakings**

The ultimate parent company and controlling entity, Compass Group PLC, is the parent undertaking of the largest group of undertakings for which Group accounts are drawn up. The immediate holding and controlling company is Compass Group Holdings PLC.

Compass Group PLC and Compass Group Holdings PLC are incorporated in the United Kingdom and registered in England and Wales.

Copies of the Compass Group PLC financial statements are available from its registered address: Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ and on the Compass Group PLC website at [www.compass-group.com](http://www.compass-group.com)

Approved by the Board of Directors on 24 June 2021 and signed on its behalf by:



S J Sergeant

Director

Compass Secretaries Limited

Registered office - Compass House, Guildford Street, Chertsey, Surrey, KT16 9BQ

Registered in England and Wales No. 04084587



**COMPASS SECRETARIES LIMITED**

**BALANCE SHEET - AS AT 30 SEPTEMBER 2020**

	2020	2019
	£	£
<b>CURRENT ASSETS</b>		
Debtors - Amounts falling due within one year		
Amounts owed by immediate parent undertaking	1	1
<b>NET CURRENT ASSETS AND NET ASSETS</b>	<u>1</u>	<u>1</u>
<b>CAPITAL AND RESERVES</b>	2020	2019
	£	£
Called up share capital		
Issued, allotted and fully paid		
1 Ordinary shares of £1 each	1	1
<b>TOTAL SHAREHOLDERS' FUNDS</b>	<u>1</u>	<u>1</u>

For the year ended 30 September 2020 the Company was entitled to exemption from audit under Section 480 of the CA 2006 relating to dormant companies.

The members have not required the Company to obtain an audit of its accounts for the year in question in accordance with Section 476 of the CA 2006.

The directors acknowledge their responsibilities for complying with the requirements of the CA 2006 with respect to accounting records and the preparation of accounts.

These financial statements have been prepared in accordance with the provisions applicable to the small companies exemption.

These financial statements of Compass Secretaries Limited (registered number 04084587) were approved and authorised for issue by the Board of Directors on 24 June 2021.

Signed on behalf of the Board of Directors



S J Sergeant  
Director

## COMPASS SECRETARIES LIMITED

### NOTES TO THE ACCOUNTS - YEAR ENDED 30 SEPTEMBER 2020

#### **1 Accounting policies**

The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the Company's accounts.

##### **(a) Basis of preparation**

These financial statements have been prepared in accordance with the historical cost convention, Financial Reporting Standard 102 *The Financial Reporting Standard* applicable in the UK and Republic of Ireland (FRS 102), and in accordance with applicable United Kingdom laws.

The Company is dormant within the meaning of the CA 2006 and in accordance with the requirements of FRS 102 paragraph 35.10(m) will retain its historic accounting policies for reported assets, liabilities and equity at the date of transition to FRS 102 on 1 October 2015 until there is any change to those balances or the Company undertakes any new transaction.

Under FRS 102 paragraph 1.12(b), the Company is exempt from the requirement to prepare a cash flow statement on the grounds that its ultimate parent company includes the Company's cash flows in its own published consolidated accounts.

##### **(b) Intercompany receivables**

Intercompany receivables are measured at amortised cost using the effective interest method less any impairment. Intercompany receivables are assessed for indicators of impairment at each reporting end date and are impaired where there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated cash flows have been adversely affected.

**EXHIBIT 10**  
**AIRPORT CONCESSIONS PROGRAM**  
**HANDBOOK**

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overight Address (if different) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With copies to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Overnight Address (if different): \_\_\_\_\_

\_\_\_\_\_

*Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.*

# **AIRPORT CONCESSION PROGRAM HANDBOOK**



***CITY OF CHICAGO***  
***DEPARTMENT OF AVIATION***

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## **INTRODUCTION:**

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

## **THE CONCESSIONS PROGRAM:**

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

### CDA UNIT FUNCTIONS

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,  
insurance,

Commissioner property management and concessions functions/issues including  
merchandising plans, outreach, proposal generation  
and evaluation, contract negotiation, and overall  
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring  
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing  
Representative ("CMR") Concessions, including construction of Improvements  
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and  
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.



## **THE MONITORING PROGRAM:**

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

## **THE PRE-MONITORING PROCESS:**

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

### **STAGE 1 - CITY COUNCIL APPROVAL**

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

### **STAGE 2 - LEASE AGREEMENT**

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

### STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

### STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

### STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

### **KEY ELEMENTS OF THE MONITORING PROGRAM:**

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

### PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

#### **FINANCIAL AUDITS**

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

#### **COMPLIANCE AUDITS**

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

#### **SECRET SHOPPING**

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

#### **SUMMARY:**

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

## **APPENDIX 1**

### **PHYSICAL INSPECTION STANDARDS:**

#### **FACILITY MAINTENANCE STANDARDS**

##### **ITEMS:**

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

##### **STANDARD:**

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

##### **ACTION:**

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
  - Report any damage to the premises to CDA and your insurance company (if applicable)
  - immediately.

##### **ITEMS:**

- Lease line maintenance
- "Pop-out" areas

##### **STANDARD:**

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

##### **ACTION:**

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

**ITEMS:**

- Altering of layout
- Renovations/construction
- Signage/advertising

**STANDARD:**

Written approval, prior to action, by the Commissioner of Aviation.

**ACTION:**

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

**ITEMS:**

- Properly functioning equipment

**STANDARD:**

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

**ACTION:**

- Have employees' spot check all equipment for possible malfunction.
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

**EMPLOYEE STANDARDS****ITEMS:**

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

**STANDARD:**

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

**ACTION:**

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

**ITEMS:**

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

**STANDARD:**

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

**ACTION:**

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

**PRODUCT STANDARDS**

**ITEMS:**

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

**STANDARD:**

Only authorized products can be sold as determined in the Lease Agreement.  
Only use professionally produced or printed signage as approved by CDA.  
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.  
Must adhere to Value Pricing as provided in the Lease Agreement.

**ACTION:**

Use professionally produced, approved signage only.  
Consider innovative ways to merchandise your products/services.  
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.  
Maintain adequate inventory levels.  
Notify the Department when adding, deleting or changing merchandise or changing prices.  
Maintain pricing as provided in the Lease Agreement.

**AUXILIARY SPACE STANDARDS**

**ITEM:**

Storage Area  
Corridors, common areas  
Pick-up, delivery and disposal

**STANDARD:**

Safe use of storage space.  
Proper storage of potentially flammable items in accordance with fire codes.  
Provide adequate ingress and egress within storage space.  
Clear aisles and corridors.  
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.  
Refuse disposal during designated hours at designated locations as determined by CDA.

**ACTION:**

Use storage space wisely.  
Maintain a system providing for access by authorized personnel only.  
Report any tampering with or malfunctioning of security locks, gates, etc.  
Keep corridors and common areas free of debris, trash, carts and stock.  
Provide pest control service on a regular basis.  
Refrain from using luggage carts for deliveries.  
Dispose of refuse during designated hours.

## **APPENDIX 2**

CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT  
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS



## **F&B Storage**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

Are Merchandise/Product Levels Adequate?

**Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

**Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

**Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

**Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Monthly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

### **Exterior**

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

**Merchandise/Product**

Are Merchandise/Product Levels Adequate?

**Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

**Safe Food Handling**

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

**Safety Requirements**

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

**Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

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- Debris on floor in dishwash area
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Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

**Staff**

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

## **Retail**

### **Documents/Logs**

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
  - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

### **Equipment**

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
  - Cooler needs repair
  - External Temp gauges not working
  - Freezer needs repair
  - Inside of Cooler/Refrigerator/Freezer needs cleaning
  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

### **Interior**

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

### **Merchandise/Product**

- Are Merchandise/Product Levels Adequate?

### **Pest Control**

- Is there Pest Evidence?
  - Flies
  - Mice
  - Mouse Droppings
  - Roach Droppings
  - Roaches

### **Safety Requirements**

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Retail Storage**

### **Documents/Logs**

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  - Outside Doors of Refrigerator/Freezer needs cleaning
  - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

### **Exterior**

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- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Staff**

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

## **Weekly F&B**

### **Dishwashing Area**

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

### **Documents/Logs**

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

### **Equipment**

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

### **Interior**

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

### **Pest Control**

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

### **Safe Food Handling**

Is the Food Service Manager on-site?

### **Safety Requirements**

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

### **Sinks/Plumbing/Drains**

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- *Mops not hung properly*
- Standing water



## **APPENDIX 3**

### **FINANCIAL AUDIT STANDARDS:**

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

#### Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

#### Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

#### Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

### Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

## **APPENDIX 4**

### **CONCESSIONS OPERATING STANDARDS:**

#### General Airport Guidelines

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

#### Laws and Ordinances

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

#### Default Notices

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

## APPENDIX 5

### KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

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**APPENDIX 6**

**KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:**

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905
Yolanda Woodruff Director of Retail Operations	(773) 894-5463
Dorine Litman Property Manager / ORD	(773) 894-3908
Patricia Grzyb Property Manager / MDW	(773) 838-0733
Sungjin Choi Construction and Design Manager	(773) 686-7606

## **APPENDIX 7**

### **RULES AND REGULATIONS:**

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for



damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

**EXHIBIT 11**  
**LIQUIDATED DAMAGES**

## EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<b><u>Infraction</u></b>	<b><u>1<sup>st</sup> Violation</u></b>	<b><u>2<sup>nd</sup> Violation</u></b>	<b><u>3<sup>rd</sup> Violation</u></b>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

(Initial Here)

**EXHIBIT 12**  
**UTILITY USAGE**  
**FEE**

## **EXHIBIT 12**

### **UTILITY USAGE FEE**

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

## EXHIBIT C

**SUBLEASE FOR FOOD AND BEVERAGE SALES**

**BETWEEN**

**Host International, Inc.**

**AND**

**Café DesCartes Company,”**

**AT**

**CHICAGO O’HARE INTERNATIONAL AIRPORT**



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Exhibit “A” Description or Depiction of Premises

Exhibit “B” Menu

Exhibit “C”

Attachment 1 Food and Beverage Purchasing Conditions

Attachment 2 ACDBE No Change Declaration Form

DRAFT

**SUBLEASE FOR FOOD AND BEVERAGESALES  
AT CHICAGO O'HARE INTERNATIONAL AIRPORT**

THIS SUBLEASE ("Sublease") is made and entered into this \_\_\_\_ day of June, 2021, by and between HOST INTERNATIONAL, INC. ("Host"), and Café DesCartes Company," ("Concessionaire"). THIS SUBLEASE MUST BE FULLY EXECUTED BEFORE CONCESSIONAIRE CAN TAKE POSSESSION OR HAVE ACCESS TO PREMISES AS DEFINED HEREIN.

**Recitals**

WHEREAS, Host is a principal concessionaire at \_\_\_\_\_ Airport (the "Airport") pursuant to that License Agreement by and between the City of Chicago ("Lessor") and Host, dated January 1, 1998 (which, together with any amendments thereto, is hereinafter referred to as the "Lease"); and

WHEREAS, Host has established and upheld a reputation as a provider and operator of high-quality concession facilities which has enabled Host to become a principal concessionaire at the Airport; and

WHEREAS, Concessionaire desires to be, and has been selected by Host and/or the Lessor, to be the operator of a certain food and beverage facility at the Airport (as hereinafter defined, the "Premises"); and

WHEREAS, the parties desire to enter into this Sublease of the Premises upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Sublease and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

**1. Lease.**

**1.01. Incorporation of Lease.** A copy of the Lease has been furnished to Concessionaire, and Concessionaire is aware of all the terms and conditions contained therein. The Lease is incorporated into this Sublease and this Sublease is subject to all applicable terms as set forth in the Lease, as such may be amended from time to time. Concessionaire shall be subject to all the requirements, terms, covenants, conditions and restrictions with respect to the occupancy, operation, use and care of the Premises and Concessionaire's conduct in the Airport which apply to Host pursuant to the Lease. Concessionaire shall have no greater rights in the Premises than Host has under the Lease. Except where the Lease is silent on an issue, or where the terms of this Sublease are more stringent than those in the Lease, in the event of any conflict between any term of this Sublease and any term imposed on

Host by the Lease, the Lease shall be superior and control the outcome. Unless otherwise defined in this Sublease, the definitions set forth in the Lease are incorporated herein and shall constitute the definitions of such terms as used in this Sublease.

