

**PORT OF SEATTLE
SEATTLE-TACOMA INTERNATIONAL AIRPORT
COMPETITIVE EVALUATION PROCESS
FOR THE MANAGEMENT AND OPERATION
OF
AIRPORT DINING AND RETAIL LOCATIONS
LEASE GROUP 5
PACKAGE: PS-1**



SEATTLE-TACOMA INTERNATIONAL AIRPORT

Proposals are due to the Port of Seattle no later than
3:00 pm (Pacific Time) on September 18, 2019.

A Pre-Proposal Meeting will be held on
July 9, 2019 or
July 18, 2019
at 10:00am (Pacific Time).

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LIST OF FORMS TO BE SUBMITTED WITH PROPOSAL

Form 8.1 Pre-Proposal Meeting Attendance Form
Form 8.2 Proposer's Certification
Form 8.3 Proforma (in Excel format)
Form 8.4 Proposal Form
Form 8.5 Financial Offer Form
Form 8.6 Capital Investment Form
Form 8.7 Job Quality, Workforce training, and Employment Continuity Information Form
Form 8.8 CEP Minimum Requirements Form

LIST OF EXHIBITS

Exhibit 1 – Proposal Checklist
Exhibit 2 – Resolution 3725
Exhibit 3 – Evidence of Labor Peace Agreement
Exhibit 4 – Operating a Concession Business at Seattle-Tacoma International Airport
Exhibit 5 – Draft Lease and Concession Agreement
Exhibit 6 – Investment Incentive Agreement

SECTION 1: INTRODUCTION

The Port of Seattle (Port) is seeking proposals from all qualified business entities that have demonstrated expertise in the development and operation of dining and retail locations at airports, other transportation centers, shopping centers, malls, or business districts to manage and operate dining and retail locations at Seattle-Tacoma International Airport (“Sea-Tac” or “the Airport”).

Interested businesses should register via email at seatacshops@portseattle.org their; (1) company name; (2) contact person; (3) mailing address; (4) phone number; and (5) email address to receive a copy of the Lease Group 5 documents.

The Port directs this Competitive Evaluation Process (“CEP”) to all companies who possess the industry expertise and financial strength to successfully build out and operate dining and retail locations at the Airport. The selected proposer will be granted the non-exclusive right to operate restaurants and/or retail and personal service shops and enter into a Lease and Concession Agreement (“L&C Agreement”) with the Port of Seattle, included as **Exhibit 5**.

1.1 LEASE GROUP 5 GOALS AND OBJECTIVES:

The ADR program embraces the qualities of the Pacific Northwest by blending the vitality of a vibrant marketplace with a variety of quality products and services at reasonable prices.

The Port seeks to enter into an L&C Agreement with an experienced, qualified, and financially sound business that will be expected to work with the Airport to meet these program goals and objectives:

- Offer Sea-Tac travelers the right product and services, in the right locations, by the right operators;
- Foster a Pacific Northwest sense of place;
- Provide shops, restaurants, and services that exceed expectations for customer service, quality, variety, and reasonable pricing;
- Provide for quality jobs, employment continuity, and service continuity; and
- Provide opportunities and encourage participation for small, local, and disadvantaged companies, including Airport Concessions Disadvantaged Business Enterprises (“ACDBE”), to meaningfully participate in operations at the Airport.

This proposed L&C Agreement is for 8 years, in order to provide sufficient opportunity for the Proposer to amortize and recoup the capital investments that the Airport is requesting.

1.2 PRE-PROPOSAL MEETING:

There will be two (2) non-mandatory pre-proposal meetings on July 9, 2019 and July 18, 2019 at 10:00 am at Seattle-Tacoma International Airport’s London Conference

Room and Central Auditorium respectively. The purpose of the pre-proposal meeting will be to discuss the requirements and objectives of this CEP**, answer questions**, and provide a networking opportunity for prospective proposers. **THERE WILL NOT BE A TOUR OF THE AVAILABLE UNITS. THE PORT WILL ILLUSTRATE IN THE PRE-PROPOSAL MEETING THE LOOK AND FEEL ON THE REMODEL THAT IS CURRENTLY TAKING PLACE.** Proposers must submit the pre-proposal meeting attendance form (**Form 8.1**) via email to seatacshops@portseattle.org by July 5, 2019 in order to attend one (1) of the two (2) pre-proposal meetings. Walk up registration will not be permitted.

** Note – Any answers to questions and any statements or other information discussed or provided, whether verbally or in writing, at the pre-proposal meeting will be considered informational only and will not operate to modify or amend the requirements of the CEP in any way. Changes to the CEP will only be effective if made through an Addendum issued by the Port.

I.3 MINIMUM QUALIFICATIONS:

The minimum qualifications and requirements for any Proposer responding to this CEP shall be as follows:

- I.3.1 At least eighteen (18) months of experience in food service, retail, and/or service operations (as applicable based on the type of lease opportunity for which Proposer is proposing) at airports, transportation facilities, shopping centers, or business districts. Such prior experience must be with operations of similar complexity generating a sales volume of similar size to that being proposed. Whether the Proposer has sufficient prior experience to meet this minimum requirement shall be determined by the Port in its sole discretion.
- I.3.2 Must never have had an agreement terminated for cause.
- I.3.3 Must be fully compliant with the City of SeaTac Proposition I (Prop I) and demonstrate such by answering these questions:
 - I.3.3.1 Do you currently operate a business covered by City of SeaTac Proposition I (Prop I)? (Yes or No)
 - I.3.3.2 If the answer to question I.3.3.1 is “Yes”, please state whether you have provided your employees with wages and benefits that met or exceed the requirements of Prop I since January 1, 2014. (Yes or No)
 - I.3.3.3 If the answer to I.3.3.2 is “No”, please state how you have otherwise addressed the requirements.
 - I.3.3.4 If the answer to I.3.3.2 is “Yes”, please explain how.

If you have not addressed, in the sole opinion of the Port, the required employee wages and benefits extending back to January 1, 2014, your firm will be disqualified from participating in this Lease Group process.

I.3.4 The Port has a significant proprietary interest in the success of the ADR program and so it is in the Port's economic interest to eliminate disruptions to its tenants' operations due to labor disputes that can also negatively impact customers using the Airport as well as airline operations. Therefore:

I.3.4.1 All non-exempt Proposers (exempt Proposers are defined in the next paragraph) must submit, with their Proposal, a letter on the Proposer's letterhead using the sample language provided in **Exhibit 3** confirming that they have a Labor Peace Agreement that: (a) applies only to Proposer's operations at the Airport, (b) requires that the Port's ADR program is free from labor-related disruption of services both to the ADR program and the general operation of the Airport, and (c) is not inconsistent with the requirements of this CEP/RFP or the L&C Agreement. The Labor Peace Agreement must be between the Proposer and a local labor organization with clear jurisdictional scope with respect to currently represented employees or employees the labor organization seeks to represent in the Port's ADR program. This letter must include signatures from a senior officer of the Proposer's firm and the local labor organization. The details of a Labor Peace Agreement are between the Proposer and applicable labor organization. Thus, the Proposer should not submit their Labor Peace Agreement to the Port. A collective bargaining relationship is not required to comply with this provision. Proposers should ensure (a) that the entity being bound by the Labor Peace Agreement is the same as the entity that is proposing for this leasing opportunity, and (b) that the individual signing the Labor Peace Agreement is authorized to and is signing on behalf of the entity being bound by the Labor Peace Agreement. For example, if the proposer is a joint venture, the entity being bound to the Labor Peace Agreement should be the joint venture (not just one of the JV members) and the individual signing should be signing in her/his capacity as it relates to the JV (not a JV member).

I.3.4.2 Small businesses (as determined by the U.S. Small Business Administration criteria), that will have 35 or fewer badged airport employees at the Airport, with the award of any package(s) in this solicitation, will be exempt.

I.3.4.3 Labor organizations with clear jurisdictional scope over employees who work in:

I.3.4.3.1 Specialty Retail and Passenger Service Concession
UFCW 21
Mr. Mike Rodriguez, Researcher
Telephone (206) 409-3057

1.3.5 PROPOSER MUST ACKNOWLEDGE ALL ADDENDUM(S) ISSUED BY THE PORT.

1.4 WRITTEN QUESTIONS:

Dawn Hunter, Senior Manager is the designated representative for questions regarding this CEP. A potential proposer, or anyone on its behalf, may only contact Dawn Hunter concerning this CEP from the release date until the Port announces the Selected Proposer. See also **Section 7.8, Competitive Integrity**.

All communications and written questions about this CEP must be submitted in writing to the Port and a written response to questions will be provided to all potential respondents who have registered. Questions should be directed to the Port of Seattle either by postal mail at the following address: Attention Dawn Hunter, Port of Seattle P.O. Box 68727, Seattle, WA 98168 or email: seatacshops@portseattle.org. **Questions concerning this CEP must be received by The Port of Seattle no later than 5:00 PM Pacific Time, on July 31, 2019.** Questions received after this time and date will not be considered. Only questions answered by the Port in writing will be binding. Oral and other interpretations, clarifications or submittal instructions will be without legal effect. Interpretations, clarifications or supplemental instructions will be issued by addenda and will be emailed to all parties who have registered in accordance with Section 1.1.

1.5 DEFINITIONS:

ACDBE - Airport Concession Disadvantaged Business Enterprise

ADR – Airport Dining and Retail

Airport – The Seattle-Tacoma International Airport

L&C Agreement – Lease and Concession Agreement between the Selected Proposer and the Port of Seattle

Build-Out Deadline – the date established in the L&C Agreement when all improvements by the Selected Proposer should be completed

Commission – The 5-member governing body of the Port of Seattle elected at-large by the citizens of King County, Washington

Enplanements – Boarding passengers

Expiration Date - The date on which the L&C Agreement will expire

MAG – Minimum annual guarantee that the Selected Proposer will pay to the Port for the concession rights and privileges granted in the L&C Agreement

Pacific Northwest Sense of Place Concept –A new or existing concept that through its name, product/service offerings, and/or design/aesthetic conveys a strong sense of the Pacific Northwest Region.

Pacific Northwest Region – It includes the states of Washington, Oregon, Idaho, Alaska and parts of northern California and western British Columbia, Canada.

Port – The Port of Seattle.

Proposer - The individual or legal entity seeking to enter into a L&C Agreement with the Port and submitting a response to this CEP to lease space in the Airport for the operation of food service and/or retail concessions.

Proposal - The documents submitted by a Proposer in response to this CEP.

Sea-Tac – The Seattle-Tacoma International Airport.

Selected Proposer - An individual or entity selected by the Port to enter into negotiations for a L&C Agreement.

I.6 INVESTMENT INCENTIVE PAYMENT:

The Port has a strong financial interest in procuring qualified and capable businesses to successfully build out and operate dining or retail establishments at the Airport as part of the ADR program. The ADR program provides significant economic opportunities for the region and generates important revenue that is reinvested in the Airport.

In order to satisfy the broad financial and operating goals of the ADR program, it is critical for the Port to obtain the highest quality, number and diversity of proposals for its benefit in order to foster robust competition and allow it to identify a variety of excellent businesses, including small businesses and ACDBE firms. The Port also has a strong proprietary interest in preventing disruptions due to labor disputes at the Airport, which would have significant negative impacts on airport operations, the traveling public, dining and retail services, and revenue under the ADR program. To address this issue, the Port in 2017 implemented a requirement for each proposal by a business with more than 35 airport employees to include confirmation of a labor peace agreement, which is a direct benefit to the Port's important interest in preventing disruption. As a pilot program for Lease Group 5, the Port is offering an investment incentive payment in the amount of Five Thousand and 00/100 (\$5,000.00) Dollars to each unsuccessful proposer that submits a fully responsive, responsible, and competitive proposal for a CEP opportunity. No Proposer will be entitled to reimbursement of any of its costs in connection with the CEP except

as specified in this Section. Successful proposers will not be eligible for an investment incentive payment. Each individual proposing entity will be eligible for only one such payment as part of Lease Group 5. For a Proposer/proposal to be responsive, responsible, and competitive it must meet all of the following standards:

Responsive: The proposal must conform in all material respects to the requirements of the RFP, as determined by the Port, and must be timely received by the Port.

Responsible: The Proposer must meet all minimum requirements in the RFP and be otherwise qualified, as determined by the Port, to execute and perform an L&C Agreement for the CEP lease opportunity for which Proposer submitted a proposal.

Competitive: A proposal will be deemed Competitive if it satisfies all of the following:
(1) the proposal's total score is at **least Seven Hundred Fifty (750) points**;
(2) the proposal's total score is **within 40% of the highest score** (not including any points awarded as a result of an interview) in the CEP for which the proposal was submitted; and
(3) the proposal does **not score less than Fifty (50) points in any of the seven major evaluation categories** (Background, Experience and Financial Capability; Concept Development; Unit Design, Materials and Capital Investment; Financial Projections and Financial Offer; Management/Staffing, Operations, Customer Service, and Environmental Sustainability; Job Quality, Workforce Training, and Employment Continuity; and Small Business Participation).

In exchange for the investment incentive payments, the Port will receive fully responsive, responsible and competitive proposals, including confirmation of labor peace agreements, and the non-proprietary concepts and ideas in the proposals. The payments will significantly benefit the Port through its acquisition of proposals that are high in quality, number and diversity, such that through robust competition it will be able to select a mix of outstanding and diverse businesses. The Port also gains the substantial benefit and protection of having labor peace agreements in place (where appropriate) at the outset, so there is certainty that the selected Proposer will have taken the necessary steps to prevent labor disruption at the Airport. In addition, the Port will obtain the right to use non-proprietary concepts and ideas in the proposals to inform and enhance its planning for dining and retail operations.

To be eligible for an investment incentive payment, in addition to the criteria stated above, the Proposer must return with its proposal the executed "Investment Incentive Agreement" that is included as **Exhibit 6**, and must satisfy the requirements stated therein, including submitting the required Investment Incentive Payment invoice and other supporting information. Payments will be made to eligible Proposers that are not selected within 45 days after the execution of the L&C

Agreement for this opportunity.

Special Circumstances:

- If the Port cancels this solicitation before proposals are due, Proposers will not be eligible for and will not receive an investment incentive payment.
- If a proposer is awarded the contract as a result of this CEP but is unwilling or unable to execute an L&C Agreement, such proposer will not be eligible for and will not receive an investment incentive payment.

If the Port cancels the CEP after proposals are due, all responsive, responsible, and competitive proposals will be eligible to receive an investment incentive payment.

SECTION 2: AIRPORT BACKGROUND

The Port of Seattle owns and operates Sea-Tac. The Port is governed by a five-member Commission elected at-large by the citizens of King County, Washington. Sea-Tac is the primary air transportation hub in Washington State and the northwestern United States. The Airport is located 12 miles south of downtown Seattle and 20 miles north of Tacoma. Sea-Tac offers scheduled commercial airline service, and also serves as a key connection point for air passengers and cargo traveling to and from communities in Eastern Washington.