**1.02. Subordination of Sublease.** This Sublease and all rights of Concessionaire hereunder are in all respects subject and subordinate to (i) the Lease and to all of the terms, covenants and conditions thereof, and (ii) to all encumbrances now affecting the Lease or the Premises or to which the Lease is subject and subordinate. The foregoing provisions shall be self-operative and no further instrument of subordination shall be necessary, unless required by Host or Lessor, in which event Concessionaire agrees, on demand, at any time or times, to execute, acknowledge and deliver to Host and/or Lessor any and all instruments that may be reasonably necessary or proper to confirm the aforesaid subordination of this Sublease, and all rights of Concessionaire hereunder, to the Lease and the lien of any such encumbrances.

**1.03. No Privity, Exercise of Rights and Remedies Under Lease.** Nothing in this Sublease shall be construed to create privity of estate or of contract between Concessionaire and Lessor. Concessionaire shall not have the right to exercise any of Host's options or elections permitted or authorized under the Lease. Concessionaire shall have no rights or remedies against Lessor for any default, failure or delay on the part of Lessor in the performance of any obligations under the Lease. Concessionaire shall not have the right to institute any action or proceeding against Lessor for the enforcement of the Lease. If Lessor shall default in the performance of any of its obligations under the Lease, Host shall, upon the written request of Concessionaire, use its diligent good faith efforts to enforce the Lease to obtain Lessor's compliance with its obligations thereunder. Except as otherwise specifically provided herein, Host shall have no duty to perform any obligations of Lessor and shall under no circumstances be responsible or liable to Concessionaire for any default, failure or delay on the part of Lessor in the performance of any obligations under the Lease, nor shall such default of Lessor affect this Sublease, or waive or defer the performance of any of Concessionaire's obligations hereunder. In furtherance of the foregoing, Concessionaire hereby waives any cause of action and any right to bring an action against Host by reason of any such act, omission, negligence or default of Lessor under the Lease.

**1.04. No Breach of Lease.** Concessionaire, its agents, employees or anyone claiming from, through or under Concessionaire, will not do, permit, or suffer any act or omission which would (i) constitute a breach or violation by Host of any of the terms, covenants, conditions or provisions of the Lease, (ii) enlarge any of the obligations of Host under the Lease, or (iii) give Lessor the right to terminate the Lease. Any violation of the provisions of the Lease by Concessionaire shall be deemed to be, for all purposes hereunder, a default under this Sublease, for which Host shall have all of the remedies provided by this Sublease.

**1.05. Termination of Lease.** If for any reason the Lease expires or is terminated prior to the expiration of the term of this Sublease (as hereinafter defined, the "Term"), either by its terms or by Lessor or by Host, whether pursuant to any termination rights therein reserved or therein granted to either of said parties or otherwise, then, on the date of expiration or termination of the Lease, this

Sublease and the Term hereof shall automatically terminate with the same force and effect as though such termination date were the date herein fixed for the expiration of the Term and Host shall not be liable to Concessionaire by reason thereof.

## **2. Contingencies.**

**2.01. Lessor Approval.** This Sublease is subject to and contingent upon the Lessor's approval of Concessionaire and this Sublease. If such approval has not been obtained within thirty (30) days hereafter, Host shall be entitled to declare this Sublease null and void, effective upon notice to Concessionaire. In the event said approval is not obtained, Concessionaire shall hold Host and Lessor harmless and shall not in any way pursue any claim against Host or Lessor for such failure, including any claim for reimbursement of expenditures made by Concessionaire with respect to this Sublease and/or the Premises or for prospective profits.

**2.02. Certification.** This Sublease is subject to and contingent upon Concessionaire being validly certified and maintaining its valid certification as an Airport Concession Disadvantaged Business Enterprise ("ACDBE") by the Lessor or the appropriate certifying entity (the Lessor or such other entity, as applicable, being the "Certifying Entity") in accordance with all applicable laws, rules and regulations and as set forth more fully herein.

**2.03. Brand Franchise/License.** This Sublease is subject to and contingent upon Concessionaire furnishing to Host a copy of the license or franchise agreement which authorizes Concessionaire to operate the Premises under a brand name if Concessionaire's use, as described in this Sublease, provides therefor.

**2.04. Liquor and/or Business Licenses.** This Sublease is subject to and contingent upon Concessionaire obtaining, maintaining, and furnishing to Host a copy of any and all liquor and/or business licenses required for the operation of the Premises.

**3. Premises.** Host hereby subleases to Concessionaire and Concessionaire hereby subleases from Host the premises located \_\_\_\_\_ in the Airport which Premises contain approximately \_\_\_\_\_ square feet, as generally depicted on Exhibit A hereto (the "Premises"). The depiction of other facilities on Exhibit A or the description of the uses or names of other facilities shown on Exhibit A shall not be construed as a representation by Host that such other facilities shall be so developed, maintained, used or named. Host reserves the right to increase, reduce, or relocate the Premises or to increase, reduce or relocate any common areas or any other tenant premises in the event that such increase, reduction or relocation is necessary to accommodate a change in the design or use of the Airport by Lessor, including but not limited to relocation of security checkpoints. Any relocation, expansion or reduction shall be accomplished as expeditiously as is reasonable under the circumstances, and any adjustment to the Premises shall be formally made by the execution of a written amendment to this Sublease. Premises shall not be delivered to Concessionaire until all requirements are met pursuant to Section 4.02 herein.

#### **4. Term.**

**4.01. Term.** The term of this Sublease (the "Term") shall commence on the date hereof (the "Term Commencement Date") and shall expire on the earliest to occur of: i) the earlier termination of the Lease; ii) the earlier termination by operation of this Sublease; or iii) at 11:59 p.m. on \_\_\_\_\_ (the "Term Expiration Date").

**4.02. Delivery of Certificates, Bonds and Other Approvals.** PRIOR TO HOST'S DELIVERY OF PREMISES TO CONCESSIONAIRE, CONCESSIONAIRE SHALL DELIVER TO HOST'S DIRECTOR OF OPERATIONS AT THE AIRPORT THE FOLLOWING:

- A. Proof of Concessionaire's valid certification as an ACDBE;
- B. Certificates or policies of insurance, and endorsements, required pursuant to this Sublease;
- C. Any and all bonds or other security instruments required pursuant to this Sublease;
- D. Proof, including the furnishing of a copy of the license or franchise agreement that Concessionaire is authorized to operate the Premises under a brand name if Concessionaire's use, as described in this Sublease, provides therefor;
- E. Reimbursement to Host for any design and construction funds expended by Host on Concessionaire's behalf, including but not limited to architectural and engineering fees, estimating fees, design management fees, construction management fees, insurance costs, interest on construction financing and costs paid to general contractors, equipment suppliers or installers, signage suppliers or installers and/or seating and decor suppliers;
- F. Reimbursement to Host of any other funds expended on Concessionaire's behalf by Host, including without limitation the Bid Development Charge set forth herein;
- G. Copies of all licenses required for operation of the Premises, including certificate of occupancy liquor, and business licenses; and.
- H. A fully executed copy of this Sublease.

CONCESSIONAIRE WILL NOT BE ALLOWED TO OPEN UNTIL ALL OF THE ABOVE ARE COMPLETE.

**4.03. Late Opening Fee.** Concessionaire shall pay Host, within ten (10) days of Concessionaire's receipt of an invoice, one hundred dollars (\$100.<sup>00</sup>) per day as a fee for each day beyond \_\_\_\_\_ on which the Premises are not open to the public for business, payable each Monday for the number of days in the prior week that the Premises were not open. This late opening fee shall be in addition to and not in lieu of all other monetary obligations payable by Concessionaire under this Sublease and represents the parties' estimate of the damages that will be caused to Host in the event of Concessionaire's failure to be open for business. Host's failure to invoice Concessionaire for such late opening fee shall not waive Host's rights, including its right to subsequently invoice Concessionaire for the late opening fee and/or Host's right to terminate this Sublease. Receipt by Host of the late opening fee shall not preclude Host from availing itself of additional remedies for such late opening, including termination of this Sublease.

**5. Use.** Concessionaire shall use the Premises to sell at retail the items listed on Exhibit "B" at the prices subject to the approval of Host and Lessor and for no other purpose, activity or operation whatsoever. Concessionaire shall not add or delete items from those listed on Exhibit B, or change prices, without the prior written consent of Host and Lessor. In the event Host or Lessor determines that any of Concessionaire's products are objectionable for display or sale, Concessionaire shall, upon written notice from Host, immediately remove such item from its inventory and shall thereafter discontinue displaying, offering for sale, or selling such item. All prohibitions and restrictions as to use of the Premises which are applicable to Host pursuant to the Lease shall likewise apply to Concessionaire; provided, however, that such prohibitions and restrictions may be enforced against Concessionaire by either Host or Lessor. Concessionaire does not have the exclusive right for the sale in the Airport, or any portion thereof, of any item or brand which Concessionaire is authorized to sell pursuant to this Sublease. Host may be operating competing businesses within the Airport for the sale of the same or similar items or brands.

TBD: [Concessionaire acknowledges that rights granted by certain national brands were granted to Host International, Inc. as part of Host's exclusive master agreement with that corporation, and such rights remain the exclusive rights of Host hereunder, notwithstanding Host's grant of this Sublease to Concessionaire for operation of this [brand] unit during the Term of this Sublease. This Sublease is a grant for the operation of a [brand] concession at the specified Premises only, for the limited Term of this Sublease, and Concessionaire has no right to any exclusive territory or to object to the location of an additional [brand] or other similar concession at a site which is in proximity of the Premises and/or in the same trading area of the Premises. Host shall be free to itself propose or bid for, or itself develop other concessions under the same or other brand locations at the Airport on its own during the Term of this Sublease and thereafter.]

Or in the Alternative: Host shall be free to develop competing businesses within the Airport for the sale of the same or similar items or brands on its own during the Term of this Sublease and thereafter. Concessionaire has no other right to a new or renewed Sublease upon the expiration of the term of this Sublease.]

Additionally, Concessionaire acknowledges that this Sublease is solely for the purpose of operating the Premises until expiration of this Sublease and Host shall not be required to grant the Concessionaire any future rights to use the brand names in any future bids or proposals for any concessions at the Airport, including but not limited to future bids or proposals for the Premises following expiration of this Sublease. Concessionaire has no other right to a new or renewed Sublease upon the expiration of the Term of this Sublease.

## **6. Operation of Premises.**

**6.01. Responsibility for Operations.** Concessionaire understands and agrees that Host has entered into this Sublease with the understanding that Concessionaire shall at all times perform a substantial operating or management role relating to the Premises, which are the subject matter of this Sublease. The representation by Concessionaire that it will perform a substantial operating or management role is relied upon by Host and is a material inducement to Host to enter into this Sublease. There are no verbal or written agreements between Concessionaire and Host relating to the role to be performed by Concessionaire, or relating to financing or other monetary arrangements, except as set forth in this Sublease. If any future agreements are reached between them, such agreements shall be promptly incorporated as a written amendment to this Sublease. No such future agreements shall be binding on Concessionaire or Host until a written amendment to this Sublease shall be effective.

Concessionaire shall be solely responsible for the operation of the Premises in accordance with this Sublease, the employment of persons who work at the Premises, and all costs and expenses incurred in connection with the conduct of business at the Premises, and Host shall have no responsibility for any of the same.

**6.02. Lease Requirements.** Concessionaire shall be subject to all the requirements, terms, covenants, conditions and restrictions with respect to the occupancy, operation, use and care of the Premises and Concessionaire's conduct in the Airport which apply to Host pursuant to the Lease. Host shall be entitled to enforce such Lease provisions as to Concessionaire and/or the Premises in the same manner and mode as Lessor is entitled to enforce such Lease provisions with respect to Host pursuant to the Lease, except that Concessionaire shall be entitled to only the lesser of (i) any applicable cure set forth herein or (ii) one-half (1/2) of any applicable grace or cure period, to which Host is entitled under the Lease before Host shall be entitled to enforce the same, it being understood and agreed that Host shall be entitled to exercise its rights as against Concessionaire hereunder prior to the time that Lessor is entitled to act against Host. Without limiting Host's remedies herein, Concessionaire's performance hereunder is subject to any and all delinquency charges, sanctions, liquidated damages, fines, interest and/or late fees, and other means of enforcement, as set forth in the Lease and/or Sublease.

**6.03. Representative of Concessionaire.** During all hours that the Premises are open, Concessionaire shall retain at the Premises at least one (1) qualified representative, authorized to represent and act for it in matters pertaining to the operation of the Premises, and shall keep Host



informed in writing of the identity of each such person. In addition, the representative of Concessionaire shall provide a non-work contact to Host for use in the event of an emergency.

**6.04. Ingress and Egress.** Concessionaire shall possess the right of ingress to and egress from the Premises as is necessary in order for Concessionaire to fulfill the terms of this Sublease, subject to the terms of the Lease and any applicable Airport rules and regulations. Concessionaire agrees that the exercise of such right shall not impede or interfere with the operations of Host and/or its other subtenants or with the use and operation of the Airport by Lessor, its tenants, other authorized occupants or the traveling public.

**6.05. Rights under the Lease.**

**A. Rights of Lessor are Also Reserved by Host.** All rights of Lessor pursuant to the Lease with respect to Host are likewise reserved in favor of Host with respect to Concessionaire, so that such rights may be exercised as to Concessionaire by either Host or Lessor.

**B. Rights of Host are not Reserved by Concessionaire.** Concessionaire's rights under this Sublease are fully set forth and explained exclusively in this Sublease, and Concessionaire does not receive and shall not have any other rights by virtue of any other document or agreement, including, without limitation, the Lease. The rights of Host with respect to Lessor that accrue to Host under the Lease do not pass to Concessionaire with respect to Host in any form whatsoever, except as specifically provided for in this Sublease. By way of illustration only, if Host has the right to sell a certain item at the Airport, Concessionaire shall not have a right to sell such item except as such right is granted in this Sublease.

**6.06. Compliance with Laws and Regulations.** Concessionaire shall comply with all applicable federal, state and local laws, ordinances, rules and regulations respecting Concessionaire's use and occupation of the Premises, the hiring and employment of Concessionaire's personnel at the Premises, and the conduct of Concessionaire and its personnel at the Airport and in the Premises, as well as all rules and regulations of Lessor in respect to the Airport, now or hereafter in effect.

**6.07. Relationship of Parties.** Concessionaire is not and shall not hold itself out as an agent, legal representative, partner, subsidiary, joint venturer or employee of Host. Concessionaire shall have no right or power to, and shall not, bind or obligate Host in any way, manner or thing whatsoever, nor represent that it has any right to do so. In all public records, in its relationship with other persons, and on letterheads and business forms, Concessionaire shall indicate its independent ownership of said business. There is no fiduciary relationship between Host and Concessionaire.

**6.08. Hazardous Substances.** No goods, merchandise, or materials that are explosive or hazardous shall be kept, stored, or sold in or on the Premises, and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon. Nothing shall be done on the Premises, other than as is provided for in this Sublease, which will increase the rate of or suspend the insurance upon the Premises or upon structures of the Airport. No machinery or apparatus shall be used or

operated on the Premises which will damage the Premises or adjacent buildings. Nothing in this section shall preclude Concessionaire from bringing, keeping, or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, provided, however, that Concessionaire shall be and remain exclusively responsible for and liable for any damages caused by the bringing, keeping and/or using of such materials, supplies, equipment and/or machinery.

**6.09. Performance Standards.** Without limiting Concessionaire's obligation to comply with all applicable federal, state and local laws, ordinances, rules and regulations, and all rules and regulations of the Lessor, Concessionaire shall observe the following performance standards ("Performance Standards") in addition to those contained in the Lease and elsewhere in this Sublease:

**A. Operation of Premises.**

**1) Hours of Operation.** The Premises shall be open from and after the Rent Commencement Date for business from \_\_\_ a.m. to \_\_\_ p.m., seven (7) days a week, including holidays, except as may be otherwise approved in writing by Host, or for such longer or shorter hours as the Lessor or Host shall require. At no time shall the Premises be left unattended or temporarily closed while employees go on break or for other such reasons.

**2) Cleanliness and Order.** The Premises shall be kept clean and in good order and Concessionaire shall observe superior sanitation standards at all times. No loud or inappropriate music will be played at the Premises.

**3) Compliance with Other Agreements.** In the event the Premises are operated as a "branded" facility by Concessionaire pursuant to a license or franchise, Concessionaire shall fully comply with all of the standards of the licensor or franchisor, perform all of the terms and conditions of such license or franchise and keep such license or franchise in full force and effect.

**4) Nuisance or Waste.** Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste in the Premises.

**5) Trash and Recycling.** Concessionaire shall recycle cans, bottles, paper, newspapers, cardboard and other items to the same extent as Host participates in recycling programs in connection with the facilities Host operates at the Airport. Concessionaire shall promptly remove from the Premises to the garbage or refuse disposal area designated by Host all rubbish, refuse, packaging and garbage; and, if such service is not provided by others, Concessionaire shall remove from the Airport the accumulation of all such material in said garbage or refuse disposal area at such frequent intervals as Host may reasonably direct. Any trash chutes used exclusively by Concessionaire shall be cleaned and sanitized by Concessionaire at regular intervals as needed. If reasonably necessary, Concessionaire

shall provide an appropriate odor-free, liquid-tight trash compactor(s), which it shall clean and sanitize as needed.

## **B. Personnel.**

**1) Manager.** Concessionaire's on-site manager at the Premises (the "Manager") shall be an active, qualified, experienced and competent Manager with the complete responsibility and authority to respond quickly and decisively to Host and Lessor in all matters affecting the operation of the Premises. Concessionaire shall at all times ensure, in the absence of the Manager, that a qualified supervisor is available and empowered to act quickly and decisively in response to any need arising from the operation of the Premises during normal business hours as well as in the evenings and/or in the event of an emergency.

**2) Staffing.** Concessionaire shall provide an adequate number of employees on each shift to assure the highest standards of public service and satisfactory operation and maintenance of the Premises at all times. Concessionaire shall provide appropriate staffing levels to accommodate peak periods of passenger activity and shall add an appropriate number of employees to respond to increased levels in potential customers resulting from changes in airline schedules or relocation of airline gates.

**3) Deportment.** Concessionaire shall require its employees in all circumstances to observe a strict impartiality as to quantities and services, to provide fast service, to exercise courtesy and consideration in dealing with the public and to give directions and make change cheerfully. Employees will acknowledge, greet and/or welcome customers and provide assistance to customers as needed or requested. Concessionaire's employees shall be proficient in customer service and sales techniques. Employees shall not eat or drink behind counters or registers or in the store selling space during business hours, or store personal belongings within view of customers at the Premises.

**4) Customer Service Training.** Concessionaire's employees shall conduct themselves in accordance with the rules and precepts of the industry standards for customer service. Concessionaire's employees shall attend any customer service training programs made available to such employees by the City of Chicago, State of Illinois and Host. Employees shall be trained in retail service selling skills and shall be knowledgeable about the products and services offered at the Premises. Concessionaire shall certify to Host, if requested, that such training has been completed for all employees.

**5) Uniforms and Badges.** All employees of Concessionaire who come in contact with the public shall wear professional uniforms or, if Concessionaire does not have a standard uniform, shall be appropriately attired. Such uniforms or attire shall be subject to approval by Host's Director of Operations at the Airport. All employees shall wear identification badges subject to approval by Host's Director of Operations at the Airport,

which clearly state Concessionaire's company name and the individual employee's name. If the Premises are operated pursuant to a license or franchise, the franchisor/licensor's uniform shall be acceptable to Host. The uniforms or other attire of employees shall be kept neat and clean and employees shall be well groomed.

**C. Service, Marketing, Advertising and Promotion Initiatives.** If required by the Lease, Concessionaire shall participate in and adopt all customer service, marketing, advertising and promotion programs that are created and implemented by Host and/or Lessor. All of Concessionaire's advertising at the Airport, as well as any advertising by Concessionaire related solely to the Premises at the Airport, shall be subject to Host's prior approval. National programs implemented by Host and adopted by Concessionaire will be maintained as per the guidelines set forth in the program communication.

**D. Refurbishment of Premises.** Concessionaire shall have available at least one percent (1%) of its annual [Gross Revenues/Gross Sales/Gross Receipts] for the refurbishment of the Premises, including the carpeting, flooring, fixtures, equipment and visual displays, beginning with the second anniversary of Concessionaire's opening of the Premises for business. Such funds shall be expended by Concessionaire as required by the Lease and/or at Host's direction based upon the condition and appearance of the Premises. Concessionaire shall maintain receipts evidencing compliance herewith for the Term of this Sublease and shall make such receipts available to Host, upon request, to prove such compliance.

**E. Performance Standard Defaults and Cure Periods.** Any failure by Concessionaire to comply with the foregoing Performance Standards shall constitute an Event of Default as enumerated in this Sublease.

## **7. Services Provided by Host to Concessionaire.**

**7.01. Services Provided Free of Charge.** Without limiting Concessionaire's obligation to comply with all applicable federal, state and local laws, ordinances, rules and regulations, and all rules and regulations of the Lessor, Host's on-site personnel may provide Concessionaire with certain services without charge therefor, as requested by Concessionaire, as follows:

**A. Management Direction.** Concessionaire may meet regularly with Host's Director of Operations at the Airport to discuss the development and maintenance of goals and methods of operation.

**B. Product Purchasing.** Host's local purchasing personnel may provide Concessionaire with advice and counsel regarding product specifications, product selection and vendor selection.

**C. Personnel Hiring and Training.** Host may assist Concessionaire in developing an employee recruitment plan. All Host training classes, conducted by Host, which are held at the Airport for the purpose of training Host employees may also be attended by Concessionaire's employees upon

approval by Host and, in Host's discretion, at no charge to Concessionaire.

**D. Liaison with Lessor.** Host's Director of Operations at the Airport shall serve as a liaison between Concessionaire and Lessor.

**7.02. Services Provided for a Fee.** In the event that Concessionaire requires services beyond the free advice and counsel set forth herein, Concessionaire may request that Host perform additional services for Concessionaire for which Host shall be paid a fee. Upon request, Host shall provide Concessionaire with a price list for such additional services which prices shall be subject to change. Upon request, Host shall provide such additional services, subject to Host's ability to do so given the practical circumstances then existing. These additional services which Host, upon Concessionaire's request, may provide for a fee are as follows:

**A. Design and Construction Services.** In the event that Concessionaire requires any design and/or construction assistance from Host, Host may provide such services and Concessionaire shall reimburse Host for the costs of providing such services pursuant to this Sublease.

**B. Accounting.** Host's local accounting personnel may provide sales and cost accounting direction and assistance.

**C. Food and Beverage Purchasing [optional provision, for F&B subleases only].** Subject to Attachment 1 ("Food and Beverage Purchasing Conditions"), attached hereto and incorporated herein, Concessionaire may purchase from Host such food and beverage items for sale at the Premises as Host may carry in Host's commissary at the Airport and which Concessionaire is permitted to sell under this Sublease. Host shall provide, at Concessionaire's request, a price list of the available food and beverage items and Concessionaire may elect whether it wishes to purchase such items. The price list will be updated periodically and may include the cost of regularly scheduled deliveries and the amount of any extra charge for special deliveries requested by Concessionaire. Host shall invoice Concessionaire for all food and beverage items purchased by Concessionaire from Host, which invoice may accompany the delivery of such food and beverage items. Invoices for food and beverage items purchased by Concessionaire from Host must be paid within ten (10) days of presentation. During any period while Concessionaire is delinquent in the payment of food and beverage items purchased pursuant to this Section, Host, in addition to resorting to any remedies available to Host for such delinquency, including Sublease termination, may refuse to make further sales of food and beverage items to Concessionaire or may, in its discretion, require that all further purchases of food and beverage items from Host shall be made on a payment in cash upon delivery basis until such delinquency is cured.