Sea-Tac's Airport Dining and Retail program ("ADR") includes a collection of restaurants, retail shops, and personal services offerings in each terminal for the convenience of travelers. Annually the program generates approximately \$336 million in gross sales and approximately \$48 million in revenue for the Port of Seattle. Airport management has developed a plan for the redevelopment of the dining and retail program to introduce new concepts and expand offerings to meet evolving passenger needs.

The Port owns and operates the Airport and its passenger terminals consisting of the Main Terminal, Concourses A, B, C, D, North and South Satellites, the Parking Garage, and the Rental Car Facility. Currently, the Airport has over 75 gates and is served by 28 airlines with both domestic and international destinations. A list of the passenger airlines operating at the Airport is shown in **Section 5**. In 2018, approximately 47 million passengers passed through the Airport. See the Passenger Traffic Summary in **Section 5**.

This package is for the remodel of the North Satellite, used exclusively by Alaska Airlines. The completed renovation and expansion that will add 8 gates to the existing 12 gates. Square footage for food service and retail in the North Satellite will grow from 19,600 square feet to an estimated 46,000 square feet. Completion of this project is slated for the June 2021 timeframe.

2.1 CUSTOMER OVERVIEW:

The number of passengers who travel through Sea-Tac follows a fairly predictable pattern. The greatest number of travelers visits Sea-Tac during the months of June, July and August. Busy summer days may attract as many as 75,000 enplanements, with a total of more than 150,000 people arriving and departing. The slowest months of the year, January and February, may attract only 40,000 daily enplanements or 80,000 total passengers. Business operators at the Airport must be prepared to operate under both high and low travel season conditions. The Transportation Security Administration currently publishes bi-weekly forecasts of anticipated travelers based on airline bookings that are shared with tenants that operate at the Airport.

Sea-Tac connects the Pacific Northwest to more than 89 domestic cities and 23 direct international destinations. Sea-Tac is primarily a U.S. domestic airport, although international service is growing. In 2018, 10.9% of total enplanements were international passengers, and a third of these passengers were destined for Canada and Mexico. The passengers at Sea-Tac are primarily leisure travelers. In 2018, 68% of passengers were traveling for leisure or personal

matters; 32% traveled for business.

Sea-Tac is known as an “origination and destination” airport, not a connecting airport. In 2018, approximately 70% of passengers either began or ended their trip at Sea-Tac. This means that a relatively large portion of travelers are residents of Washington State, as compared to a connecting hub such as airports in Denver or Atlanta. Sea-Tac passengers tend to have a greater familiarity with local brands as well as fairly good knowledge of the Airport’s layout and offerings. The Airport also is characterized primarily by its morning departures. Security checkpoints open at 4:30 AM and the majority of passengers will have departed before 1:00 PM. As a result, operators must plan their hours of operation to match traveler demand for products and services. International departures are more evenly spread throughout the day and early evening. A passenger traffic summary is included in **Section 5**. Comparable Airport dining sales performance is included in **Section 5**.

2.2 ACDBE PROGRAM:

Sea-Tac actively encourages small, local, and disadvantaged business participation in the Airport Dining and Retail Program. Eligible companies can become certified as ACDBEs. Applications for certification can be made through the Washington State Office of Minority and Women's Business Enterprises (<http://www.omwbe.wa.gov>) or toll free (866) 208-1064. **Please note in your Proposal if your proposed operation includes ACDBE participation.**

2.3 ENVIRONMENTAL SUSTAINABILITY:

The Port is committed to conserving natural resources, reducing pollution, and ensuring a healthy and sustainable future for the Puget Sound region. In this effort, Proposers are strongly encouraged to incorporate environmentally-sound practices into their business plan, and elaborate on these practices in the Proposals. The Port requires businesses to participate in recycling and composting programs and use either durable or Cedar Grove-approved compostable or recyclable food service-ware (<https://cedar-grove.com/store/packaging>). There is also a food donation program benefitting a local food bank available to tenants for participation. The Airport may develop new environmental programs in the future that Proposers should be prepared to participate in to the greatest degree possible.

SECTION 3: PROPOSAL SCHEDULE

ACTIVITY	TARGET DATE
Release of CEP	June 18, 2019
Pre-Proposal Meeting	July 9, 2019 & July 18, 2019
Last Day for Pre-Proposal Protest in accordance with Section 7.12.2.1	July 25, 2019
Written Questions Due	July 31, 2019
Response to Written Questions Posted	August 9, 2019
CEP Packages Due	September 18, 2019
Last Day to Withdrawal Proposal without Penalty	September 25, 2019
Interviews (if necessary)	September/October 2019
Award	Q1 2020
Last Day for Post-Proposal Protest in accordance with Section 7.12.2.2	4 business days after the date the notice of Award
Lease Execution	60 Days after Award Notification

The Port reserves the right to change any of these dates, as it deems necessary in the Port's best interest.

SECTION 4: SCOPE OF LEASE

4.1 GENERAL REQUIREMENTS:

The dining offering at Sea-Tac is characterized by its quality fresh ingredients and preparation. Sea-Tac travelers expect a variety of freshly-prepared offerings, as well as quality grab-and-go items, to suit different tastes during all parts of the day. Every dining location must provide a robust breakfast menu.

The retail offering at Sea-Tac has expanded in the last 15 years to include convenience retail, a broad selection of specialty retail, and enhanced duty free/duty paid merchandise. Retail concepts must demonstrate an ability to meet the needs of a broad passenger demographic and contribute to a balanced retail mix.

Respondents should provide a concept that meets the description outlined in Table I. Deviations from this concept will not be accepted.

Table I. Description of Lease Opportunity

Name of Unit	Proposed Concept	Approximate Sq. Ft.	Anticipated Date Unit is Available for Build - Out
PS-I NS-I I CEP	<p>Passenger Services location featuring either a Massage Services, Spa Services, or Medical Services or a combination thereof</p> <p>This is a new location in the North Satellite retail core.</p> <p>For the purpose of this CEP:</p> <p><u>Massage Services</u> shall include but not limited to, chair massages, foot massage, hand massages, facials, full body massage, and any other similar type services found on the street.</p> <p><u>Spa Services</u> shall include but not limited to, manicure and pedicures and any other similar services found on the street.</p>	580	June 2021

	Medical Services shall include but not limited to, chiropractor services, general health screening services that includes the administration of shots, the issuance of prescriptions. Respondents shall make every effort to take patients insurances.		
Term		8 Years	
Anticipated Minimum Investment in Fixed Improvements per Square Foot		\$800.00	

The unit included in this CEP is shown on the lease outline drawing(s) in **Section 6**.

The utility matrix for the unit included in this CEP is available for review in **Section 6**.

All businesses must be open and able to serve customers at least one hour before the first flight departs in the morning and remain open until the last outgoing flight departs each day (flight schedules vary based on concourse/satellite location). The Central Terminal area currently has set operating hours of 5:00AM to 11:00PM for dining and 6:00AM to 10:00PM for retail, which are subject to change at the request of the Port.

Flight delays sometimes occur due to weather and other unplanned events. Businesses must be flexible to quickly extend operating hours based on the need to serve passengers. In some instances, this will be at the request of the Port.

4.2 BUILD-OUT REQUIREMENTS AND OTHER DIRECT COSTS:

The business selected for this opportunity will be required to plan, design, and fully build out the new unit at their sole cost, in accordance with the Port of Seattle's ADR Design Guidelines and Tenant Design and Construction Process Manual, which are located on the Port's website: <http://www.portseattle.org/Business/Construction-Projects/Airport-Tenants/Pages/Reference-Documents.aspx>.

To the greatest extent possible the Port will provide shell conditions, including demising walls, concrete slab flooring, unfinished ceiling, and utility infrastructure tie-in locations. Utilities, depending on whether a food/beverage or retail operation, include services for electrical, water/sewer, used cooking oil disposal, natural gas (where available), and data. Businesses will take the premises "as-is" and some units with existing tenants will likely require some modifications prior to new construction.

On October 25, 2016, the Port of Seattle Commission adapted Resolution 3725 which applies to labor wages for construction performed on Port property. Please make sure you are familiar with and are prepared to comply with Resolution 3735, **Exhibit 2**.

At a minimum, the amount per square foot identified in Table I as “Minimum Investment in Fixed Improvements per Square Foot” must be invested in the initial build-out. **This minimum investment per square foot does not represent an actual expected cost to design and build out the unit in accordance with the Port’s design and construction guidelines, nor does it attempt to represent the costs associated with the challenges of building in an airport environment or actual construction market conditions in and around the Airport. Respondents should anticipate a higher investment cost and factor those higher costs into their financial pro forma.** To the extent actual design and construction costs exceed the amount estimated by the Proposer, all such added costs are at the sole risk and expense of the Proposer. Respondents are required to complete and submit their proposed capital investment and indicate the sources of funding to be used for the tenant improvements and working capital on **Form 8.6**. The Port cannot guarantee a specific schedule for the design and construction process, but it typically will take eight to ten (8-10) months from the L&C Agreement commencement date before opening for business (there may be exceptions to this timeframe if there are multiple units in a package). In addition to the initial minimum investment, a **minimum investment equal to 15% of the original build-out cost will be required in the L&C Agreement for a mid-term refurbishment** of the unit(s) at the midpoint of the term.

All dining and retail units must be professionally designed (both interior and exterior) and built out by licensed contractors selected by the tenant. **All materials and/or equipment must be new and meet the standards and approval of the Port.**

Food service operators that share common food service seating may be charged a janitorial fee for trash removal, bussing, and other cleaning and maintenance services, as required. The cost of furniture and other related furnishings in these areas are not included and are paid for by the Port.

It is the Proposer’s responsibility to ensure that the design of the premises complies with all federal, state and local laws, including but not limited to the Americans with Disabilities Act (“ADA”) and the ADA standards and guidelines implementing the ADA.

Prior to any construction, the selected proposer must comply with all plan submittal requirements as outlined in the Port’s Design and Construction Process Manual and obtain the Port’s approval of facility designs and finish materials for all tenant improvements.

Proposers are responsible for reviewing all of the information provided in this document and at the pre-proposal conference. Proposers must understand the physical conditions of each unit, the provided utilities and their points of connection, and any other base building issues that could affect the design and build-out. The Port has no obligation to provide any requested adjustments to any financial terms or build-out requirements after execution of the L&C Agreement, and a failure by any proposer to fully understand the circumstances surrounding unit development and the capital investment required will not constitute grounds for modifying any of the terms of the L&C Agreement.

Airport tenant costs also include the direct payment of utilities, including but not limited to electric, water, sewer, natural gas, grease interceptor cleaning, pest control and trash service. These items are billed by the Port each month to the tenant. The tariff rates for utilities are posted on the Port of Seattle website. <http://www.portseattle.org/Business/Documents/Tariff.pdf>

Employee badging costs are paid by the tenants. These costs vary based on the type of security badge and are detailed on the Port of Seattle website.
<http://www.portseattle.org/Employee-Services/ID-Badges/Pages/default.aspx>

Sea-Tac provides off-site parking lots for employee use with bussing service to the airport 24 hours a day. The monthly cost for parking is available through the Port's website.
<http://www.portseattle.org/Employee-Services/Employee-Parking/Pages/default.aspx>

Airport tenants leasing space are also responsible for the payment of Washington State leasehold excise tax in lieu of standard real estate tax. The current tax rate is 12.84% and is paid on the first seven percent (7%) of gross sales each month.

4.3 SUMMARY OF BUSINESS TERMS:

As part of your Submittal, you will be required to provide a **financial offer** on **Form 8.5**. Percentage fees that increase with sales volume, i.e., tiered rent structures, will be accepted.

The Port will **not** renegotiate the percentage fees during the term of the L&C Agreement. The Port is under no obligation to accept the highest percentage fee proposed.

4.3.1 Term of the L&C Agreement:

The effective date or Occupancy Date of the L&C Agreement will be the date the concession location is turned over by the Port for the performance of tenant improvements and the Expiration Date will be **eight (8) years** following the Build-Out Deadline of the unit.

4.3.2 Minimum Annual Guarantee and Percentage Fee:

Dining, retail and service tenants at the Airport pay rent as a Minimum Annual Guarantee ("MAG") or percentage fee, whichever is greater. One-twelfth of the MAG is paid on the first of every month and any percentage fee due above the monthly payment of the MAG is reported and paid by the 15th of each month for the preceding month.

The Port has established the MAG in the amount of **Sixty Thousand and 00/100 (\$60,000.00) Dollars** for the first, full calendar year of the L&C Agreement, which is not negotiable. Any percentage fee above the monthly payment of the MAG would be reported and paid by the 15th of each month for the preceding month.

The Minimum Annual Guarantee and percentage fee will be reconciled annually, as set forth in the draft L&C Agreement.

SECTION 5: STASTICAL DATA

The information contained in this Section is for informational purposes only and the Port of Seattle does not guarantee the accuracy of any specific traffic and passenger data, or sales expectations.