**8. Assignment and Subletting.** Concessionaire shall not: (i) assign (directly or by operation of law), sublet or otherwise transfer this Sublease or any portion of the Premises; (ii) transfer any rights or privileges conferred upon Concessionaire pursuant to this Sublease by management contract or otherwise; nor (iii) permit any change in the ownership or control of Concessionaire without the prior written consent of Host in each instance and, to the extent required under the Lease, the prior written

consent of Lessor. Prior to any change in ownership or control of Concessionaire, Concessionaire shall obtain valid ACDBE certification for Concessionaire as so changed. Any assignment, sublease, transfer or change in ownership or control in violation of this Section shall constitute a default hereunder. Consent to one assignment, sublease or transfer shall not constitute approval of any subsequent proposed assignment, sublease or transfer.

**9. ACDBE Certification.** Concessionaire acknowledges that compliance with ACDBE rules, laws and regulations, including 49 Code of Federal Regulations (“CFR”) Parts 23 and 26, and the Lessor’s and Host’s ability to count Concessionaire’s revenue (pursuant to the Lease or Sublease) toward Host’s ACDBE participation goals, are material requirements of the Lease and this Sublease. At all times during the Term of this Sublease, Concessionaire shall be and shall remain validly certified as an ACDBE by the Certifying Entity, as defined in Section 2.02 herein, in accordance with all applicable laws, rules and regulations. Concessionaire shall timely file any and all applications, together with all supporting documentation, necessary to maintain such certification. Failure to comply with any of the ACDBE certification requirements set forth herein is an Event of Default under this Sublease.

Without limiting the foregoing, Concessionaire shall comply with the following provisions. Any required notices or submissions to Host shall be sent to both Notice addresses for Host stated in Section 24 herein.

A. Prior to execution of this Sublease, Concessionaire shall provide proof of its valid ACDBE certification by submitting copies of the following documents to Host; however, if for any reason Concessionaire has not done so prior to execution, Host shall be entitled to declare this Sublease null and void upon notice to Concessionaire:

- 1) Concessionaire’s ACDBE certification from the Certifying Entity; and
- 2) If Concessionaire’s last available ACDBE certification is more than one (1) year old, a completed and executed ACDBE No Change Declaration (“Declaration Form”), a copy of which is attached hereto and incorporated herein as Attachment 2.

Concessionaire’s ACDBE Certification Date is [d/m/y] (“the Certification Date”). Concessionaire’s Annual Update deadline for its certification status is [d/m] each year during the Term of this Sublease (the “Annual Update”).

B. If at any time during the Term of this Sublease Concessionaire’s ACDBE certification will expire, Concessionaire shall apply for recertification of its ACDBE status no less than ninety (90) days before such expiration.

C. To confirm Concessionaire’s on-going valid ACDBE certification, each year during the Term of this Sublease, Concessionaire shall:

- 1) Provide Concessionaire's updated, completed and executed Declaration Form to Host by no later than the Annual Update deadline;
- 2) Submit Concessionaire's Annual Update affidavit to the Certifying Entity in such time and manner as required by the Certifying Entity; and
- 3) Provide a copy of Concessionaire's Annual Update approval letter to Host within (thirty) 30 days of receipt of same from the Certifying Entity if the Certifying Entity's practice is to provide an approval letter in response to a submitted Annual Update affidavit.

**D.** If at any time during the Term of this Sublease Concessionaire becomes aware of any change in its circumstances which may affect its certification status (including but not limited to a notice received from the Certifying Entity or because Concessionaire is aware of changes in its internal operations), Concessionaire shall send written notice of such change to Host.

**E.** Concessionaire is solely responsible for the content, accuracy and sufficiency of (i) any documentation and information it provides to Host or any other party with respect to Concessionaire's ACDBE certification, and (ii) the information provided in any Declaration Form.

**F.** In the event that (i) Concessionaire fails to obtain or maintain its valid ACDBE certification, (ii) Concessionaire's certification is ever suspended, revoked, terminated or invalidated for any reason whatsoever, and/or (iii) Concessionaire fails to fulfill any of the requirements herein necessary to become validly certified, or maintain and prove its on-going valid ACDBE certification, then this Sublease will automatically terminate upon written notice from Host to Concessionaire. In the event of such termination, Concessionaire shall hold Host, and the Lessor, their predecessors, successors and assigns, and the directors, officials, officers, agents and employees of each of them, harmless and shall not in any way pursue any claim against any or all such parties for or related to said failure, or any resulting termination of this Sublease, including without limitation any claim for reimbursement of expenditures made by Concessionaire with respect to this Sublease and/or the Premises or for prospective profits.

## **10. Rent.**

**10.01. Definitions.** The definition of [Gross Revenues/Gross Sales/Gross Receipts] in the Lease is incorporated herein and shall constitute the definition of such term as used in this Sublease. The term "Sublease Year" has the same meaning as Lease Year in the Lease which is currently defined as the twelve-month period [m/d] through [m/d].

**10.02. Rent Commencement.** Concessionaire's obligation to pay rent and other monetary obligations to Host hereunder shall commence on the earlier to occur of: (i) \_\_\_\_\_ [fixed date or x number of days after delivery of premises]; or (ii) the date on which Concessionaire opens for business (which earlier date is hereinafter referred to as the "Rent Commencement Date").

**10.03. Rental Amounts.** From and after the Rent Commencement Date, Concessionaire agrees to pay to Host without demand, set off or abatement, at Host / 7217 Collection Center Drive / Chicago, Illinois 60693, in lawful money of the United States each Sublease Year for the leasehold and concession privileges described herein, and under the terms and conditions set forth in this Sublease, the greater of (i) a percentage rent (the "Percentage Rent"), being \_\_\_\_\_% of annual [Gross Revenues/Gross Sales/Gross Receipts-note must say "annual"]; or (ii) an annual minimum rent (the "Minimum Rent") calculated as \_\_\_\_\_ percent (\_\_\_\_%) of Concessionaire's total Rent payments for the prior Sublease Year; provided that the Minimum Rent for the first Sublease Year shall be \_\_\_\_\_ and shall never be less than this amount. Percentage Rent and Minimum Rent are together referred to in this Sublease as "Rent."

**10.04. Minimum Rent Payment.** Concessionaire shall pay the Minimum Rent to Host in equal monthly installments, in advance, on the first day of each month, without demand, and with any partial months to be prorated. Concessionaire's Minimum Rent payment to Host is considered late if Host has not received the payment in full by the first (1<sup>st</sup>) day of each month.

**10.05. Percentage Rent Payment and [Gross Revenues/Gross Sales/Gross Receipts] Reporting.** Concessionaire shall furnish to Host on or before the [one-half the amount of time Host has under master] day following each calendar month or partial month occurring during the Term of this Sublease, via fax to the attention of the Sublease Compliance Department at (866) 721-2326 or (301) 896-5118, via email to [sublease.compliance@hmshost.com](mailto:sublease.compliance@hmshost.com), or via a website as may be developed and required by Host, a detailed statement certified by the Concessionaire and prepared in a manner consistent with the requirements of the Lease, and otherwise reasonably approved by Host, of the [Gross Revenues/Gross Sales/Gross Receipts] derived at or from the Premises during the previous calendar month and the calculation of Concessionaire's payments due to Host for the previous calendar month. With such statement Concessionaire shall calculate and pay any additional amount due over and above the monthly Minimum Rent. Concessionaire's Percentage Rent payment is considered late if Host has not received the payment in full by the [one-half the amount of time Host has under the master] day of each month.

**10.06. Annualization.** Concessionaire shall furnish to Host annually within \_\_\_\_\_ days [state number of days equal to one-half the number of days Host has under the master] after the end of each Sublease Year, an annual statement certified by \_\_\_\_\_ [party required by master], and consistent with the requirements of the Lease and Lessor, showing [Gross Revenues/Gross Sales/Gross Receipts] derived from the Premises during the preceding Sublease Year and Concessionaire's computation of the Rent payable for the previous Sublease Year. Payment of any Percentage Rent due based on such report shall accompany such report. If the Concessionaire has overpaid the Rent due for the preceding Sublease Year, Concessionaire shall deduct such overpayment from the Rent next falling due, except that if the report filed after the end of the final Sublease Year, or portion thereof, shows a Rent overpayment, a cash refund to the Concessionaire will be made by Host within fifteen (15) days after receipt of such final report. The purpose of annualization shall be to effect payment to Host by Concessionaire of the greater of the Minimum Rent or Percentage Rent for each Sublease Year. This requirement to provide an annual, audited statement of [Gross



Revenues/Gross Sales/Gross Receipts] shall be in addition to any other obligations set forth herein or in the Lease and shall in no way limit or excuse Concessionaire from such obligations.

**10.07. Additional Rent.** All payments of any kind or description, other than Rent, payable by Concessionaire to Host or Lessor in accordance with the terms and conditions of this Sublease or the Lease are referred to as "Additional Rent," including without limitation, (i) reimbursements to Host or Lessor for the expense of performing obligations of Concessionaire which Concessionaire fails to perform; (ii) any common area maintenance or utility charges; and (iii) fees, penalties, interest and other charges payable by Concessionaire under this Sublease or the Lease. Unless otherwise provided herein with respect to a particular obligation, all items of Additional Rent shall be payable by Concessionaire within ten (10) days of the giving of notice, including a statement or invoice, to Concessionaire of the amount due. Additional Rent payments shall be sent to: Host / 7217 Collection Center Drive / Chicago, Illinois 60693.

**10.08. Late Payment Service Charge and Returned Checks.**

**A. Late Payment Service Charge.** In the event Concessionaire fails to make timely payment of any Rent or Additional Rent within five (5) days after same shall become due and payable, upon each such event, a one hundred dollar (\$100.<sup>00</sup>) service charge shall become immediately due and payable, together with interest at the rate of eighteen percent (18%) per annum or the maximum contract rate of interest allowed by law, whichever is less, on the delinquent payment(s) from the date due until the date payment is received by Host. Notwithstanding the foregoing, Host shall not be prevented from terminating this Sublease for default in the payment of Rent or Additional Rent or for default in the payment by Concessionaire of any payment due to Lessor. Host and Concessionaire agree that the service charge and interest provided for herein with respect to late payments represent a fair and reasonable estimate as to the additional administrative, processing and accounting costs which will be incurred by Host as a result of any late payments by Concessionaire hereunder.

**B. Returned Checks.** In the event Concessionaire pays any Rent or Additional Rent due under this Sublease with a check that is returned, unpaid, for any reason by Concessionaire's bank (including but not limited to insufficient funds or a stop-payment order on the check) and this occurs three (3) times within any six (6) month period, upon notice from Host, Concessionaire shall make all Rent and Additional Rent payments by money order or cashier's check as required by Host until any and all amounts owed by Concessionaire under this Sublease are brought current and maintained current for an uninterrupted period of sixty (60) days. Concessionaire's payment of any Rent or Additional Rent due hereunder with a check that is returned, unpaid, for any reason by Concessionaire's bank, after Concessionaire has previously made three (3) such payments at any time during the Term of this Sublease shall constitute an Event of Default, with no cure period. Concessionaire shall be charged a thirty-five dollar (\$35.00) fee per returned check to offset the related administrative costs to Host. The fee is intended as a reasonable estimate of such costs and is subject to change by Host.

**10.09. Administrative Charge.** In the event Concessionaire defaults in the performance of any obligation to be performed under this Sublease, including without limitation the securing and maintaining of any insurance or bond; the improving, remodeling, maintaining and repairing of the Premises; or paying utilities; then Host shall have the right, but not the obligation, to perform such obligation on behalf of Concessionaire and Concessionaire shall, within ten (10) days of receipt of any invoice therefor, reimburse Host for the amount expended by Host in performing such obligation on behalf of Concessionaire plus an administrative charge of twenty percent (20%) of such amount. Concessionaire agrees that it shall pay and discharge all costs and expenses, including attorney fees, expended by Host in collection of any delinquent amounts due hereunder, including administrative and service charges.

**10.10. Books, Records and Audits.** Except as expressly modified herein, the provisions of the Lease with respect to financial statements and the certification thereof; maintenance of, access to, and retention of books and records; and rights to audit and adjustments, charges and penalties in respect to audits are incorporated herein and shall apply under this Sublease as between Concessionaire and Host in the same manner as they apply under the Lease as between Host and Lessor.