Airlines by Concourse
As of June 1, 2019

Concourse A:	North Satellite:
Air Canada / Air Canada Jazz	Alaska Airlines
Aer Lingus	South Satellite:
Delta Airlines	AeroMexico
Japan Airlines	Air Mobility Command (AMC)
Norwegian	Air France
Skywest (United Express)	All Nippon Airways
United Airlines	Asiana Airlines
Concourse B:	Atlas Air
Alaska Airlines	British Airways
Delta Air Lines / Delta Connections	Cathay Pacific
JetBlue Airways	Condor
Southwest Airlines	Delta Air Lines
Spirit Airlines	Emirates
Concourse C:	Eva Air
Alaska Airlines	Hainan Airlines
Horizon Air	Hawaiian Airlines
Concourse D:	Icelandair
Alaska Airlines	Korean Air
American Airlines	Lufthansa
Frontier Airlines	Omni Air International
Sun Country Airlines	Singapore Airlines
	Skywest (Delta Express)
	Thomas Cook
	Virgin Atlantic
	Volaris
	Xiamen Airlines

Historical Enplanements by Concourse

Concourse	2014	2015	2016	2017	2018
A	2,491,298	3,496,767	3,256,072	4,257,896	4,619,656
B	3,127,994	2,947,468	3,422,170	4,425,820	5,052,422
C	4,219,427	4,823,594	4,558,165	5,689,927	5,766,437
D	1,844,863	2,716,212	2,446,010	2,822,169	3,451,226
North Satellite	4,804,316	4,696,544	4,142,425	4,620,762	4,785,294
South Satellite	2,798,448	3,446,173	2,872,661	3,764,279	3,878,843

Future Enplanements for the North Satellite (assumes a 2% growth rate)

Concourse	2021	2022	2023	2024	2025	2026
North Satellite	4,583,455	4,670,611	4,759,424	4,849,717	4,946,711	5,045,645

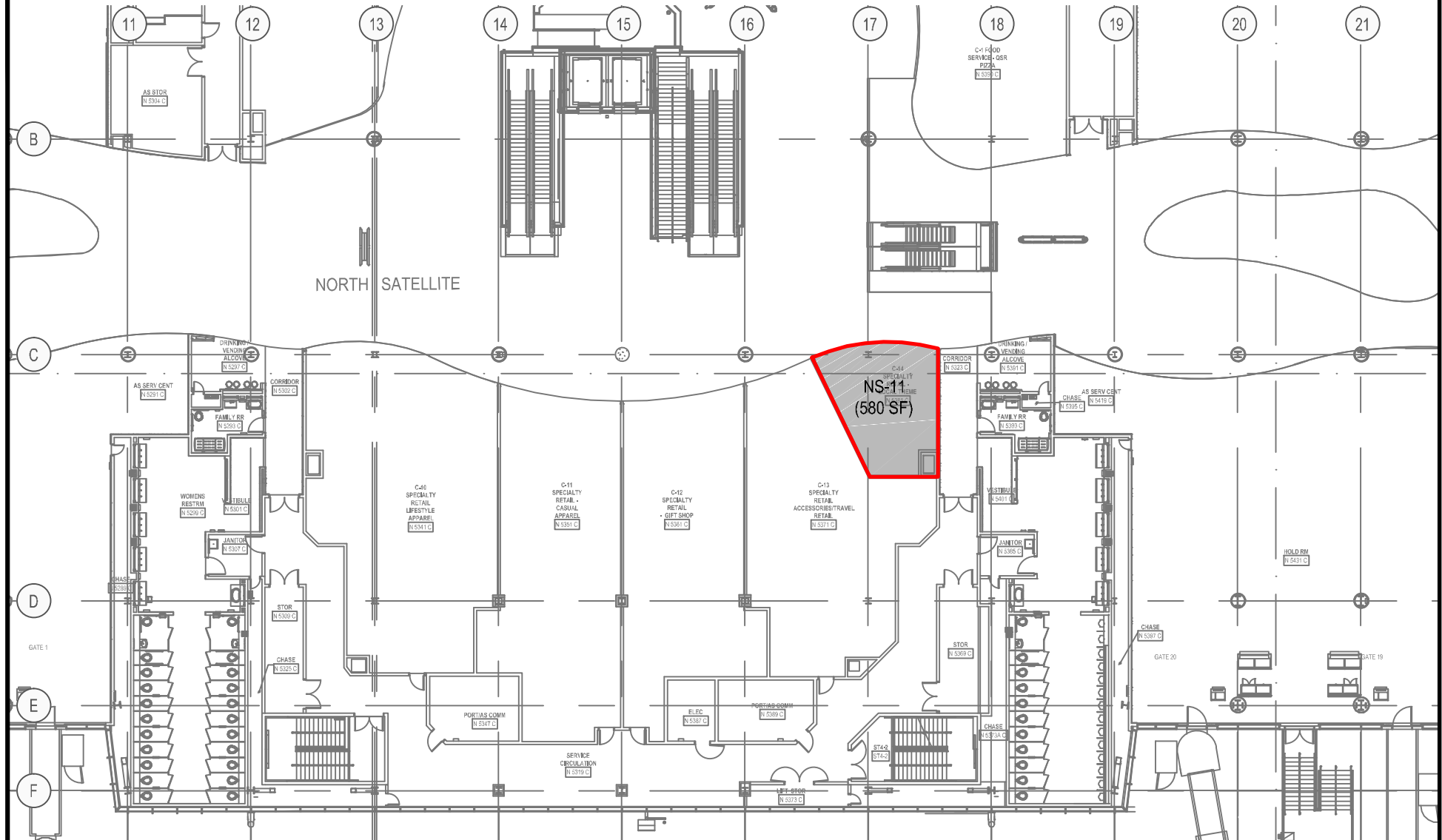
Comparable Annual Gross Sales

Gross Sales					
Store Name	Concourse	2016	2017	2018	2019
Massage Bar	C	1,614,003	1,551,350		
Massage Bar	NS	243,082	234,680	550,788	37,692
Terminal Getaway Spa	A		4,481	604,084	115,451
Terminal Getaway Spa	C			1,144,722	364,952

SECTION 6: LEASE OUTLINE DRAWINGS (LOD)

NORTH SATELLITE UNIT NS-11

580 SF SPACE (APPROX.)

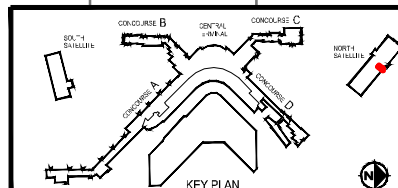


LEGEND:

 LEASE AREA



0 15
1"=30'-0"



Port of Seattle/Aviation Properties
Seattle-Tacoma International Airport

BUILDING: NORTH SATELLITE
LEVEL: CONCOURSE LEVEL
LOCATION:

DATE: 05JUNE2019

SCALE: 1"=30'

DRAWN BY:

CHECKED BY:

EXHIBIT NO.

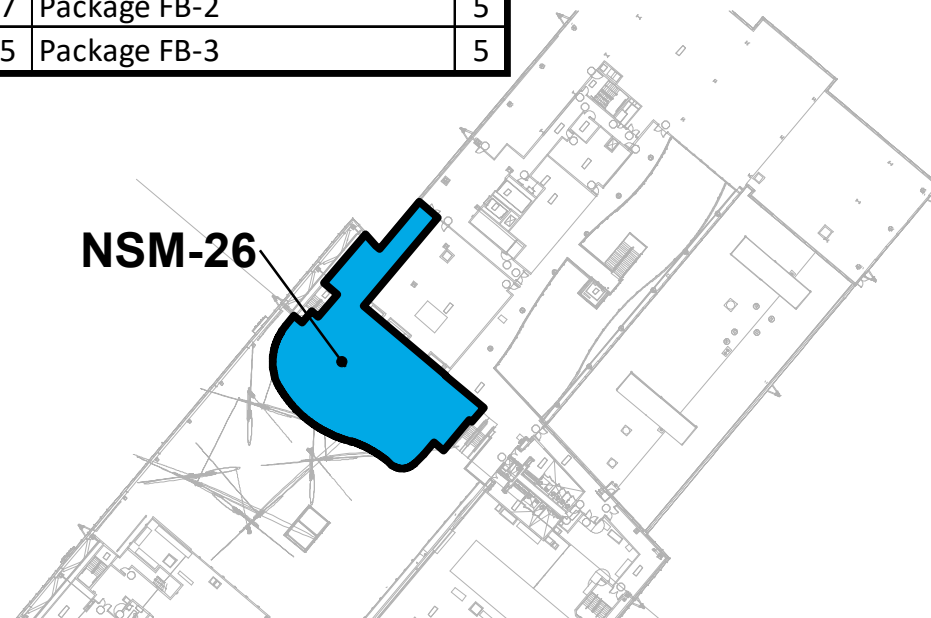
NS-11

INFORMATION IS SHOWN FOR REFERENCE PURPOSES ONLY.

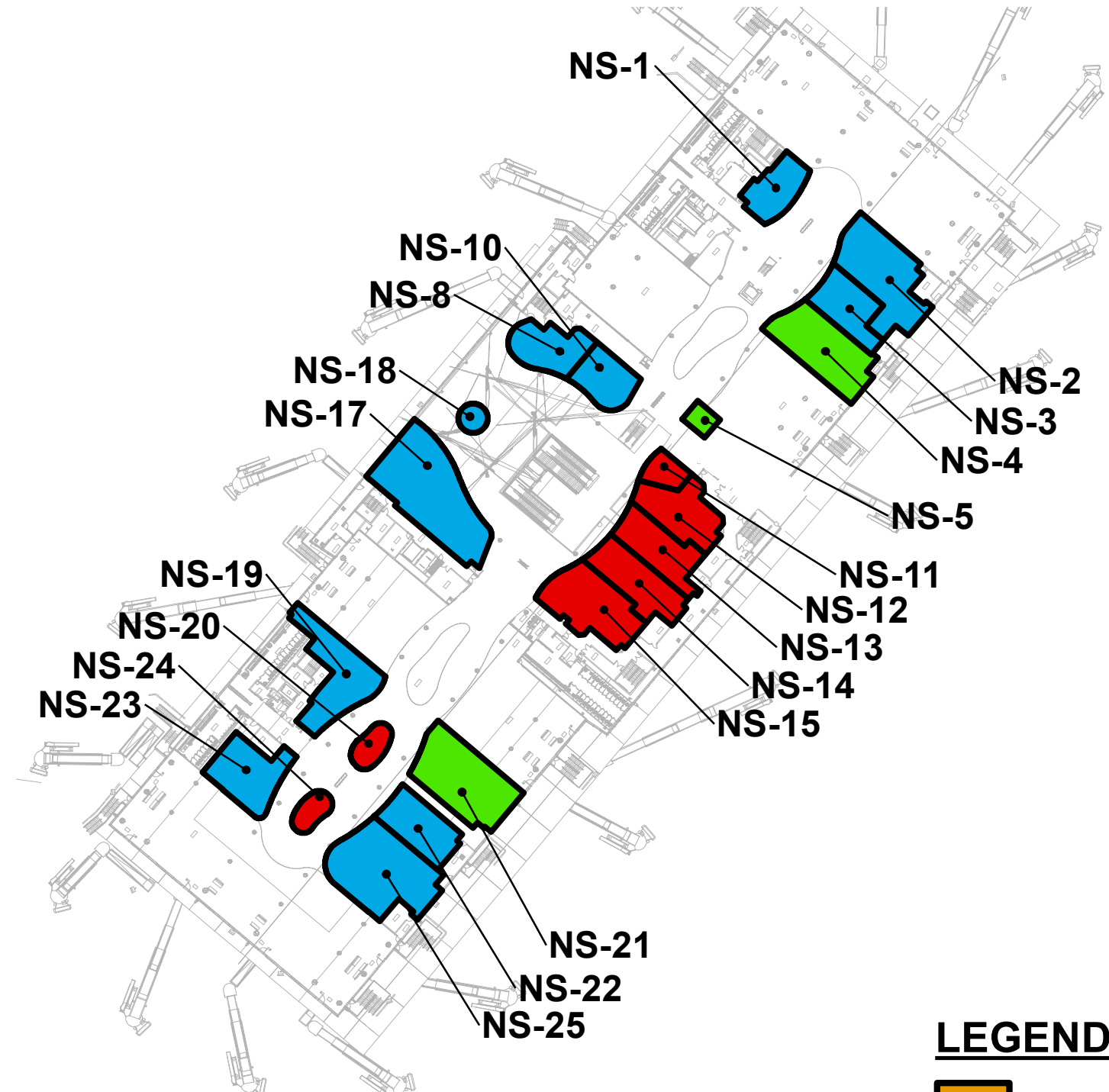
JUNE 2019

NORTH SATELLITE ADJACENCIES

ID	SF	NAME	LG
NS-01	1,250	Caffe D'Arte	4
NS-02	2,895	Skillet	4
NS-03	1,537	Bambuza Vietnam Kitchen	4
NS-04	2,559	The New Stand	3
NS-05	327	Hudson Temp	4
NS-08	1,501	QSR	4
NS-10	1,301	Package FB-1	5
NS-11	582	Package PS-1	5
NS-12	1,822	Package SR-1	5
NS-13	1,739	Package PS-2	5
NS-14	1,894	Package SR-2	5
NS-15	2,421	Filsons	
NS-17	4,015	Starbucks/Seattle Beer Union	4
NS-18	314	Future Kiosk	
NS-19	2,337	Village Pub	
NS-20	573	Future Kiosk	
NS-21	2,923	Hudson	
NS-22	1,629	9th & Pike (Sandwich)	
NS-23	1,875	Poppa Woody's (Burger)	4
NS-24	508	Future Kiosk	
NS-25	3,397	Package FB-2	5
NSM-26	6,785	Package FB-3	5



NORTH SATELLITE MEZZANINE



NORTH SATELLITE

LEGEND:

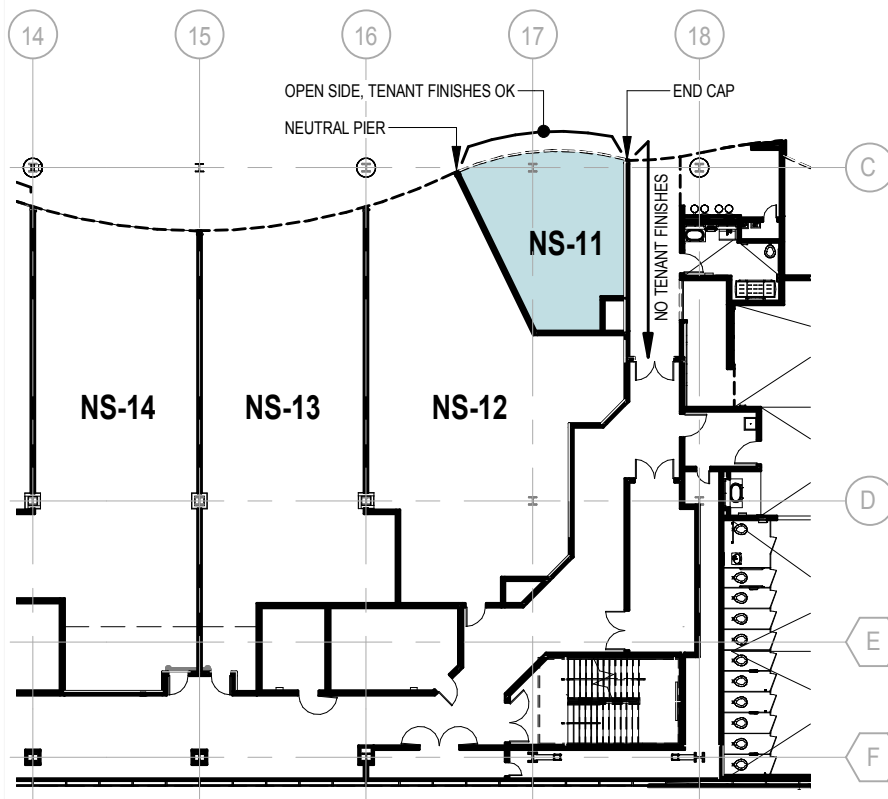
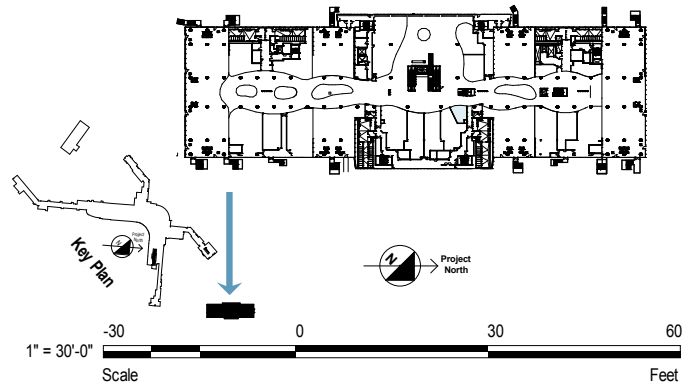
- Duty Free
- Food and Beverage
- Retail (Conventional)
- Retail (Special)
- Services

DATE: 6/13/2019

NS-11

NSAT Tenant Playbook

ROOM NUMBER: N 5381 C
COLUMN LINE: 17 C



COMMUNICATIONS: (2) 2" Conduit
CONNECTION POINT: Pull string in conduit provided from comm room to tenant space.

ELECTRICAL: 208V, 10KVA, 100Amp
CONNECTION POINT: Pull string in conduit provided from electrical room to tenant space. Circuit breaker, conductors, CT and meter modules by tenant.

FIRE ALARM LIFE SAFETY: Fire/Smoke Alarm Zone 2, Area 2M. Aspiration type fire detection.
CONNECTION POINT: In tenant space

GAS: None
CONNECTION POINT: N/A

GREASE WASTE: Max Fixture Units: 54
Pipe Size: 4"
CONNECTION POINT: Below tenant space

HVAC: Max Cooling Supply: 950 CFM
Max Heating Supply: 475 CFM
Type I Exhaust: None
Type II Exhaust: None
Max Flow Heating Water: 1.4 GPM
CONNECTION POINT: In tenant space

FIRE SPRINKLER: Wet Sprinkler
CONNECTION POINT: In tenant space

TENANT COLD WATER: Max Fixture Units: 40
Pipe Size: 1 1/2"
CONNECTION POINT: Below tenant space

TENANT HOT WATER: 140°
Max Fixture Units: 20
Pipe Size: 1 1/2"
CONNECTION POINT: Below tenant space

PLUMBING VENT: Max Fixture Units: 54
Pipe Size: 3"
CONNECTION POINT: In tenant space

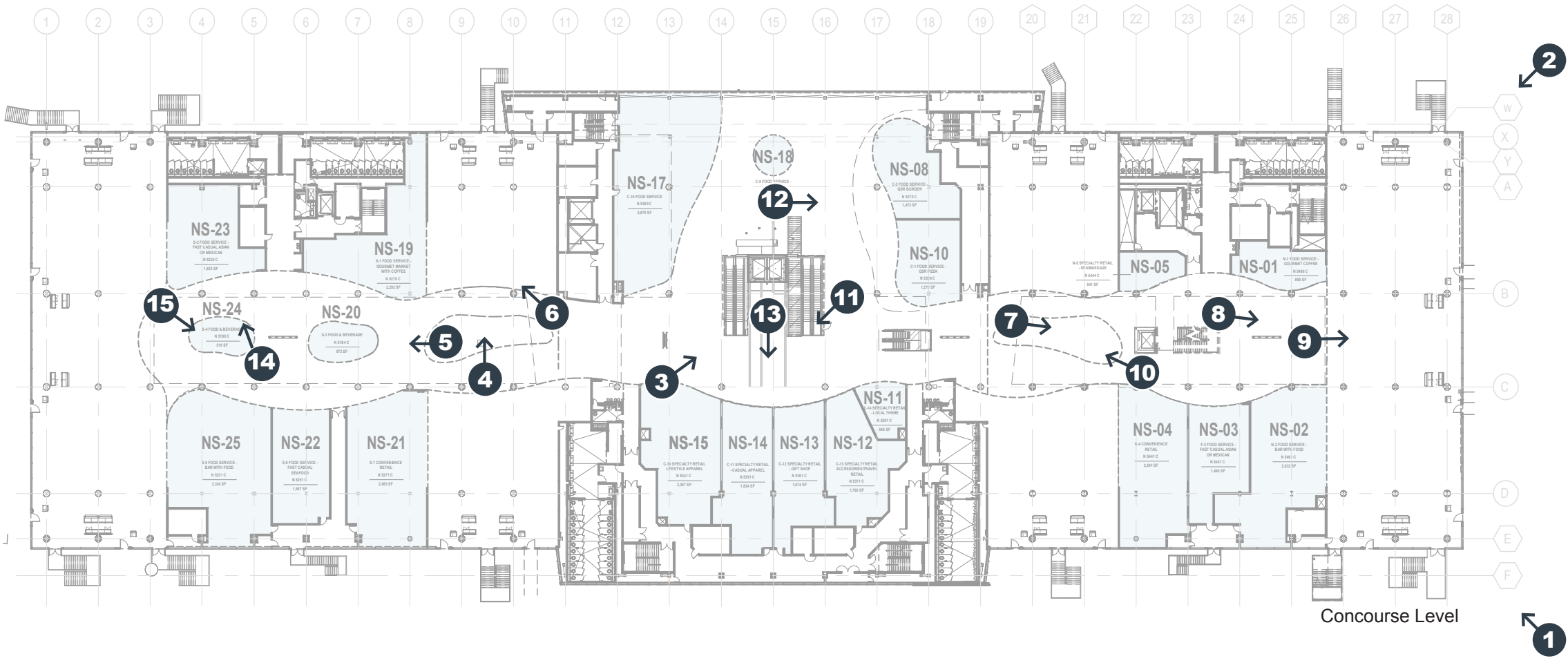


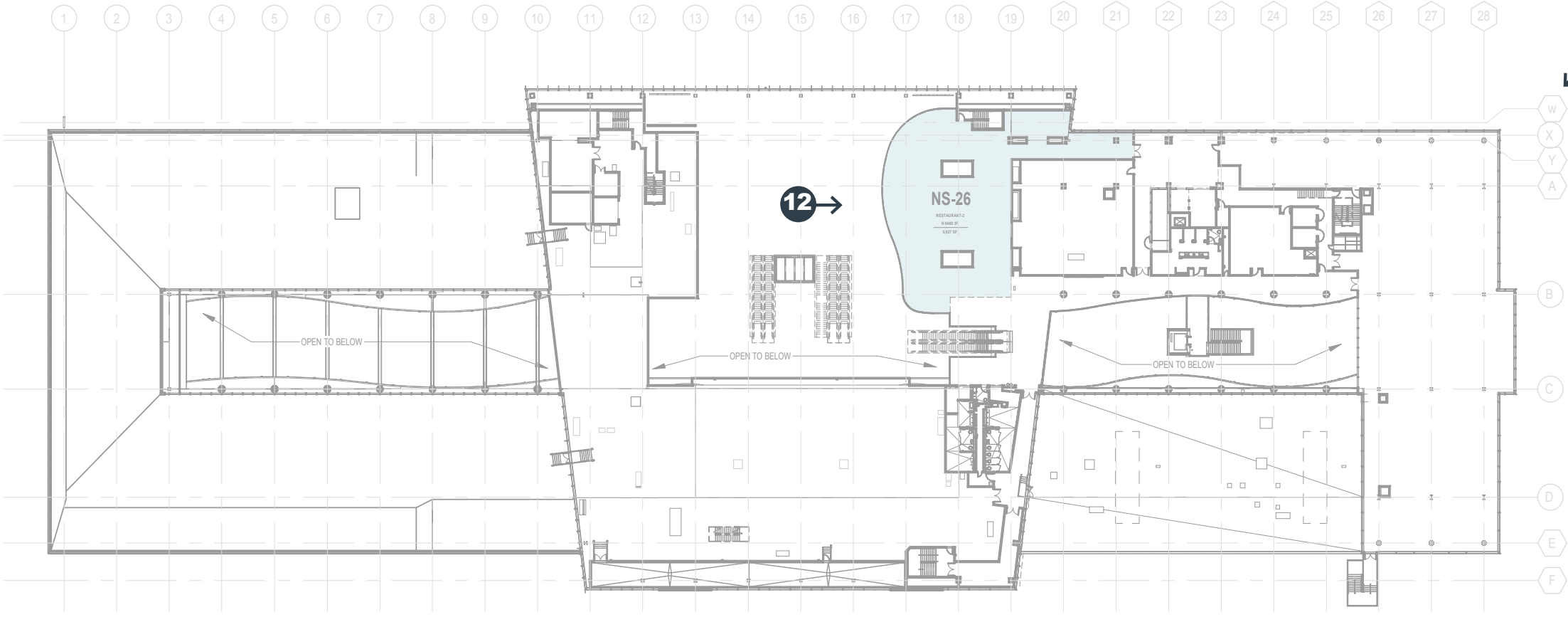
CONCEPT RENDERING FOR ILLUSTRATION PURPOSES ONLY, ALL INTERIOR FINISHES BY THE TENANT.

Introduction to NSAT

CENTRAL CONCOURSE

SOUTH CONCOURSE





Third Level



SECTION 7: INSTRUCTIONS TO PROPOSERS

7.1 GENERAL INSTRUCTIONS:

The Port of Seattle is not required (under federal or state law) to solicit proposals or to follow any competitive selection process for any of the Airport concessions that are covered by this solicitation. Accordingly, the process outlined in this CEP and the actions taken by the Port as part of the evaluation process, whether consistent with this CEP or not, are intended solely as a tool for the Port to identify the Proposer/proposal with which the Port believes it wants to enter into negotiations for a L&C Agreement. The Evaluation Panel's consideration of Proposals necessarily involves the exercise of discretion, much of which is impossible or impractical to accurately reflect in the evaluation documentation. While the Port may document some or all of the evaluation process, the Port shall not be required to, and does not represent that it will, comply with documentation requirements that may apply to other state or federal procurements. Nor shall the evaluation documentation that is provided be construed as the sole basis on which the Port's scoring or decisions were made.

By submitting a proposal, Proposers expressly acknowledge and agree that:

- A. The Port is not required to follow any competitive solicitation process for Airport concessions that are covered by this solicitation; and**
- B. The Port may (at its sole discretion and without providing advanced notice to Proposers) waive or modify any process, procedure, or requirement set forth in, implied by, or inferred from the CEP.**

The following numbered instructions provide important information regarding the CEP process and describe the steps necessary to properly prepare and submit a response.

- 7.1.1 This CEP is intended to attract responses from interested and qualified personnel, firms, and business entities that have demonstrated expertise in food service, retail, and/or passenger services at airports or other large transportation centers, shopping centers, malls, or business districts.

It is the responsibility of proposers to examine this document carefully, understand the Airport's characteristics and requirements, and assess all of the circumstances and conditions that may affect their proposals. Proposers are responsible for anticipating both positive and negative aviation and general economic trends over the course of a multi-year agreement, and to consider proposals, financial or otherwise, with this understanding. Failure on the part of a proposer to be completely knowledgeable of the terms and conditions of the proposal requirements, operational conditions, or any other relevant documents or

information will not relieve the selected proposer from complying fully with this request for proposals or the terms of an executed L&C Agreement.

All costs associated with the preparation, submittal and delivery of a proposal and any presentation materials and the proposal process (including revised/modified proposals, Best and Final Offers, and/or Interviews, if any or all are utilized by the Port) are the responsibility of proposer, such as costs of delivery, packing, insurance, travel costs, bank fees and bonds.

ALSO, PLEASE BE ADVISED:

THE MATERIAL TO BE SUPPLIED THROUGH THIS CEP IS BEING SOUGHT FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT, IN ANY WAY, CONSTITUTE A “BID” (IN THE SENSE THAT THE PROPOSER WITH THE HIGHEST RENT PROPOSAL TO THE PORT WILL AUTOMATICALLY BE AWARDED THE CONCESSION) AND SHOULD NOT BE CONSTRUED AS SUCH. THE PORT OF SEATTLE MAY OR MAY NOT NEGOTIATE A L&C AGREEMENT WITH ANY OF THE PROPOSERS RESPONDING TO THIS CEP, AT ITS SOLE DISCRETION.

- 7.1.2 The Port, in its sole discretion, reserves the right (but is not required):
 - (a) to contact any Proposer, any subset of Proposers, or all Proposers to seek clarification(s),
 - (b) to ask any Proposer, any subset of Proposers, or all Proposers to submit additional information,
 - (c) to request modified Proposals after the submission deadline from any Proposer, any subset of Proposers, or all Proposers,
 - (d) to request Best and Final Offers (BAFOs) from any Proposer, any subset of Proposers, or all Proposers, and
 - (e) to create and implement, in the event of a tie, any tie-breaking process the Port determines to be in the best interest of the Port.
- 7.1.3. Each response submitted under this CEP must contain responses to questions and information requested in **Section 9 to Section 15**.
- 7.1.4. Before submitting a response, the Proposer should be familiar with the information described in this CEP, which contains important provisions for the successful Proposer.
- 7.1.5. **There will be two (2) non-mandatory pre-proposal meetings on July 9, 2019 and July 18, 2019 at 10:00 AM.** The purpose of the pre-proposal meeting will be as described in Section 1.2. If changes to the CEP are required as a result of the information meetings, the Port will issue written addenda to the CEP.

- 7.1.6. Under no circumstance will the submission of a response under this Invitation be construed by the Port, the Proposer, or any other person or firm as being a formal bid. Also, the words “INVITATION” and “REQUEST” will be considered as the same and interchangeable.
- 7.1.7. It is understood that a L&C Agreement will be prepared based on the terms and conditions set forth in this CEP, and the responses submitted by the Proposers. All factual representations made in the responses will be relied on by the Port in selecting a Proposer with which to initiate negotiations for a L&C Agreement. A significant variance from such factual representations may result in an alternative Proposer recommendation from staff.
- 7.1.8. All responses must be submitted in a sealed envelope clearly marked as follows:

**LEASE GROUP 5 PACKAGE PS-1:
SEATTLE-TACOMA INTERNATIONAL AIRPORT**

**With the name and address of the Proposer in the upper left-hand corner.*

- 7.1.9. **Responses shall be submitted to the Port of Seattle one (1) pdf electronic copy on a thumb drive or other device, prepared with complete answers, signed by an authorized representative, and a completed and executed Exhibit 6** enclosed in a sealed envelope properly addressed, and must be either (a) delivered by hand, (b) mailed by certified or registered mail and acknowledged by receipt, or (c) by overnight courier and received by the Port no later than **3:00 PM, Pacific Time, September 18, 2019** at the following address:

Port of Seattle
Seattle-Tacoma International Airport
Aviation Office Building
Room A6012M
17801 Pacific Highway South
Seattle, WA 98158
Attention: Dawn Hunter

- 7.1.10. Responding to this CEP creates no contractual rights or duties. Failure by the Port to choose any Proposer with which to negotiate does not give rise to any cause of action, including but not limited to, damages for preparation costs should the Proposer not be considered or chosen for any reason whatsoever.
- 7.1.11. The objective of this CEP is to supply information to Airport staff and the Port.