**10.11. Maintenance and Operations Fees. [optional section, use if required by master].**

From and after the Rent Commencement Date, during the Term of the Sublease, Concessionaire agrees to pay to Host without demand, set off or abatement, at Host's offices at the Airport, in lawful money of the United States, Maintenance and Operations Fees of \_\_\_\_\_ (\$ ) per square foot, per year, to be paid in equal monthly installments, in advance, on the first day of each month, and with any partial months to be prorated. Such amount shall be adjusted periodically, as required by Lessor.

**10.12. Trash and Dumpster Fees. [optional section, use if required by master].** From and after the Rent Commencement Date, during the Term of the Sublease, Concessionaire agrees to pay to Host without demand, set off or abatement, at Host's offices at the Airport, in lawful money of the United States, Trash and Dumpster Fees in the amount of \_\_\_\_\_ (\$ ) per month, to be paid in advance, on the first day of each month and with any partial months to be prorated. Concessionaire understands and agrees, as Host's fees for trash service at the Airport change, Concessionaire's Trash Fees will be adjusted accordingly.

**10.13. Occupancy Fee. [optional section, use if required by master].** From and after the Rent Commencement Date, during the Term of the Sublease, Concessionaire agrees to pay to Host without demand, set off or abatement, at Host's offices at the Airport, in lawful money of the United States, an Occupancy Fee of \_\_\_\_\_ (\$ ) per square foot, per year, to be paid in advance, on the first day of each month, and with any partial months to be prorated.

**10.14. Profit Sharing. [optional section, use if required by master, and tailor language to fit with language of master regarding this requirement].** Concessionaire is subject to the Profit Sharing requirements contained in the Lease. Concessionaire shall pay to Host at the end of each Sublease Year, or portion thereof, an additional fee ("Profit Sharing Fee") in an amount equal to

\_\_\_\_\_ percent (\_\_\_%) of profits earned by Concessionaire from its operation of the Premises during the Sublease Year. Such profits shall be determined in accordance with generally accepted accounting principles of certified public accountants in making a similar determination of profits in the operation of a business or businesses of the general type and character of the business conducted by Concessionaire. The computation of such profits shall be based substantially upon the application of a formula as more particularly set out in Exhibit C, attached hereto **[add this Exhibit to Table of Contents, if applicable]**. Within sixty (60) days after the end of each applicable Sublease Year or the earlier termination of this Agreement for any reason, Concessionaire shall render to Host an accounting of its profits as described above and on the attached Exhibit C, or as otherwise required by Host or Lessor. If a profit sharing fee is due, Concessionaire shall make payment to Host at the time said accounting is rendered.

**11. Taxes, Assessments and Liens.** The provisions of the Lease with respect to taxes, assessments and liens shall apply under this Sublease as between Concessionaire and Host in the same manner as they apply under the Lease as between Host and Lessor. Notwithstanding the foregoing, all real and personal property taxes assessed upon the Premises, including any partial first and/or last tax year of the Sublease, and/or any furniture, fixtures and equipment thereon, by any government authority, agency or entity, together with any sales taxes payable on Concessionaire's Rent and/or the remittance of sales tax collected from customers, shall be the sole responsibility and liability of Concessionaire. The proration method of any real property taxes due by Concessionaire shall be decided and calculated by Host. Concessionaire shall not allow any liens to attach to the Premises or to its leasehold interest. Concessionaire will be responsible for its pro rata share of consulting and legal fees and expenses incurred by Host related to any protest, challenge and/or appeal Host undertakes with respect to any property and/or sales tax assessments on the Premises, or Concessionaire's operations in the Premises, hereunder.

## **12. Improvements.**

**12.01. Acceptance of Premises "AS IS".** Concessionaire shall inspect the Premises before commencement of Concessionaire's construction, improvement and/or operation of the Premises. Host shall have no obligation to make any alterations, additions or improvements of any nature to the Premises. Concessionaire acknowledges that Host has not made nor will make any warranties to Concessionaire with respect to the quality of construction of any leasehold improvements or tenant finish within the Premises or as to the condition of the Premises, whether express, statutory, implied or otherwise, and that Host expressly disclaims any implied warranty that the Premises are or will be suitable for Concessionaire's intended commercial purposes. By virtue of the occupancy by Concessionaire or Concessionaire's contractors of the Premises, Concessionaire shall be deemed to have accepted the non-structural components of the Premises AS IS and WITH ALL FAULTS both as between Host and Concessionaire and Lessor and Concessionaire.

**12.02. Improvement of the Premises.** Improvement of the Premises, including any work in connection with demolition, extension to the Premises and hook-up of utilities and fire prevention or retardant systems, installation of leasehold improvements, fixtures, equipment, decorations,

furnishings, and signs at or on the Premises (sometimes referred to as "improvement of the Premises") will be entirely accomplished by Concessionaire at Concessionaire's expense.

**12.03. Plans and Specifications.** Prior to the commencement of Concessionaire's initial improvement of the Premises or any subsequent refurbishment, remodeling or improvement of the Premises, Concessionaire shall submit two (2) sets of detailed plans and specifications, including estimated project costs, to Host's Director of Operations at the Airport for approval and for forwarding to Lessor for approval. Such plans and specifications and other required information and materials shall be prepared and submitted in conformity with any policies and procedures of Lessor. In addition, Concessionaire shall submit at the same time one (1) set of its plans and specifications to Project Director, \_\_\_\_\_ Airport, Host International, Inc., 6905 Rockledge Drive, Bethesda, Maryland 20817. All plans and specifications shall be prepared by design professionals licensed to perform such design in the State of \_\_\_\_\_.

Concessionaire shall include with its plans and specifications schematic renderings of the Premises, materials, color board(s) and a detailed layout of Concessionaire's proposed overall merchandising plan. Approval will extend to and include but not be limited to architectural and aesthetic matters. Lessor and Host reserve the right to reject any designs submitted and to require Concessionaire to resubmit designs and layout proposals until they meet with approval of Lessor and Host.

In the event of disapproval of any portion of the plans and specifications or other submitted materials, Concessionaire will promptly submit necessary modifications and revisions thereof. After approval, no changes or alterations will be made in said plans, specifications or other materials. Concessionaire shall submit to Lessor and Host the construction cost bids it receives for improvement of the Premises for Lessor's and Host's review and approval prior to commencement of the work. Concessionaire shall be responsible to ensure that construction activities are closed off from the public view by an attractive, painted barrier, with attractive, easy to read signs explaining the construction, as approved in advance by Lessor and Host.

No approval of plans, specifications or other documents by Lessor or Host shall relieve Concessionaire of the entire responsibility for compliance of such documents and the construction performed pursuant thereto with all applicable codes, laws and regulations, all requirements of building permits, and all standards of design and construction applicable in the Airport.

**12.04. Quality of Materials.** All finishes, furnishings, fixtures, signage, decor and equipment shall be of excellent quality and, without limiting the foregoing, at least comparable in quality to Concessionaire's other stores in the \_\_\_\_\_ metropolitan area.

**12.05. Concessionaire's Construction.** Promptly after approval of Concessionaire's plans, Concessionaire shall cause all necessary demolition, and shall construct and install all the approved improvements of the Premises at no expense to the Lessor or Host, and shall open the Premises to the public for business by or before the Rent Commencement Date.

**12.06. As-Builts.** Concessionaire shall be responsible for submitting architectural as-built drawings to Lessor and Host within thirty (30) calendar days after substantial completion of Concessionaire's initial improvement and any subsequent leasehold improvement of the Premises, and Concessionaire shall be subject to a fine of one hundred dollars (\$100.<sup>00</sup>) per day for each day of delinquency in providing such drawings. The as-built drawings shall include two (2) sets on reproducible mylar, as well as one (1) set on computer disk in AutoCAD (release 12 or higher), prepared in accordance with Host's layering standards and naming conventions (which standards and conventions are available from Host).

**12.07. Delay in Delivery of Possession.** In the event that Host shall not have delivered possession of the Premises to Concessionaire in a timely manner, because of delays by Lessor in completing its work, labor disruptions, war, insurrection, governmental restrictions, fire, flood, storm, earthquake or any other cause not reasonably within the control of Host, the time for delivery of possession may be extended.

**12.08. Certified Construction Costs.** Within thirty (30) days after completion of any construction or renovation, Concessionaire shall provide Host with a certified statement ("Certified Construction Costs") setting out the actual total cost of such construction, installation, furnishing, fixturing, and equipping by Concessionaire. This statement shall be signed by Concessionaire's chief financial officer.

**13. Title.** As between Host and Concessionaire, title to all leasehold improvements shall vest in Host at the expiration or earlier termination of the Sublease. Subject to the terms of the Lease with respect to the removal of property from the Premises, all furniture, fixtures, equipment and signage at the Premises shall be the property of Concessionaire.

**14. Utilities.** Concessionaire shall be solely responsible for paying for all of the utilities used in the Premises. In the event that said utilities are not metered to the Premises and billed directly to Concessionaire by the provider thereof, Host shall make a reasonable assessment as to Concessionaire's consumption of said utilities and shall invoice Concessionaire accordingly subject to the terms of the Lease. All such invoices are to be paid by Concessionaire within ten (10) days of receipt thereof.

**15. Repairs and Maintenance.** Concessionaire shall repair and maintain the Premises in accordance with the terms of the Lease. In no event will Host have any liability to Concessionaire for any damage or inconvenience which may arise through any maintenance, repairs or other alteration of any part of the Airport (whether or not including all or any part of the Premises). Concessionaire shall maintain and repair the Premises in good condition and shall be responsible for any damage caused by Concessionaire or its employees, agents, contractors, licensees and invitees. Concessionaire hereby acknowledges and agrees that the only services and amenities to which it is entitled under this Sublease and which are included and paid for by the monthly rentals to be made by Concessionaire hereunder are those services and amenities to which Host is entitled under the Lease as they apply to

the Premises (subject to all of the terms, provisions, restrictions and conditions imposed by the Lease).

Host shall in no event be liable to Concessionaire for Lessor's or Host's failure to provide any such services or amenities, nor shall any such failure be construed as a breach hereof by Host or an eviction of Concessionaire or entitle Concessionaire to an abatement of any of the Rent or Additional Rent due under this Sublease.

**16. Remodeling and Alterations.** Concessionaire shall cause no improvement, refurbishment, alterations, or remodeling of the Premises, or any portion thereof, without the prior written consent of Host and, to the extent required by the Lease, the prior written consent of Lessor.

**17. Signage and Advertising.**

**17.01. Definition of Signs.** For purposes of this Sublease, signs shall include, but not necessarily be limited to, identification signs, Concessionaire logos, advertising or promotions for product offerings, photographs, art displays, counter displays, brand name logos, and the like.

**17.02. Right to Install.** Concessionaire shall have the right to install and operate, within the Premises at Concessionaire's sole cost and expense, signs containing its name, and representing its business, as well as Concessionaire's standard promotional material. Concessionaire acknowledges the Lessor's desire to maintain a high level of aesthetic quality in the Airport and in all concession facilities. Concessionaire may install professionally prepared signs in the interior of Premises that are the same as signs used in Concessionaire's other stores. Concessionaire shall immediately remove or modify any signs to which Host or Lessor objects.

**17.03. Prohibitions.** Neon, flashing, handwritten, or hand lettered signs are prohibited.

**17.04. Signs and Fixtures Outside Premises.** Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Premises without the prior written approval of Host, and to the extent required by the Lease, the prior written consent of Lessor.

**17.05. Removal of Signs.** Upon the termination of this Sublease, Concessionaire shall, if requested by Host, remove any and all identification signs and similar devices placed by Concessionaire on or in the Premises. If Concessionaire fails to do so, Host may perform such work and, upon demand, Concessionaire shall pay to Host the cost thereof, plus fifteen percent (15%).

**18. Indemnity, Release, Insurance, and Bonds.** For purposes of this Section, the term "Concessionaire" shall be inclusive of its successors and assigns; and the term "Indemnified Parties" shall mean Host and Lessor, their predecessors, successors and assigns, and the directors, officers, agents and employees of each of them.