- 7.1.12 The Proposer shall be responsible for examining and understanding the terms of this CEP and Sample L&C Agreement, and shall judge for itself the circumstances and conditions affecting its proposal. Proposer's failure to make such examination and to investigate thoroughly shall not be grounds for any declaration that the CEP conditions and terms were not understood.
- 7.1.13 Questions regarding this CEP should be directed to Ms. Dawn Hunter, Senior Manager, Port of Seattle. Phone (206) 787-6340; email: seatacshops@portseattle.org
- 7.1.14 Proposer must submit the Proposer's Certification Form (**Form 8.2**).
- 7.1.15 **ALL PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE LEGAL ENTITY SUBMITTING THE PROPOSAL (I.E., THE PROPOSER). IF NOT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER, THE PROPOSAL MAY BE DEEMED NON-RESPONSIVE AND NOT SCORED.**
- FOR EXAMPLE, IF THE PROPOSER IS A JOINT VENTURE, PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JOINT VENTURE (NOT JUST ONE OF THE JV MEMBERS) AND THE INDIVIDUAL SIGNING SHOULD BE SIGNING IN HER/HIS CAPACITY AS IT RELATES TO THE JV (NOT A JV MEMBER).**
- 7.1.16 **PROPOSER MUST ACKNOWLEDGE ALL ADDENDUM(S) ISSUED BY THE PORT. FAILURE TO ACKNOWLEDGE ALL ADDENDUM(S) ISSUED MAY RESULT IN THE PROPOSAL BEING DEEMED NON-RESPONSIVE AND NOT SCORED.**

7.2 PAGE LIMITATIONS AND SUBMITTAL REQUIREMENTS:

- 7.2.1 **All responses are limited to a total of maximum of 200 pages (including requested financial information). Any pages beyond the limit will not be scored.**
- 7.2.2 **A Proposer may submit one (1) concept per package.**
- 7.2.3 Electronic Copy Requirements:
7.2.3.1 All sections should be combined into a **single electronic file** that is a word-searchable portable document format (PDF)

- 7.2.3.2 PDF file must be no larger than 300 MB
- 7.2.3.3 Each of the tabbed sections should be included in the PDF file.
- 7.2.3.4 PDF file should be submitted on a flash drive.
- 7.2.3.5 Include the pro forma in Excel format as well as pdf format on the flash drive.

- 7.2.4 Cover Letter and Proposal Checklist:
Your Proposal must include a cover letter not to exceed one (1) page that includes the following:
 - 7.2.4.1 Date submitted
 - 7.2.4.2 Statement of interest in the specific units in the CEP

7.3 AWARD LIMITATIONS:

Not Applicable

7.4 MINIMUM REQUIREMENTS:

Complete the Minimum Requirements Form, (**Form 8.8**). In order to be considered for an L&C Agreement, Proposers must provide the information required in **Form 8.8** to demonstrate that they meet the following **minimum requirements**:

7.5 CEP PROPOSAL FORM:

Complete the CEP Proposal Form, (**Form 8.3**).

7.6 GENERAL REQUIREMENTS:

- 7.6.1 All dining and retail units must be designed and built according to the guidelines and standards in place at Sea-Tac Airport. Please refer to: <http://www.portseattle.org/Business/Construction-Projects/Airport-Tenants/Pages/Reference-Documents.aspx>.
- 7.6.2 All equipment and furniture must be new and of high quality in order to meet the demands and standards of operation in a high-traffic facility.
- 7.6.3 Utilities consumed will be metered and billed to the Selected Proposer.
- 7.6.4 The Selected Proposer must comply with all federal, state, county and local laws that apply to the sale of alcohol and tobacco; the Selected Proposer may not sell marijuana, marijuana concentrates, marijuana-infused products, or products intended for or espousing the consumption of any of the foregoing.
- 7.6.5 The Selected Proposer is required to pay a leasehold excise tax on the amount of "contract rent" per Revised Code of Washington (RCW) Chapter 82.29A. The leasehold excise tax, which is currently at 12.84 percent (12.84%) is currently

based on the first seven percent (7%) of gross sales, see Section 4.8 of the draft L&C Agreement, **Exhibit 5**.

- 7.6.6 If such space is available, the Selected Proposer may be able to lease office and/or storage space at the Airport. The lease of office and/or storage space will be included as a Rider to the main L&C Agreement. All costs of any improvements to the office space will be the responsibility of the Selected Proposer, and are not permitted to be included in the Proposer's original build-out cost.
- 7.6.7 The Proposal of each Selected Proposer will be included as an exhibit to the L&C Agreement to ensure commitment to the specifics of the Proposal as presented. Any commitments made as part of a Proposal and approved by the Port will be for the entire term of the L&C Agreement.
- 7.6.8 The Selected Proposer will be expected to provide a transition plan and work closely with an outgoing tenant to ensure a smooth transition of operations and continued customer service.

7.7 PROPOSAL GUARANTEE (REQUEST FOR PROPOSAL ONLY):

Not Applicable

7.8 COMPETITIVE INTEGRITY:

The Port maintains a neutral competitive environment for all proposers to protect the integrity of the selection process. A potential proposer, or anyone on its behalf, may only contact the authorized Port representative, concerning this CEP from the release date until the Port announces the Selected Proposer(s). Any communication concerning the content of this solicitation by a potential or actual proposer, or anyone on its behalf, with any Port elected official or employee other than the Port representative may result in the rejection of that proposer's proposal unless, in the reasonable judgment of the Port's General Counsel, the communication could not reasonably be believed to have given the proposer a competitive advantage or have impaired the neutral competitive environment of this CEP. Submitted questions, per **Section 1.4** of this CEP and attendance at the pre-proposal conference are the only contacts considered allowable by this CEP between the Port and potential proposers.

Failure by Proposer and/or their representatives to comply with this restriction may result in their proposal being rejected by the Port.

7.9 PUBLIC DISCLOSURE:

As a public agency, the Port is subject to the Washington State Public Records Act ("PRA"), Chapter 42.56, Revised Code of Washington (RCW). During or after all recent Lease Group solicitations, the Port received PRA requests for copies of all proposals that were submitted in response to the solicitations. The Port anticipates similar requests for proposals that are submitted in response to this solicitation. When the Port receives PRA requests for copies of

proposals, the Port must provide copies of the proposals. The Port will only withhold or redact those portions of proposals for which a statutory exemption is asserted by the Proposer. Generally speaking, in previous solicitations the only portions of proposals that were exempt from public disclosure related to confidential taxpayer information that some proposers included and certain confidential/proprietary financial information.

To (i) facilitate the timely release of these documents pursuant to the Port's obligations under the PRA, and (ii) to ensure that proposers have access to as much information as possible to inform their decision on whether to protest the Port's selection decision: no later than 3 business days following the Port notifies all proposers of the apparent successful proposer for each concession opportunity, the Port will also post copies of all proposals for that specific concession opportunity to its public records website. The only exception to the foregoing will be the following sections of each proposal (the "Sections with Potentially Exempt Material"):

- Section 9 Question 3 (v.)
- Section 9 Question 3 (vi.)
- Section 9 Question 3 (vii.)
- Section 9 Question 3 (viii.)
- Section 9 Question 4
- Section 9 Question 9

ALL other sections of EVERY proposal (the "Remaining Sections") will be posted to the Port's public disclosure website without any review by the Port for the applicability of an exemption, and Proposers are hereby notified that they should not include any information that is exempt from public disclosure under the PRA in the Remaining Sections. By submitting a proposal, Proposers agree to release, defend, indemnify, and hold harmless the Port (and its employees, agents, and commissioners) from and against any claim, damages, costs, or cause of action of whatsoever kind or nature that may arise from or relate to Proposer including any information that may be exempt from public disclosure in any of the Remaining Sections.

The Port will promptly notify the submitting Proposer of any requests for public disclosure of Proposer's Sections with Potentially Exempt Material. Proposer shall be responsible for and bear the costs of taking legal action in an attempt to prevent disclosure of such documents. In no event shall the Port be liable to Proposer for disclosure of Proposer's documents the Port deems disclosable under Chapter 42.56 RCW.

7.10 REJECTION OF PROPOSALS:

The Port reserves the right to accept or reject any or all proposals in their entirety or in part, and to waive minor irregularities. What constitutes a "minor irregularity," as that term is used herein, shall be within the sole discretion of the Port, and the Port's discretion shall not be limited by case law that applies procurement requirements that arise out of state or federal

competition requirements. The Port may, at any time, determine that a particular requirement may be modified or waived. If the Port makes a determination that a particular requirement be modified or waived prior to awarding the concessions opportunity to the selected Proposer, then the requirement(s) will be modified or waived for all proposers and all proposals will be evaluated in light of the change. In the event that, in the Port's sole determination, there is not an acceptable Proposal, the Port reserves the right to (i) enter into direct contract negotiations with any party on such terms and conditions as are then acceptable to the Port, notwithstanding any provisions of this CEP. Absolutely nothing in this procurement is intended, or should be construed, to create enforceable due process rights in favor of any Proposer or prospective Proposer.

7.11 WITHDRAWAL OF PROPOSALS:

Submitted Proposals may be withdrawn prior to the deadline for submission of Proposals. Should a Proposer discover an error in their submission, following the submission deadline of September 18, 2019, may request for their Proposal not be score and returned with written notification no later than **September 25, 2019 at 4:00 pm Pacific**. The Port will not make any modifications on the Proposer's behalf.

After **September 25, 2019**, Proposers may not withdraw its proposal except on the forfeiture of its proposal guarantee to the Port as liquidated damages.

7.12 PROTEST PROCEDURES:

7.12.1 PURPOSE

These protest procedures are included in this invitation, solicitation or request (for convenience, the "CEP") to provide a prompt, fair and equitable administrative remedy to all Proposers and prospective Proposers regarding alleged substantive errors or omissions in the CEP or regarding any decision by the Port to award the contract, to declare a proposal non-responsive, or to find a Proposer not responsible.

7.12.2TIMING

Any Proposer or prospective Proposer showing a substantial economic interest in the contract to be awarded under this CEP may protest to the Port (a "Protest") only in accordance with the procedures set forth below. There are two types of protest available to Proposers or prospective Proposers. The first must be submitted prior to Proposal submittal and by the date stated below. The second type of protest can be filed after Proposals are submitted but must be filed within the deadlines described below.

7.12.2.1Pre-proposal Protests (Protests based on the form or content of the CEP documents):

Any Protest based on the form or content of the solicitation documents included with the CEP or any addendum (including, but not limited to, any terms, requirements and/or restrictions therein) must be filed with the Port as soon as practicable at: Port of Seattle, Seattle-Tacoma International Airport, Aviation Office Building, 17801 Pacific Highway South, Seattle, Washington 98158, Attention: Dawn Hunter. This is the point where prospective Proposers must raise any concerns relating to the criteria for award published by the Port. Protests challenging the criteria shall not be considered post-award. The transmittal envelope must clearly identify the CEP number on its face and be labeled as a "Protest." **No protest based on the form or content of the solicitation documents will be considered if received by the Port after 5:00 pm Pacific time on July 25, 2019.**

7.12.2.2Post-Proposal-Submittal Protests:

The Port will provide notice to every Proposer when any of the following occur, and the deadline for a protest based thereon shall be as follows:

- A Proposal is rejected → Protest deadline is 5:00 P.M. (Seattle time), 4 business days after the date the notice was sent to the Proposer indicating that the Proposer's Proposal was rejected;
- Two or more Proposers are shortlisted for further evaluation by the Port to submit revised proposals, and/or to submit modified proposals, and/or to submit BAFOs, and/or to participate in an interview process → Protest deadline is 5:00 P.M. (Seattle time), 4 business days after the date the notice was sent to the Proposer indicating that the Proposer was not shortlisted for further evaluation; and
- One Proposal is selected for award → Protest deadline is 5:00 P.M. (Seattle time), 4 business days after the date the notice was sent to the Proposer indicating that the Proposer was not selected for award.

The foregoing deadlines are mutually exclusive. Specifically, if a Proposer's Proposal is rejected, all of its protest rights related to this solicitation terminate (4) business days after Proposer is notified that its Proposal was rejected. Unless it timely submits a protest and the Port grants its protest, that Proposer shall not be allowed to protest upon any subsequent notification. Similarly, if a Proposer is notified that it was not shortlisted, all of its protest rights related to this solicitation terminate (4) business days after Proposer is notified that it was not shortlisted for a subsequent step. And unless Proposer timely submits a protest and the Port grants its protest, that Proposer shall not be

allowed to protest upon any subsequent notification.

Protests described in this section must be filed with the Port at: Port of Seattle, Seattle-Tacoma International Airport, Aviation Office Building, 17801 Pacific Highway South, Seattle, Washington 98158, Attention: Dawn Hunter, within the time periods specified above. The transmittal envelope must clearly identify the CEP number on the face of this document and be labeled as a "Protest." ***No protest will be considered by the Port if all proposals are rejected or if the protest is received after the timelines set forth herein.***

7.12.3 CONTENTS OF PROTEST:

To be considered, a Protest shall be in writing and shall include: (1) the name, street address, telephone number and email address of the aggrieved party; (2) the CEP title and number under which the Protest is submitted; (3) the economic interest of the aggrieved party in the contract to be awarded under the CEP; (4) a detailed description of the specific grounds for the Protest and any supporting legal and/or factual documentation; and (5) the specific ruling or relief requested.

In the event the protesting party challenges the responsiveness or responsibility of any other Proposal/Proposer as a grounds for Protest, the protesting party must address in detail the specific responsiveness or responsibility criteria identified in the particular CEP and, absent such specific responsibility criteria, one or more of the following matters: the ability, capacity, and skill of the Proposer to perform the contract or provide the service; the character, integrity, reputation, judgment, experience, and efficiency of the Proposer; whether the Proposer can perform the contract within the time specified; the Proposer's quality of performance of previous contracts or services; the previous and existing compliance by the Proposer with laws relating to the contract; and any other information having a bearing on the decision to award the contract to the Proposer.

7.12.4 REVIEW

For Pre-bid Protests the Port reserves the right to resolve or to attempt to resolve any Protest that concerns the form or content of the solicitation documents and which Protest was timely received before the Proposal opening through written addenda to the CEP documents.

The purpose of the Post-award Protest process is to ensure the appropriate steps have been taken by the Port when a Proposer is dissatisfied with a decision to

award a contract to another Proposer or whose proposal has been disqualified. This process does not create any due process rights, but is intended to allow Proposers to raise concerns regarding actions taken regarding the Port's process. The Port shall promptly consider the Protest based on the written submittal. In its sole discretion, the Port may give notice of the Protest to other interested parties, including other Proposers.

For Post-award Protests the following types of issues will be considered an appropriate basis for a Protest:

- An alleged violation of state or federal laws;
- An alleged violation of Port policies or procedures; or
- An alleged failure of the Port to follow terms or processes set out in the applicable CEP.

The filing of a Protest does not operate as a stay of action in relation to the awarding of a contract.

Any Protest will initially be reviewed by the Port's General Counsel to ensure compliance with these requirements.

7.12.5 DISCRETIONARY PROTEST HEARING:

The Port may, in its sole discretion, elect to hold a hearing regarding the Protest. A hearing will not, however, generally be held unless the Port believes it would be helpful to resolution of the Protest. At the hearing, the aggrieved party will be given a reasonable opportunity to present relevant testimony and evidence and to make legal arguments. Other interested parties may also be given the opportunity to do so. The hearing will generally be recorded, and the Port will maintain an official record of all documentary evidence presented at the hearing. The hearing panel will consist of the Managing Directors of the Aviation, Economic Development, and Maritime Divisions, or their designees. The Port's General Counsel or his or her designee will also participate in the hearing as a non-voting member.