**18.01. Indemnity.** Concessionaire shall defend, indemnify and hold harmless the Indemnified Parties, from and against any and all liability for injuries to or deaths of persons or damage to property, howsoever caused, arising directly or indirectly from Concessionaire's operation, use or improvement of the Premises and/or Concessionaire's failure to comply with all applicable federal, state and local laws, ordinances, rules and regulations. Concessionaire covenants and warrants that it and all of its agents, servants, employees, and contractors will use due care and diligence in all of their activities and operations authorized by this Sublease.

**18.02. Release.** Concessionaire hereby releases, relinquishes and discharges the Indemnified Parties from and against: (i) any and all liabilities, lawsuits, causes of action, losses, claims, judgments, damages, fines or demands arising by reason of or in connection with the actual or alleged errors, omissions, or negligent acts, whether in contract or tort, of Concessionaire or the Indemnified Parties relating to this Sublease or to the activities of Concessionaire at the Premises or elsewhere at the Airport and/or Concessionaire's failure to comply with all applicable federal, state and local laws, ordinances, rules and regulations; and (ii) any and all costs for the investigation and defense of any and all liabilities, lawsuits, causes of action, losses, claims, judgments, damages, fines or demands referred to in the preceding clause (i) including, but not limited to, attorney fees, court costs, discovery costs, and expert fees. Concessionaire's obligations under this Section expressly extend to the actual or alleged joint or concurrent negligence of the Indemnified Parties.

**18.03. Notice and Tender of Claims.** Upon the filing or presentation of any type of claim, cause of action, or lawsuit against the Indemnified Parties for any type of damages arising out of incidents for which Concessionaire may be liable pursuant to the preceding paragraph, the Indemnified Parties shall notify Concessionaire of such claim, cause of action, or lawsuit. In the event that Concessionaire does not settle or compromise such claim, cause of action, or lawsuit at its own cost, then Concessionaire shall undertake the legal defense of any such claim, cause of action, or lawsuit at its own cost both on behalf of itself and on behalf of the Indemnified Parties until final disposition, including all appeals. The Indemnified Parties may participate in the legal defense of any such claim, cause of action, or lawsuit and in the selection of counsel by Concessionaire to defend against such claim, cause of action, or lawsuit. Any final judgment rendered against the Indemnified Parties for any cause for which Concessionaire is liable hereunder shall be conclusive against Concessionaire as to liability and amount upon the expiration of the time for all appeals.

**18.04. Insurance.** [CHECK AGAINST MASTER TERMS] It is understood that the insurance coverages and limits required of Concessionaire hereunder are designed to meet the minimum requirements of Lessor, and are not a recommended insurance program for Concessionaire. Concessionaire alone shall be responsible for the sufficiency of its own insurance program. With no

intent to limit Concessionaire's liability or the indemnification provisions set forth herein, Concessionaire shall procure and maintain during the Term of this Sublease the following insurance:

**A. Workers' Compensation and Employers' Liability Insurance.** Workers' compensation and employers' liability insurance in the amounts and on the forms required by law.

**B. Comprehensive General Liability Insurance.** Comprehensive general liability insurance, including automobile liability insurance covering owned, hired and non-owned vehicles used in connection with the Premises. The policy or policies providing said coverage shall include Premises, products and contractual liability including, but not limited to, the indemnification obligation assumed by Concessionaire hereunder and personal injury and property damage coverage. Said policy or policies shall cover loss or liability for damages in an amount not less than \_\_\_\_\_ MILLION DOLLARS (\$\_\_\_\_,000,000.<sup>00</sup>), for each occurrence for bodily injury, death or property damage occurring by reason of Concessionaire's operations in, on or about the Premises or the Airport. Such insurance shall be subject to increase in the amount of coverage as required hereafter by Lessor or Host. Host and Lessor shall be endorsed as Additional Insureds on this policy.

**C. Extended Coverage Insurance.** Extended coverage insurance, or "all risk" coverage, including fire and lightning, vandalism and malicious mischief, excluding coverage for earthquake but including coverage for named windstorm and flood debris removal. Said extended coverage insurance shall cover all structural or other improvements installed by Host or Concessionaire in the Premises and all leasehold improvements, fixtures, furnishings, equipment and decorations kept, furnished or installed by Concessionaire or Host in the Premises. Such insurance shall be in an amount equal to the full replacement value of all such items with the policy or policies containing a loss payable endorsement in favor of Concessionaire, Host and Lessor as their respective interests may appear.

**D. Builder's Risk Insurance.** Builder's risk insurance, in the event that Concessionaire undertakes any construction responsibilities with respect to the Premises, in a form and amount as may reasonably be required by Host.

**E. Liquor Liability Insurance.** If applicable, Liquor Liability Insurance in such amount and providing such coverage as required by law and/or Lessor.

**F. Excess or Umbrella Coverage.** [If master lease requires] In addition to the primary coverages listed above, the Concessionaire will maintain an umbrella or excess liability policy in the amount of \_\_\_\_\_ [use amount stated in the master lease or if none stated, \$5M]. Host and Lessor shall be endorsed as Additional Insureds on this policy.

Concessionaire shall furnish Additional Insured endorsements and certificates of insurance from the insurance carrier or carriers showing the aforesaid insurance policies to be in full force and effect during the Term of this Sublease. Each such policy and certificate shall contain a provision or endorsement that the policy may not be canceled, terminated or materially modified without giving at least thirty (30) days prior written notice thereof to Host and Lessor. The foregoing insurance



requirements do not limit Concessionaire's liability or indemnification responsibilities set forth elsewhere in this Section.

#### **18.05. Bonds.**

**A. Faithful Performance Bond.** Prior to Host's delivery of the Premises to Concessionaire, Concessionaire shall, at its own expense, deliver a surety bond ("Bond"), in the penal sum \$ \_\_\_\_\_ [equal to 3 mos. MAG], naming Host as obligee, to: Host International, Inc., 6905 Rockledge Drive, Law Dept., 7<sup>th</sup> Floor, Bethesda, Maryland 20817, Attn: General Counsel. A copy of said Bond shall be delivered to Host International, Inc., City of Chicago, Attn: Director of Operations.

The Bond shall be kept in full force and effect during the Term to ensure the faithful performance by Concessionaire of all the covenants, terms and conditions of this Sublease, including without limitation the payment of all Rent. After the end of each full or partial Sublease Year, Host shall review the Bond amount and Concessionaire shall, as required by Host, adjust the amount to the greater of (i) the then-current amount or (ii) the equivalent of the average three-month's Percentage Rent during the immediately preceding Sublease Year; provided that the amount shall never be less than [\$\_\_\_\_\_]. The Bond shall be issued by a surety company approved by Host and shall be in such form as approved by Host. The surety company issuing the Bonds shall give Host notice in writing by registered mail at least sixty (60) days prior to an anniversary date of its intention not to renew the Bonds.

In lieu of the Bond, Concessionaire may provide Host with an irrevocable letter of credit ("Letter of Credit") from a commercial bank in an amount equal to the penal sum of the Bond, subject to the same requirements as a Bond as set forth herein. If Concessionaire chooses to provide such a Letter of Credit in lieu of the Bond, such Letter of Credit must be drawn on a bank acceptable to Host and must be in a form acceptable to Host.

**B. Construction / Labor & Material Payment Bond.** In the event that Concessionaire undertakes any construction responsibilities with respect to the Premises, Concessionaire shall provide Host with performance and payment bonds in the forms and amounts as may reasonably be required by Host and/or Lessor.

**19. Damage or Destruction to Premises.** The provisions of the Lease with respect to damage or destruction of the Premises are incorporated herein and shall apply under this Sublease as between Host and Concessionaire in the same manner as they apply under the Lease as between Lessor and Host.

#### **20. Events of Default and Remedies.**

**20.01. Events of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default.

**A.** Concessionaire's cessation of operations at or abandonment of the Premises for a period of three (3) or more consecutive calendar days.

**B.** Concessionaire's assignment, sublease or transfer of this Sublease, in whole or in part, voluntarily or involuntarily, other than in accordance with the terms hereof.

**C.** Concessionaire's failure to make any payment of Rent or Additional Rent due hereunder, as and when due, if such failure shall continue for a period of ten (10) days after written notice from Host to Concessionaire.

**D.** Concessionaire's failure to make any payment of Rent or Additional Rent, as and when due, without the need of any notice to Concessionaire if within the previous twelve (12) months Host has already given two notices specifying a failure by Concessionaire to make such payments regardless of whether Concessionaire has cured such previous failures to make such payments.

**E.** Concessionaire's payment of any Rent or Additional Rent due hereunder with a check that is returned, unpaid, for any reason by Concessionaire's bank, after Concessionaire has previously made three (3) such payments at any time during the Term of this Sublease, such default having no cure period.

**F.** Concessionaire's failure to perform any non-monetary obligations, if such failure shall continue beyond the Specified Cure Period (as defined below). If there is no Specified Cure Period for a failure to perform a particular non-monetary obligation, then the cure period for such a failure shall be the lesser of: a) twenty (20) days after written notice thereof specifying the non-monetary obligation not performed; or b) one-half (1/2) of the applicable cure period set forth in the Lease, it being understood and agreed that Host shall be entitled to exercise its rights as against Concessionaire hereunder prior to the time that Lessor is entitled to act as against Host with respect to performance of said non-monetary obligation. Notwithstanding the foregoing, there shall be no cure allowed in the event of certain expressly identified or repeated defaults as set forth herein.

**G.** Concessionaire's (i) application for, consent to, or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within ninety (90) days of such filing); or (vii) permitting to continue unstayed and in effect for ten (10) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Concessionaire's assets or of Concessionaire's interest in this Sublease and/or the Premises.

**H.** Concessionaire's failure to make any payments as and when such become due (without the need of any notice to Concessionaire) on i) any loan or note from Host, its parent, subsidiaries, affiliates, successors and/or assigns; or, ii) any loan or note which is guaranteed by Host, Host's

parent, subsidiaries, affiliates, successors and/or assigns.

**I.** Concessionaire's commission or omission of any act which constitutes an event of default under the Lease.

**J.** The commission or omission by Concessionaire of any act which constitutes an event of default under any other agreement which Concessionaire has with Host, Host's parent, subsidiaries, affiliates, successors and/or assigns, including without limitation any other subleases under which Concessionaire operates at this and/or other Host locations. For the purposes of this Section 20.01(J), "Concessionaire" includes Concessionaire, or its parent, subsidiaries, affiliates, successors and/or assigns.

**K.** Concessionaire's commission or omission of any act which constitutes an event of default under any other agreement which it has with any third party which is necessary for Concessionaire to fulfill its obligations under this Sublease, including without limitation any franchise or license agreement under which it operates its business at the Premises.

**L.** Concessionaire's failure to comply with and/or fulfill any or all of the requirements herein with respect to ACDBE certification including, without limitation, those stated in Section 9. A default under this Subsection 20.01(L) has no cure period. In the event of such default, and without limiting any other rights or remedies of Host, Host may automatically terminate this Sublease upon notice to Concessionaire as set forth in Section 9 herein.

**M.** Concessionaire's failure to maintain any license or franchise agreement pertaining to Concessionaire's operations at the Premises.

**N.** Concessionaire's failure to comply with the Performance Standards beyond the specified cure period (the "Specified Cure Period"). For each such Event of Default, there shall be certain limits on the number of times in a twelve month period that Concessionaire shall be entitled to cure such (the "Limit on Right to Cure"). If Concessionaire does not cure an Event of Default within its Specified Cure Period or if Concessionaire exceeds the Limit on Right to Cure for any such Event of Default, Host shall be entitled to all remedies against Concessionaire as such may arise hereunder or by operation of law. The Specified Cure Period and Limit on Right to Cure for each Event of Default related to Concessionaire's failure to comply with the Performance Standards are as follows:

**1) Hours of Operation.** Failure to comply with the requirements regarding hours of operation shall constitute an Event of Default. Specified Cure Period is twenty-four (24) hours. The Limit on Right to Cure is two (2) events of default in any consecutive twelve (12) month period.

**2) Refurbishment of Premises.** Failure to comply with the requirements regarding refurbishment of premises shall constitute an Event of Default. The Specified Cure Period is thirty (30) days. There shall be no Limit on Right to Cure such events of default.

**3) Maintenance and Repair.** Failure to comply with the requirements regarding maintenance and repair shall constitute an Event of Default. The Specified Cure Period is fifteen (15) days. The Limit on Right to Cure is two (2) events of default in any consecutive twelve (12) month period.

**4) Operation of the Premises.** Failure to comply with the requirements regarding operation of the Premises shall constitute an Event of Default. The Specified Cure Period is three (3) days. The Limit on Right to Cure is two (2) events of default in any consecutive twelve (12) month period.

**5) Personnel.** Failure to comply with the requirements regarding personnel shall constitute an Event of Default. The Specified Cure Period is five (5) days. The Limit on Right to Cure is three (3) events of default in any consecutive twelve (12) month period.

**6) Service, Marketing, Advertising and Promotion Initiatives.** Failure to comply with any requirements regarding service, marketing, advertising and promotion initiatives shall constitute an Event of Default. The Specified Cure Period is five (5) days. The Limit on Right to Cure is one (1) Event of Default in any consecutive twelve (12) month period.

**20.02. Remedies.** Upon the occurrence of any uncured Event of Default, in addition to any remedies which Host may otherwise have at law or in equity, Host may exercise the following remedies at its sole option:

**A. Termination.** Host may terminate Concessionaire's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Concessionaire shall immediately surrender possession of the Premises to Host. In such event Host shall be entitled to recover from Concessionaire: (i) the worth at the time of award of the unpaid Rent and Additional Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent and Additional Rent which would have been earned after termination until the time of award exceeds the amount of such loss that Concessionaire proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent and Additional Rent for the balance of the Term after the time of award exceeds the amount of such loss that Concessionaire proves could have been reasonably avoided; and (iv) any other reasonable amount necessary to compensate Host for all the detriment proximately caused by Concessionaire's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorney's fees, and any other reasonable costs. The "worth at the time of award" of the amounts referred to in subparts (i) and (ii) above shall be computed by allowing interest at ten percent (10%) per annum from the dates such amounts accrued to Host. The worth at the time of award of the amount referred to in subpart (iii) above shall be computed by discounting such amount at one (1) percentage point above the discount rate of the Federal Reserve Bank of New York at the time of award.

**B. Reletting or Assumption of Operation by Host.** Without terminating or effecting a forfeiture of this Sublease or otherwise relieving Concessionaire of any obligation hereunder in the absence of express written notice of Host's election to do so, Host may: i) relet the Premises or any portion thereof at any time or from time to time and for such terms and upon such conditions and rental as Host in its sole discretion may deem proper; or ii) assume operation of the Premises itself and for its own account. Whether or not the Premises are relet or used by Host, Concessionaire shall pay to Host all amounts required of Concessionaire hereunder up to the date that Host terminates Concessionaire's right to possession of the Premises. Such payments by Concessionaire shall be due at the times provided in this Sublease, and Host need not wait until the termination of this Sublease to recover them by legal action or otherwise. If Host relets or assumes operation of the Premises or any portion thereof, such reletting or assumption shall not relieve Concessionaire of any obligation hereunder, except that Host shall apply the proceeds actually collected by it from such reletting against amounts due from Concessionaire hereunder to the extent such proceeds compensate Host for non-performance of any obligation of Concessionaire hereunder. Host may execute any Sublease made pursuant hereto in its own name, and the sublessee thereunder shall be under no obligation to see to the application by Host of any proceeds to Concessionaire, nor shall Concessionaire have any right to collect any such proceeds. Host shall not by any re-entry or other act be deemed to have accepted any surrender by Concessionaire of the Premises or Concessionaire's interest therein, or be deemed to have terminated this Sublease, or to have relieved Concessionaire of any obligation hereunder, unless Host shall have given Concessionaire express written notice of Host's election to do so.

**C. Liquidated Damages.** Without prejudice to any other remedy to which Host may avail itself in the event of any Event of Default, Host may collect agreed upon liquidated damages from Concessionaire, which Concessionaire shall pay upon receipt of written demand therefor, in an amount of TWO HUNDRED DOLLARS (\$200.<sup>00</sup>) for the first occurrence and in the amount of FIVE HUNDRED DOLLARS (\$500.<sup>00</sup>) for any subsequent occurrence in the event that: (i) Concessionaire shall fail to comply with the requirements regarding hours of operation; (ii) Concessionaire shall fail to comply with the requirements regarding refurbishment of the Premises; (iii) Concessionaire shall fail to comply with the requirements regarding maintenance and repair of the Premises; (iv) Concessionaire shall fail to comply with the requirements regarding operation of the Premises; (v) Concessionaire shall fail to comply with the requirements regarding personnel; or (vi) Concessionaire shall fail to comply with the requirements regarding service, marketing, advertising and promotion initiatives.

**20.03. No Obligation or Liability of Host.** Host shall be under no obligation to observe or perform any covenant of this Sublease on its part to be observed or performed which accrues after the date of any default by Concessionaire hereunder. If Host elects to re-enter the Premises in the event of a default by Concessionaire, Host shall not be liable for any damages by reason of such re-entry.

**20.04. Rent During Unlawful Detainer.** In any action for recovery of the Premises commenced by Host against Concessionaire by reason of any default hereunder, the reasonable rental value of the Premises for the period of such action shall be deemed to be the amount of Rent, Additional Rent and

other charges or payments to be made by Concessionaire under this Sublease for such period.

**20.05. Cumulative Rights.** The rights and remedies reserved to Host hereunder, including those not specifically described, shall be cumulative. Host may pursue any or all of such rights and remedies at the same time or separately.

**20.06. Impact of Termination.** The termination of this Sublease shall not relieve Concessionaire of any of its liabilities or obligations hereunder.

**21. Suspension, Abatement or Termination.** Any suspension, abatement or termination of the Lease pursuant to its terms shall cause a like suspension, abatement or termination of this Sublease.

**22. Cessation of Subletting.**

**22.01. Surrender of Premises.** Concessionaire shall yield and deliver peaceably to Host possession of the Premises on the date of the cessation of the subletting, whether such cessation be by termination, expiration or otherwise. The Premises shall be left by Concessionaire in the condition required by the Lease.

**22.02. Removal of Property.** Subject to the provisions of the Lease, Concessionaire shall cause the immediate removal of all fixtures, equipment, decor, furnishings and signage from the Premises at the cessation of the subletting, and shall surrender the Premises in clean and sightly condition with any damage resulting from the removal of Concessionaire's property having been repaired. Concessionaire shall be liable to Host for Host's costs, plus a twenty percent (20%) administrative fee, for the disposal of any of Concessionaire's personal property and for the repair and restoration of the Premises if Concessionaire fails to perform such activities prior to cessation of the letting. Host will retain Concessionaire's faithful performance bond or other security instrument until such time as all covenants, terms and conditions herein are performed and all keys to the Premises are delivered to Host by Concessionaire and Host determines that the Premises are clean, sightly, and in good repair.

**22.03. Host Not Liable.** Host shall not be obligated to store, remove or dispose of Concessionaire's personal property. If any of Concessionaire's personal property is damaged, lost or stolen as a result of Host's storage, removal or disposal thereof, or as a result of Host's refusal to so store, remove or dispose of Concessionaire's personal property, Concessionaire shall hold Host harmless and shall not pursue any claim against Host for any damages caused thereby.

**22.04. Holding Over.** In the event of any unauthorized holding over by Concessionaire after the expiration or termination of this Sublease, Concessionaire shall pay as liquidated damages two hundred percent (200%) times the amount of all Rent and Additional Rent which was payable by Concessionaire immediately prior to such expiration or termination, prorated on a daily basis for the entire holdover period. In the event of any unauthorized holding over, Concessionaire shall also indemnify Host against all claims for damages by Lessor or by any other tenant to whom Host may have subleased all or any part of the Premises effective upon the expiration or termination of this

Sublease. Any such holding over, without Host's prior written consent, shall create only a tenancy at sufferance relationship with Concessionaire and shall not operate to renew or extend this Sublease for any period of time. Any holding over with Host's prior written consent shall create a month-to-month tenancy.

### **23. Public Use and Nondiscrimination.**

**23.01. Nondiscrimination.** Concessionaire shall comply with all federal, state, and local laws, rules and regulations relating to nondiscrimination against employees, applicants for employment, customers, subcontractors, employees and agents of Concessionaire, Host, Lessor, and other users of the Airport.

**23.02 Right to Amend.** In the event that the Federal Aviation Administration, or its successors, requires modifications or changes in this Sublease as a condition precedent to the granting of funds for the improvement of the Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Sublease as may be reasonably required to obtain such funds; provided, however, that in no event shall Concessionaire be required, pursuant to this paragraph, to agree to an increase in the rent or other charges provided for hereunder or to change in the use (provided it is an authorized use hereunder) to which Concessionaire has put the Premises.

**24. Notices.** All notices required to be given hereunder shall be in writing and given by certified mail or by overnight courier service to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

<b>To Host</b>	<b>To Concessionaire</b>
Host International, Inc. 6905 Rockledge Drive Law Dept., 7 <sup>th</sup> Floor Bethesda, Maryland 20817 Attn: Law Department - Real Estate/Leasing	
with a copy to: Host International, Inc. Chicago O'Hare International Airport  Attn: Director of Operations	with a copy to:

In the event that delivery of notices to Concessionaire is unsuccessful notwithstanding good faith efforts on Host's behalf to deliver such notices in accordance with the foregoing, whether such results

from Concessionaire's change of address without proper notice to Host, from Concessionaire's refusal to accept delivery of any notices, or from any other cause, reason or purpose whatsoever, Host may give notices to Concessionaire by delivery thereof to the Premises. The effective date of service of any notice given shall be the date on which the notice is received, or, in the event that initial delivery to Concessionaire is unsuccessful, then the date of service shall be the date on which the notice is delivered to the Premises.

**25. Automatic Stay.** Concessionaire hereby agrees that, to the extent permitted by law, in the event Concessionaire shall (1) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (2) be the subject of any order for relief issued under such Title 11 of the U.S. Code as amended, (3) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (4) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, (5) be the subject of any order, judgment or decree entered by any court of competent jurisdiction, approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Host and/or Lessor shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of the rights and remedies otherwise available to Host and/or Lessor as provided herein, and as otherwise provided by law.

## **26. Miscellaneous Provisions.**

**26.01. Exhibits.** All Exhibits to this Sublease are hereby incorporated into and made a part of this Sublease.

**26.02. Governing Law.** This Sublease shall be governed by and construed under the laws of the State of Illinois.

**26.03. Waiver.** The failure of Host to insist upon the strict performance of any of the terms or provisions of this Sublease, or Host's failure or refusal to exercise any option, right or remedy contained herein, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by Host of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by Host. No delay or omission of Host to exercise any right or remedy shall be construed as a waiver by Host of any such right or remedy or of any default of Concessionaire. The acceptance by Host of Rent or Additional Rent shall not be a waiver of any preceding breach or default by Concessionaire of any provision hereof, other than the failure of Concessionaire to pay the particular Rent or Additional Rent accepted, regardless of Host's knowledge of such preceding breach or default at the time of acceptance of such Rent or Additional Rent payments, or a waiver of Host's right to exercise any remedy available to Host by virtue of such default.



**26.04. Accord and Satisfaction.** No payment by Concessionaire or acceptance by Host of a lesser amount than the Rent, Additional Rent and/or any other payments due hereunder shall be deemed to be in accord and satisfaction of the whole amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction of the whole amount due, and Host shall accept such check or payment without prejudice to Host's right to recover the balance of such amount due or to pursue any other remedy. Host may apply any partial sums received against any amounts due in its sole and absolute discretion.

**26.05. Broker's Commission.** Host and Concessionaire each warrant to the other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Sublease. Host and Concessionaire each agree to indemnify the other and defend and hold the other harmless from all liabilities arising from any claim by any broker or finder allegedly representing either of them, including, without limitation, the cost of attorneys' fees and costs in connection with the defense of such claim.