7.12.6 AWARD OF THE CONTRACT

The Port will issue a written Final Decision containing its decision with respect to any Protest lodged by a Proposer. In making its decision, the Port may consult with others and consider information relating to the Protest from any source, including other interested parties. A copy of the Final Decision will be provided to any party, and any other party as may be required, by either: (i) personal service or (ii) email, with telephonic confirmation.

7.12.7 STAY OF AWARD OF THE CONTRACT

The Port will stay award of the contract for two (2) business days, following the issuance of its Final Decision. The term “business day” shall mean any day on which the Port of Seattle’s business office at the Airport Office Building is open for regularly conducted business.

7.12.8 JUDICIAL PROCEEDINGS

All judicial proceedings must be filed within two (2) business days of the issuance of the Port’s Final Decision. The stay provided by Section 7 is specifically intended to ensure that any request for judicial relief proceeds orderly and that the Port is provided advance notice thereof.

Therefore, an aggrieved party that intends to commence judicial proceedings shall specifically provide notice to the Port prior to the commencement of such proceedings. The notice shall be provided to the Port’s General Counsel at 2711 Alaskan Way, P.O. Box 1209, Seattle, WA 98111, (206) 787-3000.

7.12.9 STRICT COMPLIANCE

Strict compliance with these protest procedures is essential in furtherance of the public interest. Any aggrieved party that fails to comply strictly with these protest procedures is deemed, by such failure, to have waived and relinquished forever any right or claim with respect to alleged irregularities in connection with the solicitation or award of the contract. No person or party may pursue any judicial or administrative proceedings challenging the solicitation or award of the contract to be awarded by this CEP, without first exhausting the administrative procedures specified herein.

7.12.10 REPRESENTATION

An aggrieved party may participate personally or, if a corporation or other artificial person, by a duly authorized representative. Whether or not participating in person, an aggrieved party may be represented, at the party’s own expense, by counsel.

7.12.11 ACKNOWLEDGEMENT

By submitting a proposal in response to this CEP, the Proposer acknowledges

that it has reviewed and acquainted itself with the protest procedures herein and agrees to be bound by such procedures as a condition of submitting a proposal.

7.13 SMALL AND DISADVANTAGED SUPPLIER PROCUREMENT:

The Port seeks to stimulate economic activity among small and disadvantaged businesses as a result of the provision of business opportunities at the Airport. Proposers are encouraged to provide information about potential business partners through either a partnership, sublease, and/or joint venture; or suppliers for the proposed business, which the Port may deem to be small and/or disadvantaged. Proposers also are encouraged to provide information about possible efforts to encourage Airport Concession Disadvantage Business Enterprise (ACDBE) and/or Disadvantage Business Enterprise (DBE) certification among such suppliers that may qualify. Specific submittal requirements are outlined in Section 15.

7.14 LEASE AND CONCESSION AGREEMENT:

The selected Proposer will enter into an L&C Agreement with the Port. A draft of this document is attached as **Exhibit 5**. The Port specifically reserves the right to negotiate the final L&C Agreement terms with the selected Proposer. The Port will be guided by the attached draft L&C Agreement and any comments provided by the Selected Proposer in **Form 8.4** in negotiating the final terms of this agreement. The attached draft L&C Agreement shall not, however, operate as a limit to the Port's ability and authority to negotiate the final terms of the L&C Agreement as the Port determines to be in the best interest of the Port and its stakeholders. The Port may request supplemental or additional information from the selected Proposer as part of these negotiations.

7.15 EXECUTION OF LEASE AND CONCESSION AGREEMENT

The selected Proposer shall execute a Lease and Concession Agreement within sixty (60) days of receipt of the L&C Agreement from the Port. If the L&C Agreement is not signed by the Selected Proposer within this timeframe, the Port, in its sole discretion, may cancel the Selected Proposer and the Port may offer the opportunity to the Proposer that is deemed during the evaluation process to have the second-highest score based on the evaluation criteria. Cancellation will be through written notice from the Port and the cancellation date will be effective on the date specified in the notice.

7.16 COMMON MISTAKES MADE BY PROPOSERS

This Section shall serve for informational purposes only of some common mistakes made by proposers in past Port of Seattle Airport and Dining CEP/CEP. It is not a comprehensive list:

- Failure to sign the required pages
- Failure to submit the required pages

- Does not meet the minimum requirements
- Failure to provide Evidence of a labor Peace Agreement
- Company executed evidence of Labor Peace Agreement not in the entity that the L&C Agreement would be with
- Company signed required forms not in the entity that the L&C Agreement would be with
- Exceeding the page requirements

7.17 POST-AWARD DEBRIEF

A Proposer may, upon written request, request a debriefing from the Port to be conducted after the Lease and Concession Agreement for the specific opportunity on which the Proposer proposed is executed by the Port. The debriefing will not include point-by-point comparisons of the debriefed Proposer's proposal with those of other Proposers; nor will it include a section-by-section description or explanation of the Proposal's scoring. Moreover, the debriefing is not intended to reveal any information prohibited from disclosure or exempt from release. Instead, it is intended to provide high-level, constructive feedback to Proposers about how to generally improve their proposals and/or to highlight areas of their proposals that were particularly strong or weak so that they can improve in subsequent solicitations from the Port and other public owners.

An official summary of the debriefing shall be included in the contract file and a copy will be provided to the debriefed Proposer.

SECTION 8: PROPOSAL FORMS

LIST OF FORMS TO BE SUBMITTED WITH PROPOSAL

Form 8.1 Pre-Proposal Meeting Attendance Form

Form 8.2 Proposer's Certification

Form 8.3 Proforma (in Excel format)

Form 8.4 Proposal Form

Form 8.5 Financial Offer Form

Form 8.6 Capital Investment Form

Form 8.7 Job Quality, Workforce training, and Employment Continuity Information Form

Form 8.8 CEP Minimum Requirements Form

FORM 8.1

PRE-PROPOSAL MEETING ATTENDANCE FORM

There will be two (2) non-mandatory informational meetings conducted on July 9, 2019 and July 18, 2019.

Please complete the information below and return via email to **seatacshops@portseattle.org** to be received no later than **July 5, 2019**.

Company Name:

Company Contact:

Telephone Number/Facsimile Number: /

Email Address:

Preferred Meeting Date	July 9, 2019	July 18, 2019
------------------------	--------------	---------------

Attendees

Full Name

Full Name:

Full Name

THERE WILL NOT BE A TOUR OF THE AVAILABLE UNITS. THE PORT WILL ILLUSTRATE IN THE PRE-PROPOSAL MEETING THE LOOK AND FEEL ON THE REMODEL THAT IS CURRENTLY TAKING PLACE.

FORM 8.2

PROPOSER'S CERTIFICATION

By submitting a Proposal, Proposer understands, agrees and warrants that:

- Proposer has carefully read and fully understands the information provided in this CEP/ RFP, including, by not limited to Section 7, Paragraph 3 - Competitive Integrity
- Proposer has the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted
- All information in the Proposal is true and correct
- The Port has the right to negotiate fees and other items it deems appropriate for the benefit of the Port and the traveling public
- The Port has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by the Proposer, and Proposer hereby grants the Port permission to make said inquiries and to provide any and all requested documentation in a timely manner

Dated this _____ day of _____, 2019.

Proposer

By: _____

Title: _____

(TO BE ACCEPTED, ALL PROPOSERS MUST SIGN THIS CERTIFICATION.)

ALL PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE LEGAL ENTITY SUBMITTING THE PROPOSAL (I.E., THE PROPOSER). IF NOT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER, THE PROPOSAL MAY BE DEEMED NON-RESPONSIVE AND NOT SCORED.

FOR EXAMPLE, IF THE PROPOSER IS A JOINT VENTURE, PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JOINT VENTURE (NOT JUST ONE OF THE JV MEMBERS) AND THE INDIVIDUAL SIGNING SHOULD BE SIGNING IN HER/HIS CAPACITY AS IT RELATES TO THE JV (NOT A JV MEMBER).

FORM 8.3

PROFORMA

Respondent will need to submit the Proforma using the Excel file provided as part of this CEP/RFP

Exhibit 8 - Financial Proforma Template

FORM 8.3
Seattle - Tacoma International Airport
Proforma Statement, Lease Group 5
Package _____
PROFORMA¹

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
ASSUMPTIONS USED												
Enplanements²	4,583,455	4,670,611	4,759,424	4,849,717	4,946,711	5,045,645	5,146,558	5,249,489	5,354,479	5,461,568	5,570,800	51,055,002
Sales per Enplanement	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PROJECTIONS												
Gross Sales:												0
												0
Cost of Goods Sold												0
Gross Profit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0
												0
Expenses												0
Payroll												0
Benefits												0
Utilities												0
Operating Expenses												0
Franchise/License Fees												0
Rent to Port												0
General & Administrative												0
Washington Lease Excise Tax												0
Insurance												0
Other Direct Expenses												0
Total Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0
												0
EBITDA	\$ -											0
Interest, Depreciation, and Amortization	\$ -											0
Net Profit Before Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0
Total Initial Investment												n/a
Total Midterm Investment												n/a

(1) The term length is 10 years

(2) The enplanements shown are projections only for the purpose of this CEP/RFP and are not guaranteed or meant to assure any future passenger level at the airport. While these enplanements will be used to determine a consistent measure for sales per enplanement among the respondents, each respondent is responsible for independently developing their own projections for this submittal.

FORM 8.4

PORT OF SEATTLE

SEATTLE-TACOMA INTERNATIONAL AIRPORT

PROPOSAL FORM

Company Legal Name (Exactly as it is to appear on the Agreement)

Name and Title (of individual authorized to execute the Agreement on behalf of proposer)

Agreement Mailing Address

City

State

Zip

Telephone Number

Email

Will you execute an Agreement in substantially the same form as the draft provided with the CEP?

Yes **No**

If No please state desired changes:

List the business type of the proposing organization (i.e., corporation, LLC, partnership, joint venture or sole proprietorship)

Attach the following information as relevant:

- If a corporation list the names, addresses and shares of all persons or entities owning ten percent (10%) or more of the Proposer's voting stock;
- If an LLC list the name and address of each member;
- If a partnership list the name, address and share of each partner;
- If a joint venture, list date of organization indicate if the joint venture has done business in the state of Washington and where, and list the name, address and share of each joint venture partner
 - If the joint venture includes an ACDBE or an ACDBE applicant, and it is the desire of the joint venture partners that the ACDBE partner's portion of the sales be applied towards Sea-Tac's ACDBE goal, then the joint venture must be in compliance with the Joint Venture Guidance issued by the U.S. Department of Transportation Federal Aviation Administration in July 2008.
- If a sole proprietorship, list all business names under which such proprietor has done business during the last five (5) years, address(es), how long in business, and state whether registered or authorized to do business in Washington.

List any affiliate of proposer engaged in airports or other large transportation centers, shopping centers, malls, or business districts activities and any corporation with a direct or controlling interest in the proposer, and any subsidiary corporation in which the proposer has a controlling interest and any affiliates.

Please provide the names, addresses, and telephone numbers of at least three (3) credit references, including at least one (1) banking reference.

Credit Reference No. 1:

Company Name and Address

Contact Name, Title, and Telephone Number

Credit Reference No. 2:

Company Name and Address

Contact Name, Title, and Telephone Number

Credit Reference No.3:

Company Name and Address

Contact Name, Title, and Telephone Number

Banking Reference:

Company Name and Address

Contact Name, Title, and Telephone Number

FORM 8.5

Financial Offer Form

Package PS-I

During each year of the term of the Agreement, for the right and privilege of operating and managing the Premises at the Airport, the undersigned company hereby proposes to pay monthly to the Port beginning on the Rent Commencement Date, the greater of items 1 or 2 below:

- 1) One-twelfth (1/12) of the Minimum Annual Guarantee (MAG) paid in advance, on the first (1st) day of the month. **The MAG for the First Full Year of the Agreement is Sixty Thousand (\$60,000).** For the second full calendar year through the Last Full Year, the MAG will be eighty-five percent (85%) of the total amount paid (whether by MAG or Percentage Fees) by Concessionaire to the Port for the previous calendar year in accordance with the Agreement.

Flat Rate Percentage Fee of:

Proposed Percentage Fee in Number Format	Proposed Percentage Fee in Words
____%	

OR

Tiered Percentage Fee of: (Add tiers as necessary on a separate sheet of paper using this format.)

Annual Gross Sales	Proposed Percentage Fee in Number Format	Proposed Percentage Fee in Words
Annual Gross Sales less than \$_____.	____%	
Annual Gross Sales between \$_____ and \$_____.	____%	
Annual Gross Sales equal to or greater than _____.	____%	

The signature of the Authorized Representative certifies that this Financial Offer is supportable throughout the term of the Agreement.

ATTEST:

(Witness Signature)

(Company Name)

BY: _____
(Signature of Authorized Representative)

(Printed Name of Authorized Representative)

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FOR EXAMPLE, IF THE PROPOSER IS A JOINT VENTURE, PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JOINT VENTURE (NOT JUST ONE OF THE JV MEMBERS) AND THE INDIVIDUAL SIGNING SHOULD BE SIGNING IN HER/HIS CAPACITY AS IT RELATES TO THE JV (NOT A JV MEMBER).

Form 8.6

Capital Investment Form

Proposers are required to submit their proposed capital investment and indicate the sources of funding to be used for the tenant improvements and working capital. Please complete one form for each unit included in your submittal and one form that includes consolidated information for all units included in your submittal.

Unit/Package Number: _____

Concept: _____

Square Feet: _____

Initial Capital Investment	Amount	Percent of Initial Capital Investment
- Leasehold Improvements	\$ _____	_____ %
- Furnishings, Fixtures and Equipment	\$ _____	_____ %
- Design, Engineering, and Construction Management ⁽¹⁾	\$ _____	_____ %
Total Initial Capital Investment	\$ _____	_____ %
Total Initial Capital Investment/Sq.Ft	\$ _____ /Sq.Ft	

Mid-Term Refurbishment Investment		
- Minimum Mid-Term Refurbishment Investment ⁽²⁾	\$ _____	
- Minimum Mid-Term Refurbishment Investment/Sq.Ft	\$ _____ /Sq.Ft	

Working Capital	
- Amount of Working Capital Available	\$ _____
- Sources of Working Capital (list below)	

⁽¹⁾ Must not exceed 12% of Initial Minimum Investment

⁽²⁾ Must be minimum of 15% of the Initial Investment

FORM 8.7

Job Quality, Workforce Training, and Employment Continuity Information Form

Please prepare one Form 8.7 for each package. The total anticipated workforce listed should be specific to the units included in the package and reflect the anticipated staffing levels during the first year of operation.

Name of Proposer

Package Name

11.1 WORKFORCE INFORMATION FOR PROPOSED SEA-TAC LOCATION(S)

Types of Employees	Number of Employees
Full-Time Employees	
Part-Time Employees	
Total Employees:	

Full-time is defined as 30 or more hours of work per week.

Managerial Positions by Title (Please list title for each position)	Number of Managerial Employees by Position
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Subtotal Managerial Employees:	
Non-Managerial Positions by Title (Please list title for each position)	Number of Non-Managerial Employees by Position (B)
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Position: _____	
Subtotal Non-Managerial Employees: (A)	
Total Number of Employees:	

11.2 WAGES AND COMPENSATION IN 2019 DOLLARS

PROPOSED STARTING SALARIES, WAGES AND PAY RANGES BY POSITION FOR SEA-TAC EMPLOYEES

<u>Managerial</u> Positions by Title Listed in Section 11.1	Starting Annual Salary	Pay Range by Position
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		

<u>Non-Managerial</u> Positions by Title Listed in Section 11.1	Starting Hourly Wage (C)	Pay Range
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		
Position: _____		

Average starting wage for all Non-Managerial Employees:

--

Average starting wage for all Non-Managerial Employees, less current Proposition 1 minimum hourly wage of \$16.09:

--

Calculation: Sum total of (B x C) for every Non-Managerial Position listed above divided by A.
B is the number of non-managerial employees by position in Section 11.1 that corresponds to the above listed positions.

C is the starting hourly wage listed above for each of the positions in **B**.

A is the subtotal of non-managerial employees noted in Section 11.1

11.3 PAID TIME-OFF BENEFITS FOR NON-MANAGERIAL EMPLOYEES

Type of Paid Time-Off Provided by Company	Check all that apply	Accrual Details (i.e., "X" number of benefit hours/per "Y" number of hours worked, etc.)
Full-Time Employees		
Sick Leave Pay		
Vacation Pay		
Combined Sick/Vacation		
Holiday Pay		
Bereavement Pay		
Parental Leave Pay		
Other: _____		
Other: _____		
Other: _____		
Part-Time Employees		
Sick Leave Pay		
Vacation Pay		
Combined Sick/Vacation		
Holiday Pay		
Bereavement Pay		
Parental Leave Pay		
Other: _____		
Other: _____		
Other: _____		

11.4 EMPLOYEE HEALTHCARE BENEFITS FOR NON-MANAGERIAL EMPLOYEES IN 2019 DOLLARS

Please check whether or not healthcare benefits meet or exceed Affordable Care Act (ACA) requirements.	
Benefits Meet ACA:	
Benefits Exceed ACA:	
Non-Managerial Employees	
Please state the average amount per hour that proposer will contribute to the healthcare benefits per non-managerial employee.	_____ per hour
Please state the amount per hour that proposer's non-managerial employees will be required to contribute to their healthcare benefits.	_____ per hour
List all eligibility criteria (minimum length of time employed, minimum number of hours worked per week, and any other requirements) to qualify for these healthcare benefits.	
Percentage of Non-Managerial Employees that will receive healthcare benefits during the first year of operation.	_____ Percent

11.5 RETIREMENT BENEFITS FOR NON-MANAGERIAL EMPLOYEES IN 2019 DOLLARS

Non-Managerial Employees	
Please state the average amount per hour that proposer will contribute to the retirement benefits per non-managerial employee.	_____ per hour
List all eligibility criteria (minimum length of time employed, minimum number of hours worked per week, and any other requirements) to qualify for these retirement benefits.	
Percentage of Non-Managerial Employees that will receive retirement benefits during the first year of operation.	_____ Percent

Please provide detailed calculations on how you arrived at the \$ per hour for Healthcare Benefits and Retirement Benefits. Failure to not provide the calculation may result in this section no being included in the overall calculation on page 6.

11.6 OTHER BENEFITS FOR NON-MANAGERIAL EMPLOYEES

Other Benefits Provided by Company	Check all that Apply	Please list all eligibility criteria for each benefit (minimum length of time employed, minimum number of hours worked per week, etc.)
Full-Time Employees		
Transit Pass		
Paid Parking		
Shift Meal Allowance		
Wellness Program(s)		
Employee Discounts		
Flexible Schedules		
Airport Badging		
Other: _____		
Other: _____		
Part-Time Employees		
Transit Pass		
Paid Parking		
Shift Meal Allowance		
Wellness Program(s)		
Employee Discounts		
Flexible Schedules		
Airport Badging		
Other: _____		
Other: _____		

11.7 EMPLOYMENT CONTINUITY

IMPORTANT NOTE: If the award of this opportunity will result in the operation of four or more units (where the lease(s) for those units were first effective on or after November 25, 2014), the proposer is <u>required</u> to make these commitments.		
	Yes	No
If the award will result in the operation of 1 to 3 units: Proposer agrees to <u>interview</u> qualified, non-managerial, non-supervisory and non-confidential employees from the Port's Employment Continuity Pool, managed by a third-party vendor, before considering applications outside the pool. Proposer also agrees that employees that may be hired from the pool will be retained for a minimum 90-day "trial period."		
If the award will result in the operation of 4 or more units: Proposer agrees to <u>hire</u> qualified, non-managerial, non-supervisory and non-confidential employees from the Port's Employment Continuity Pool, managed by a third-party vendor, before considering applications outside the pool. Proposer also agrees that employees that may be hired from the pool will be retained for a minimum 90-day "trial period."		

11.8 EMPLOYEE TRAINING

Please describe in detail employee training practices, including customer service, merchandise/menu, and store operations training or any other training programs unique to the proposed concepts. For each training practice, please state whether or not employees are paid for the time spent.

1. Average starting wage for non-managerial staff, less current Proposition 1 minimum hourly wage of \$16.09 (section 11.2)

2. Healthcare Contribution* (per hour x 1st year participation)

3. Retirement Contribution* (per hour x 1st year participation)

Total of items 1, 2, and 3 immediately above:

* Non-Managerial Staff, inputs in sections 11.4, and 11.5

FORM 8.8

CEP MINIMUM REQUIREMENTS FORM

Company:

The minimum qualifications and requirements for any Proposer responding to this CEP shall be as follows:

1. At least eighteen (18) months of experience in food service, retail, and/or service operations at airports, transportation facilities, shopping centers, or business districts. Such prior experience must be with operations of similar complexity generating a sales volume of similar size to that being proposed.
2. Must never have had an agreement terminated for cause. Yes No
3. Must be fully compliant with the City of SeaTac Proposition I (Prop I) and demonstrate such by answering these questions:
 - A. Do you currently operate a business covered by City of SeaTac Proposition I (Prop I)?

 Yes No
 - B. If the answer to question 3A is “Yes”, please state whether you have provided your employees with wages and benefits that met or exceed the requirements of Prop I since January 1, 2014.

 Yes No
 - C. If the answer to 3B is “No”, please state how you have otherwise addressed the requirements.

If you have not addressed, in the sole opinion of the Port, the required employee wages and benefits extending back to January 1, 2014, your firm will be disqualified from participating in this Lease Group process.

4. The Port has significant proprietary interest in the success of the ADR program and so it is in the Port's economic interest to eliminate disruptions to its tenants' operations due to labor disputes that can also negatively impact customers using the Airport as well as airline operations. Therefore:
 - A. All non-exempt Proposers (exempt Proposers are defined in the next paragraph) must submit a letter on the Proposer's letterhead using the sample language provided in **Exhibit 3** with their Proposal confirming that they have a Labor Peace Agreement with a local labor organization with clear jurisdictional scope with respect to currently represented employees or employees the labor organization seeks to represent in the Port's ADR program. This letter must include signatures from a senior officer of the Proposer's firm and the local labor organization. The details of a Labor Peace Agreement are between the Proposer and applicable labor organization. Thus, the Proposer should not submit their Labor Peace Agreement to the Port. A collective bargaining relationship is not required to comply with this provision. This requirement is intended to insure the Port's ADR program is free from labor-related disruption of services both to the ADR program and the general operation of the Airport.
 - B. Small businesses (as determined by the U.S. Small Business Administration criteria), that will have 35 or fewer badged airport employees at the Airport, with the award of any package(s) in this solicitation, will be exempt.
5. Acknowledgement of all Addendum(s) if applicable.

I hereby certify that the above statements are true and correct to the best of my knowledge. I understand that a false statement may disqualify my submittal from the Lease Group 5 evaluation process.

Date:

Name:

Company:

Title:

Signature:

ALL PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE LEGAL ENTITY SUBMITTING THE PROPOSAL (I.E., THE PROPOSER). IF NOT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER, THE PROPOSAL MAY BE DEEMED NON-RESPONSIVE AND NOT SCORED.

FOR EXAMPLE, IF THE PROPOSER IS A JOINT VENTURE, PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JOINT VENTURE (NOT JUST ONE OF THE JV MEMBERS) AND THE INDIVIDUAL SIGNING SHOULD BE SIGNING IN HER/HIS CAPACITY AS IT RELATES TO THE JV (NOT A JV MEMBER).

Proposers must provide written responses to the following Sections Nine through Fifteen, which are included in the evaluation criteria.

SECTION 9: BACKGROUND, EXPERIENCE, AND FINANCIAL CAPABILITY

The Proposer must demonstrate stability, experience and expertise plus customer satisfaction in operating a business in a challenging environment similar to that proposed. The Proposer must demonstrate that it has the financial capacity to fulfill the commitments of an L&C Agreement with the Port. Information submitted in response to this section must include a narrative for each of the following items, in the same order as they are listed below.

1. Include a brief history of the Proposer's business.
2. Note any changes in Proposer's name(s) and ownership structure(s) and any other names under which the Proposer has been doing business.
3. Explain in detail the Proposer's food service, retail and/or service operating experience (as applicable to the specific type of concession being sought here) that includes:
 - a) Number of years of relevant experience operating in a mall, downtown, airport, or other high-traffic location.
 - b) Number of locations currently in operation and specific experience with the offered concept, if any.
 - c) Descriptions of up to three (3) current operations most relevant to those included in this Proposal. For these relevant operations, list:
 - i. Square footage
 - ii. Gross sales for the last three years
 - iii. Sales per square foot
 - iv. Enplanements for those years (if an airport property)
 - v. Average sales per transaction
 - vi. Guaranteed rent or base rent (if applicable)
 - vii. Percentage rent (if applicable)
 - viii. Actual rent paid
 - ix. Term of lease (including commencement and expiration dates)
 - x. Capital investment (broken down into initial build-out and refurbishments, if applicable)
 - xi. Photographs (if available)
 - xii. Include a description of any operational challenges, including
 - Logistics
 - Seasonal business swings
 - Employee retention
 - Any others deemed appropriate
 - d) Names, addresses, and telephone numbers of the current landlords or property managers for each of these operations who will be familiar with the day-to-day operations of your business.

- e) Provide examples of any customer satisfaction comments, survey results, ratings, awards, etc. that company may have received for the proposed concept(s).
- 4. Identify and substantiate the sources and amounts of funding to be used for tenant improvements and working capital.
- 5. Indicate the number of full-time and part-time employees, if applicable, both currently and over the past twelve months. If this is a new entity, please provide employee information for both the current and twelve-month prior operations of the owners/partners.
- 6. List any judgments or lawsuits currently pending or judgments rendered against you (and any affiliated entities providing services comparable to those being proposed) within the last ten (10) years.
- 7. Also, list any lawsuits filed by you (and any affiliated entities providing services comparable to those being proposed) in the last ten (10) years.
- 8. Note if the Proposer or any of Proposer's shareholders, partners, or members have ever declared bankruptcy, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, been named as a defendant in any legal proceedings, or had involuntary proceedings filed in bankruptcy court and the status of each occurrence.
- 9. Provide a copy of your latest financial statement or other financial information prepared by an independent Certified Public Account or officer of Proposer. Proposer is responsible for the validity and accuracy of all financial statements submitted. Any data outliers should be explained in the footnotes.

If Proposer is a joint venture or partnership, be sure to include the requested information below for all of the parties involved.

All pages submitted are included toward the overall page count limit.

- a) Balance sheet for each of the last three (3) fiscal years
- b) Income statements for each of the last three (3) fiscal years
- c) Cash flow statements for each of the last three (3) fiscal years
- d) If the Proposer is a newly-formed organization, the Proposal must include a certified statement of the names of the officers of the organization to be formed, the principal occupation of all members of the new organization's Board, and certified statements of the personal net worth statement following 49 CFR Par 26 (Airport Concessions Disadvantage Enterprise) format for each shareholder, member, or partner in the organization for the last three years.

SECTION 10: CONCEPT DEVELOPMENT

Demonstrate the ability of the concept (or concepts) proposed to meet or exceed the expectations described in Section 5.1 for the unit or units. The Airport is a competitive environment for customer spending; therefore, the ability to attract business hinges on developing a concept with broad and lasting customer appeal.

Information submitted in response to this section must include a narrative description of the following:

1. Provide details of the restaurant(s) or retail concept(s) proposed, including:
 - a) Proposed store name/concept
 - b) Statement regarding whether it would be a franchised/licensed operation
 - c) Rationale for its selection for the Seattle-area market
2. Fully explain why you believe this concept will be successful at Sea-Tac.
3. Provide a services list/merchandise, including proposed pricing.
4. Provide franchise and/or license authorization letters for any franchised or licensed concepts in the Proposal.

SECTION 11: UNIT DESIGN, MATERIALS AND CAPITAL INVESTMENT

Demonstrate and describe the quality of unit design, efficient use of space, selection of appealing and durable materials (including sustainable materials) and its relation to or reinforcement of the Pacific Northwest Sense of Place as described in the Port of Seattle's ADR Design Guidelines and Tenant Design and Construction Process Manual, which are located on the Port's website: <http://www.portseattle.org/Business/Construction-Projects/Airport-Tenants/Pages/Reference-Documents.aspx>, as well as the reasonableness of the proposed capital investment in the unit(s).

Proposer will submit the following. Renderings (or photographs) and floor plans may not exceed 11" by 17":

1. Preliminary renderings of the proposed concept(s) that are representative illustrations of the exterior and interior of the concept(s), proposed color schemes, and graphics. In the case where a proposer intends to virtually duplicate an existing concept that the proposer has developed elsewhere, the proposer may substitute pictures or photographs of an existing facility for the renderings.
2. A floor plan for should be provided, indicating:
 - a. Locations for fixtures including but not limited to, counters, queuing, kitchens, seating (including estimated number of seats), merchandise displays, etc.
 - b. Point-of-sale counters
 - c. Back-of-house area, as appropriate
 - d. Indicate the square footage to be allocated to front versus back-of-house areas.
 - e. How customers with bags will be accommodated.
 - f. Please be sure to stay within the lease lines shown in the lease outline drawings provided with this CEP and do not add space that is outside of the lease lines.
3. A list of materials to be used per unit that demonstrates the quality of the materials to be used in each location, including:
 - a. Floor covering
 - b. Wall covering
 - c. Ceiling treatment
 - d. Service counter and display units or fixtures
 - e. Any proposed signage, interior and exterior
4. Provide information about environmental sustainability considerations planned for the design and build-out of the unit(s), such as materials procurement and other sustainable practices.
5. Identify the minimum capital investment (per square foot and total) that will be made to build out the unit(s) (not including the cost of initial inventory), along with a separate figure for the minimum investment per square foot that will be invested for the midterm refurbishment of the unit(s), using the fillable pdf form in **Form 8.6**.