**26.06. Authority to Execute.** The parties represent and warrant that the officers executing this Sublease on behalf of their respective corporation, partnership or other entity are duly authorized to execute and deliver this Sublease on behalf of said corporation, partnership or other entity, and that this Sublease is binding upon said corporation, partnership or other entity in accordance with its terms.

**26.07. Severability.** If any portion of this Sublease shall be declared invalid by any law, order, decree or judgment of a court having jurisdiction over the parties and/or the subject matter hereof, this Sublease shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship on either party or constitute a substantial deviation from the general intent and purpose of the parties as reflected in this Sublease.

**26.08. Amendment.** This Sublease may only be amended or modified by a written agreement signed by both parties.

**26.09. Authorship.** The terms of this Sublease have been fairly bargained for after careful consideration by the parties; therefore, this Sublease shall be enforced, interpreted and construed without regard to its authorship, and no inference shall be drawn by the parties or any third party including any court, by virtue of its authorship.

**26.10. Certain Rules of Construction.** Although certain references herein to Concessionaire's required acts hereunder omit to state that such shall be performed at Concessionaire's sole cost and expense, each and every such act shall be performed or fulfilled at Concessionaire's sole cost and expense unless expressly stated to the contrary. The headings of Sections are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Sections nor do they affect this Sublease in any manner. Each and every obligation, covenant, condition and restriction herein contained shall inure to the benefit of and be binding upon and enforceable against, as the case may require, the successors and assigns of Host, and, subject to the restrictions hereof shall

also inure to the benefit of and be binding upon and enforceable against any authorized assignee, transferee, sublessee or other successors in interest of Concessionaire. In this Sublease each of the neuter, feminine or masculine gender(s) includes the other or others, and the singular number includes the plural, wherever the context so requires. If more than one Concessionaire is named above, the obligation of each of such Concessionaires hereunder shall be and is joint and several. The word "including" as used in this Sublease shall not be used in an exclusive sense and instead shall have the meaning of "including without limitation."

**26.11. Specific Performance.** Nothing contained in this Sublease shall be construed as or shall have the effect of abridging the right of either party to obtain specific performance of any and all of the covenants or obligations of the other party under this Sublease.

**26.12. Time.** Time is of the essence of this Sublease.

**26.13. Reference to Sections of the Lease.** The express reference in this Sublease to certain sections of the Lease as applying to Host and Concessionaire herein does not imply that other sections of the Lease do not apply.

**26.14. Force Majeure.** Reasons of force majeure which excuse performance of Lessor or Host under the Lease shall similarly excuse the performance of Host or Concessionaire under this Sublease.

**26.15. Quiet Enjoyment.** Concessionaire, upon paying all Rent and Additional Rent provided for herein, and upon observing and keeping all of the covenants, conditions and provisions of this Sublease on its part to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term, without hindrance or molestation by or from anyone claiming by, through or under Host, subject to the terms of this Sublease and the Lease. The provisions of this Section and any and all other covenants of Host contained in this Sublease shall be binding upon Host and its successors only with respect to breaches occurring during its and their respective ownership of Host's interest hereunder.

**26.16. Assignment by Host.** Provided any assignee of Host assumes in writing all of Host's obligations under this Sublease and so notifies Concessionaire, Host may assign its interest in this Sublease during the Term hereof and, thereafter, Host shall be released from all obligations and liability hereunder, provided that Host's assignee shall agree to recognize this Sublease and be bound by Host's obligations hereunder.

**26.17. Exculpation.** In the event of any default or breach by Host with respect to any of the terms, covenants and conditions of this Sublease to be observed and performed by Host, Concessionaire shall look solely to the estate and property of Host in the Premises for the collection of any sum of money on a judgment, or for the payment or expenditure of any money under any decree of specific performance, injunctive or other equitable relief, or under any other judicial process requiring performance by Host of any obligation under this Sublease. No other property or asset of Host, Host's agents, incorporators, shareholders, officers, directors, partners, principals (disclosed or

undisclosed) or affiliates shall be subject to levy, execution or other enforcement procedure for the satisfaction of Concessionaire's remedies.

**26.18. Unreasonable Withholding of Consent.** Concessionaire hereby waives any claim against Host which it may have based upon any assertion that Host has unreasonably withheld or unreasonably delayed any consent, and Concessionaire agrees that its sole remedy shall be an action or proceeding to enforce any such provision or for specific performance, injunction or declaratory judgment. In the event of such a determination, the requested consent shall be deemed to have been granted. Concessionaire's sole remedy for Host's unreasonably withholding or delaying of consent shall be as provided in this Section.

**26.19. Definition of Host.** The term "Host" shall mean only the owner at the time in question of Host's present interest in the Premises and in the event of a sale or transfer of Host's interest in the Premises (by operation of law or otherwise), the transferor shall be and hereby is automatically and entirely released and discharged, from and after the date of such sale or transfer, of all liability in respect of the performance of any of the terms of this Sublease on the part of Host thereafter to be performed.

**26.20. Estoppel Certificates.** At any time and from time to time, upon not less than ten (10) days prior written demand by Host, Concessionaire shall execute, acknowledge and deliver to Host a written estoppel certificate(s) or affidavit(s) certifying or stating:

1. that the Sublease is unmodified and in full force and effect (or if there have been modifications, stating the nature of same);
2. the Rent Commencement Date and the Term Expiration Date;
3. the amount of Minimum Rent and the date to which the Minimum Rent has been paid by Concessionaire;
4. the amount of any Security Deposit;
5. whether or not to the best of knowledge of Concessionaire, Host is in default in the performance of any covenant, agreement or condition contained in this Sublease, and, if so, specifying each such default of which Concessionaire may have knowledge;
6. that Concessionaire has no right to setoff and no defense against payment of the Rent, stating the address to which notices to Concessionaire should be sent; and
7. such other matters as may reasonably be requested by Host.

Any such certificate delivered pursuant to this Section may be relied upon by Host, any financial institution or any assignee or prospective assignee of Host's interest in this Sublease. If

Concessionaire fails to deliver the certificate within the five (5) days after Host's written demand therefor, Concessionaire by such failure shall irrevocably constitute and appoint Host as its attorney-in-fact to execute and deliver the certificate(s) to any third party.

**26.21. Airport Variables.** Passenger counts, passenger flows and other customer traffic are predominantly dependent upon airline schedules and gate utilization. Such may also be affected from time to time by construction undertaken by Lessor or its agent to improve the Airport. Also, FAA rules and regulations governing security and emergency situations may restrict access to the different terminal buildings of the Airport. Accordingly, Host makes no warranties, promises or representations as to the economic viability of the Premises and the business to be operated by Concessionaire thereon, and Concessionaire shall hold Host and Lessor harmless from and against any and all claims and/or damages which may arise from the foregoing variables.

**26.22. Entire Agreement.** This Sublease sets forth the entire agreement between the parties and there are no other agreements between the parties with respect to the terms of this Sublease, written or otherwise, except as set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their duly authorized officers the day and year first above written.

Host International, Inc.

Café DesCartes Company,"

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESS:

WITNESS:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A" TO SUBLEASE**

**DESCRIPTION OR DEPICTION OF PREMISES**

DRAFT

**EXHIBIT "B" TO SUBLEASE**

**MENU LIST**

DRAFT

**EXHIBIT C**

DRAFT

## **ATTACHMENT 1 TO SUBLEASE**

### **FOOD AND BEVERAGE PURCHASING CONDITIONS**

1. Any arrangement for Host to sell products to Concessionaire shall not violate any confidentiality or “no resale” provision of Host’s contracts with suppliers.
2. Any resale arrangement is contingent on Host’s reasonable ability to obtain and maintain the appropriate licenses and follow the required regulations and processes to perform such services.
3. Any resale arrangement will apply only to food and beverage items that remain in the manufacturer’s original packaging and will exclude modified or production items, meat products, fresh seafood, fluid dairy, and fresh produce.
4. Concessionaire shall follow, without limitation, all industry standard food safety procedures such as the FDA Food Code and including but not limited to Concessionaire checking and recording temperatures upon receipt from Host, promptly putting all hazardous food in refrigerators and freezers, and fully cooperating in any and all recalls.
5. All pricing is determined by Host and is considered confidential information that shall not be shared with any third party other than Concessionaire’s accounting and legal firms, each of which must be subject confidentiality agreements which protect against the disclosure of Host pricing information and copies of which confidentiality agreements shall be provided to Host.
6. Any resale arrangement is at-will for both parties and may be discontinued with reasonable notice to the other party, or as otherwise determined by Host.
7. Concessionaire shall provide resale certificates and any other regulatory information reasonably required by Host.
8. Concessionaire shall give no less than 30 days’ notice of any planned significant change in purchasing volumes.
9. Concessionaire agrees to be obligated to any same performance requirements to which Host is obligated or Host may determine if will not resell such product to Concessionaire.



## ATTACHMENT 2 TO SUBLEASE

### ACDBE NO CHANGE DECLARATION

Name of ACDBE Firm which is the Concessionaire under the Sublease:

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Name of ACDBE Firm Owner:

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I, the above-named ACDBE Firm Owner, declare and certify on behalf of Concessionaire the following as of the date of this Declaration:

1. There have been no changes in Concessionaire's circumstances affecting its ability to meet the requirements of 49 CFR Part 26 and Part 23.
2. There have been no material changes in the information provided with Concessionaire's application for ACDBE certification except for any changes about which Concessionaire has provided written notice to the appropriate recipient(s) as required pursuant to 49 CFR Part 26.
3. The Certifying Entity, as defined in Section 2.02 of the Sublease (*check one*):  

☐ does  
☐ does not  
provide Annual Update approval letters, as defined in Section 9 of the Sublease.
4. Concessionaire has not received any notice of change in status from the Certifying Entity.
5. Concessionaire is solely responsible for the content, accuracy and sufficiency of (i) any documentation and information it provides to Host or any other party with respect to Concessionaire's ACDBE certification, and (ii) the information provided in this or any Declaration Form.

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Date

---

Signature

---

Printed Name

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Cafe' DesCartes Company"

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: \_\_\_\_\_

5819 N. Washtenaw Ave

C. Telephone: \_\_\_\_\_

773-551-7068

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

D. Name of contact person: \_\_\_\_\_

Arshad Javid

E. Federal Employer Identification No. (if you have one): \_\_\_\_\_

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

New HMSHost ACDBE Subtenant

G. Which City agency or department is requesting this EDS? \_\_\_\_\_

Dept of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_

and Contract # \_\_\_\_\_

## SECTION II – DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☐ No ☒ Organized in Illinois

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) **for not-for-profit corporations**, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) **for trusts, estates or other similar entities**, the trustee, executor, administrator, or similarly situated party; (iv) **for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures**, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>Munazzah Jabeen</u>	<u>President/Secretary</u>
<u>Arshad Javid</u>	<u>Secretary/President</u>

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Munazza Jabeen	5819 N. Washburn Ave. Chicago, IL 60659	51%
Arshad Javid	5819 N. Washburn Ave. Chicago, IL 60659	49%

### SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees ( <u>indicate whether paid or estimated.</u> ) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
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(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes    ☒ No    ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes    ☐ No

### B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

*True*

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

*True*

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

True

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

True

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

*True*

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

*True*

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

*True*

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

*True*

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

*True*

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

True

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

None

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."



If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

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If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name

Business Address

Nature of Financial Interest

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4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

## E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

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## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

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(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

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of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

*Acknowledged and Consent to the above.*

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Cafe' DesCartes Company,"

(Print or type exact legal name of Disclosing Party)

By: Arshad Javid  
(Sign here)

Arshad Javid

(Print or type name of person signing)

President

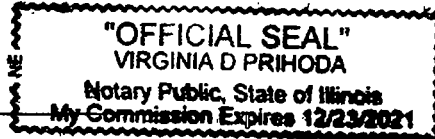
(Print or type title of person signing)

Signed and sworn to before me on (date) July 12, 2021

at Chicago Cook County, Illinois (state).

[Signature]  
Notary Public

Commission expires: \_\_\_\_\_



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

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**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a "contractor" as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants' wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☒ N/A – I am not an Applicant that is a "contractor" as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked "no" to the above, please explain.

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