SECTION 12: FINANCIAL PROJECTIONS AND FINANCIAL OFFER

Your Proposal must include, at a minimum, a completed financial offer using Form **8.5** as well as a completed Pro Forma noted below. Both documents are available electronically on the Sea-Tac Airport leasing website (www.lease.seatacshops.com/forms) and require the following information:

1. Proposed percentage rent structure.
2. Completed financial Pro Forma for each individual unit, as well as for the entire package in the case of a multiple-unit package. The Pro Forma must be submitted electronically in Excel using the downloadable template. A written sample of the Pro Forma template **Form 8.4**.

Sales projections will be evaluated for reasonableness based on historical performance, the company's demonstrated experience in other locations, and other factors deemed appropriate by the Port in its sole discretion. Revenue to the Port will be evaluated based upon the proposed percentage fee of projected gross sales and the total amount of revenue the Port could expect to receive based on the Proposal for the term of the L&C Agreement. The sales projections in the Proposal will be used in the evaluation of the total revenue to the Port, but the Port specifically reserves the right to make adjustments to projections. Proposer may submit additional information in support of its completed financial Pro Forma. Any such information will count against the overall page limit for Proposer's Proposal.

SECTION 13: MANAGEMENT/STAFFING, OPERATIONS, CUSTOMER SERVICE, AND ENVIRONMENTAL SUSTAINABILITY

The Proposer must demonstrate its ability to effectively manage all units and operations, which also includes quality leadership and adequate levels of staffing. The Proposer must also demonstrate its commitment to reliable, safe, clean and well-merchandised operations, as well as a proactive and consistent approach to preserving the units (including equipment). The Proposer must also demonstrate its commitment to providing a high level of customer service at its operations at Sea-Tac. Environmental sustainability measures that Proposer currently or will practice in the operation of the business, including (where applicable) separation of waste, recycle and compost, and use of durable or Cedar Grove approved compostable or recyclable food service-ware should be documented.

Describe your **management and staffing** structure in terms of the following:

1. Please include a staffing plan for an average day showing all proposed hours of operation, employee positions and management by hour.
2. Explain the company's philosophies and goals regarding recruitment and retention of management and front-line staff.
3. Describe methods used to determine:
 - a) Level of staffing required to provide excellent customer service
 - b) Product quality
 - c) A well-maintained and clean unit
4. Indicate your commitment to meeting the operational conditions of the airport environment in specific regard to the operating hours.

Describe your **operating standards** in terms of the following:

5. Standards for day-to-day operations, including:
 - a) Cleaning (areas and frequency)
 - b) Equipment and furniture upkeep
 - c) Preventive maintenance schedules for all systems
 - d) Means used to track and document these practices

Describe your **customer service practices in terms of the following:**

6. Provide a Sea-Tac specific customer service plan that includes at a minimum:
 - a) Customer service training
 - b) Procedures for handling complaints
 - c) Monitoring procedures to ensure that staff are providing high-quality service

Describe your **environmental philosophy and practices** in terms of the following:

7. Environmental philosophies and practices that are a part of your day-to-day operation.
8. Commitment to participate in airport environmental composting and recycling initiatives and use durable or Cedar Grove approved compostable or recyclable food service-ware.
9. Other environmentally-sustainable sourcing practices and product packaging that will be implemented at Sea-Tac.

SECTION 14: JOB QUALITY, WORKFORCE TRAINING, AND EMPLOYMENT CONTINUITY

Your response to Section 14 should include a completed Form 8.7.

The Port Commission supports the creation of business opportunities that foster economic prosperity, entrepreneurial initiative, increased job opportunity and job security. In addition, the Commission is committed to the creation of job opportunities that offer wage compensation and other benefits that allow employees to thrive and the empowerment to seize opportunities for personal and professional growth. The company must provide detail regarding its commitment to employment continuity, provision of quality jobs, sustainable wages, benefits and paid time off (PTO).

You must include information by completing **Form 8.7**, and attaching any additional pages as necessary (which will count against the overall page limitation) to provide additional information to fully describe Proposer's programs and commitment.

SECTION 15: SMALL BUSINESS PARTICIPATION

The Port Commission supports the creation of business opportunities that foster economic prosperity and entrepreneurial initiative. The Port Commission also recognizes that small businesses are key to the success and growth of our local, regional and national economies.

Proposers must include information about the following:

- I. Small Business Qualifications - Proposers should indicate whether they qualify as a small business either (i) relative to the standards adopted by the U.S. Small Business Administration (SBA) in accordance with the size standards for their North American Industry Classification System (NAICS) codes or (ii) by being certified as an Airport Concessions Disadvantaged Business Enterprise (ACDBE) based on the eligibility standards in 49 CFR Part 23, Subpart C.

- a) If a Proposer qualifies as a small business relative to the SBA small business size standards, include the following information in the Proposal:

- Business address and date of the establishment of your business
- NAICS code for your business
- Average annual receipts over the last three years
- Confirmation that your business is organized for profit
- Confirmation that your business operates primarily in the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor
- Federal Tax Identification number
- Confirmation that your business is independently owned and operated
- Confirmation that your business is not dominant in its field on a national basis

In connection with this item, the Port may also consider some of the information provided in response to Section 1.3, including (but not necessarily limited to) the Proposer's organizational structure, details about Proposer's organization, and the number of employees.

- b) If a Proposer qualifies as a small business by certification as an ACDBE, include the following information in the Proposal:

- Business address and state and date of the establishment of your business
- NAICS code for your business
- Average annual receipts over the last three years
- Federal Tax Identification number
- Copy of ACDBE certification

2. If Proposer is a joint venture including a small business, provide the following information in the Proposal:
 - Items from section I.a. or I.b. above, as appropriate, for each small business partner in the joint venture
 - Copy of a joint venture agreement that meets the FAA guidelines for joint ventures with roles and responsibilities and ownership percentages for all parties. **(Not included as part of total page count)**
 - The percentage of capital invested by each joint venture partner

NOTE: Only joint ventures that include a minimum of twenty percent (20%) ownership and capital investment participation will receive the small business participation points detailed in the evaluation process below.

3. Indicate whether and to what degree you commit to, and your proposed operation will include, any of the following three opportunities for participation by local, small and/or disadvantaged firms. A Proposer shall describe how its commitment meaningfully and significantly supports local, small, and/or disadvantaged businesses participation.
 - a) Sourcing products and/or supplies and/or providing product placement opportunities for products produced by local, small and/or disadvantaged firms
 - b) Mentoring of one or more small businesses, which could include an association or collaboration with a small business and/or ACDBE firm that does not otherwise qualify as a formal joint venture/partnership
 - c) Utilizing local, small and/or disadvantaged firms in the design and/or construction of your unit(s)

SECTION 16: EVALUATION PROCESS

16.1 GENERAL PROCESS

The Port will review the Proposers' Proposals using the following general process, which the Port reserves the right to modify with or without notice to Proposers:

- After receipt, Proposals will be reviewed for compliance with stated Minimum Requirements. Proposals that do not meet the stated Minimum Requirements may be rejected and not considered further.
- Proposals will be reviewed for compliance with applicable page limitations. Proposals that exceed the page limitations will be redacted consistent with the limitations, and then page-limit-compliant redacted proposals will be distributed to the evaluation panel members.
- Evaluation panel members will separately review all of the proposals. Each evaluator may take notes on the proposals, through some other means, or not at all, as the evaluator deems appropriate.
- The evaluation panel members will meet to discuss and ultimately agree upon a consensus score for each separately-scored section of each Proposal. Generally speaking, for each concession opportunity, the evaluation panel will discuss and score the same section of each Proposal at the same time, before moving on to the discussion/scoring of the next section of each Proposal. For example, if the evaluation panel is reviewing five proposals for a specific leasing opportunity, they would discuss and agree upon a score for the Background, Experience and Financial Capability section for Proposal A, then do the same for Proposal B, then Proposal C, etc., before moving on to evaluate the next section of each of Proposals A, B, and C.
 - Some proposal-specific observations, comments, remarks, strengths and/or weaknesses may be noted, primarily for the purpose of providing high-level constructive feedback to unsuccessful proposers after a lease and concession agreement is executed. These notes will be the only notes retained as part of the procurement record – all others will be superseded and not retained.
 - The Evaluation Panel may, but shall not be required to, directly compare corresponding sections of different Proposals against each other as part of the consensus scoring process to arrive at its consensus score.

16.2 EVALUATION CRITERIA

Proposals meeting the Minimum Requirements will be evaluated by the Port based on the Proposers' responses to the Proposal requirements outlined in Sections 9 through 15 above, with the following points associated with each criterion:

Background, Experience and Financial Capability:	200 points
Concept Development:	250 points
Unit Design, Materials and Capital Investment:	200 points
Financial Projections and Financial Offer:	200 points
Management/Staffing, Operations, Customer Service, and Environmental Sustainability:	250 points
Job Quality, Workforce Training, and Employment Continuity:	200 points

Important note about Job Quality, Workforce Training, and Employment Continuity scoring:

- One Hundred Fifty (150) of the Two Hundred (200) points for this category will be awarded based on wages, healthcare benefits, and retirement benefits.
 - The Proposer with the highest combined total of the following items will receive the full One Hundred Fifty (150) points:
 - Average starting wage for all non-managerial employees as noted in **Form 8.7**, Table 11.2, less the current Proposition 1 minimum wage of \$16.09 per hour.
 - Average amount per hour that Proposer will contribute to the healthcare benefits per non-managerial employee times the percentage of non-managerial employees that will receive these benefits in the first year of operation as noted in **Form 8.7**, Table 11.4.
 - Average amount per hour that Proposer will contribute to the retirement benefits per non-managerial employee times the percentage of non-managerial employees that will receive the

benefits in the first year of operation as noted in **Form 8.7**, Table 11.5.

- All other Proposers will receive a portion of the 15 points based on the computed ratio of their combined total of the above items divided by the highest combined total of the above items.
- Fifty (50) of the Two Hundred (200) points will be awarded for the remaining topics requested on **Form 8.7**.

Small Business Participation:

200 points

Important note about Small Business Participation scoring:

- A Proposer that qualifies as a small business as defined in **Section 15** will automatically receive One Hundred (100) points.
- Prime operators that propose a joint venture with one or more small businesses with a minimum participation level of twenty percent (20%) **and** submit a joint venture agreement(s) that meet(s) the FAA guidelines for joint ventures will automatically receive Fifty (50) points, regardless of whether or not the Proposer proposes to operate a national brand through a franchise, license, joint venture, or other business structure. Any joint ventures that do not meet these criteria will not receive any points.
- Point allocation for **Section 15 Question 3** is broken out as follows:
 - Question 3(a) Forty (40) Points
 - Question 3(b) Forty (40) Points
 - Question 3(c) Twenty (20) Points
- Small Business and/or ACDBE's may receive **up to Two Hundred (200) points** by using any of the following combinations:
 - Small Business (100 pts) and Section 15 Question 3 (100 pts)
 - ACDBE (100 pts) and Section 15 Question 3 (100 pts)
- Prime Operators may receive **up to One Hundred Fifty (150) points** by using any of the following combinations:
 - Prime Operator with a valid Joint Venture (50 pts) and Section 15 Question 3 (100 pts)
 - Prime Operator without a Joint Venture Section 15 Question 3 (100 pts)
- No Proposer may earn more than Two Hundred (200) points for the Small Business Participation element regardless of the combinations used.

16.1 PROPOSAL ACKNOWLEDGEMENTS

By sending a Proposal, the Proposer declares that the facts set forth in the Proposal are true and correct. The Proposer recognizes that the Port of Seattle will rely on the information provided in the Proposal in determining the credit status of the Proposer and that any substantial discrepancies that may come to the Port of Seattle's attention before or after execution of an L&C Agreement may result in the Port of Seattle finding the L&C Agreement to be in default and may exercise any of the remedies prescribed in the L&C Agreement. The Proposal is for informational purposes only and is not to be considered in any way a commitment to enter into an L&C Agreement. Any false statements, omissions, or other misrepresentations made in the Proposal may result in immediate disqualification.

Further, the Proposer authorizes any person or entity to release or furnish information to the Port of Seattle as may be requested in connection with their review and evaluation of this Proposal.

ADDITIONAL INFORMATION MAY BE REQUIRED THAT COULD INCLUDE, BUT IS NOT LIMITED TO, TAX RETURNS, PLANS AND DESIGNS, AND BUSINESS PLANS.

Proposers will be required to participate in an in-person interview to clarify their Proposal, if necessary. The Proposer further agrees that all Proposals, financial statements, tax returns, reports, and other materials furnished or obtained in connection herewith shall become the property of the Port of Seattle. The information provided by the Port of Seattle, its employees and leasing agent – whether at the outreach meetings, informational meetings, or tours, in written form, on the website, or otherwise – is intended to provide a general overview of potential business opportunities at Seattle-Tacoma International Airport. That information, including but not limited to, historical sales performance of existing and prior concessionaires, forecast enplanement levels, air carriers/air service, facility conditions, and security requirements is considered reliable, but is subject to change, and the Port makes no representation or warranty about its accuracy.

In addition, operating a restaurant, retail shop, or personal service business in an airport environment is unique and unlike similar operations in a “street” or mall location. The opportunities and challenges that affect success are many, and they are often unpredictable. In order to be successful, an operator must possess a high degree of business acumen and an ability to uphold high standards of operation and customer service under sometimes difficult and frequently changing circumstances. Similar to a shopping mall or other non-airport environment, the Port (like other landlords) cannot guarantee or warrant circumstances beyond its control.

In addition to those factors that can affect profitability at non-airport locations, the following additional circumstances – all of which are beyond the Port's control – can affect airport business opportunities:

- The number of enplanements/passengers Airport-wide can be affected by global, regional, or local economic conditions.
- The number of enplanements/passengers in any given concourse or Airport concession zone can be affected by carrier mergers, destination changes, airline insolvencies, and many other events.
- The locations or number of air carriers providing service at the Airport can be affected by airline scheduling, relocations, consolidations, or retractions.

The Port is not responsible for any of these events and cannot accept responsibility for their consequences.

The location, number, and type of competing dining and retail businesses are also unique in an airport environment. The Port does not typically grant exclusive leases of any kind and may add and/or relocate new/existing concession businesses as circumstances dictate.

Concessionaires are regularly acquired and sometimes change brands. Moreover, the Port, in many instances, seeks to promote competition between its concessionaires to increase the overall level of service at Sea-Tac and to the traveling public. The Port likewise cannot accept responsibility for circumstances as a result of these actions.

Please understand that Proposers are responsible for evaluating whether any specific opportunity is an appropriate fit for your financial circumstances, your business acumen, and your operational skills. The Proposer is responsible for the due diligence to determine whether you believe that you will be able to recover any investment made by the end of a granted lease term. The Port makes no warranty that Proposers will recover their investment or that the business will yield a profit.

By submitting a proposal, Proposers expressly acknowledge and agree that the Port is not required to follow any competitive solicitation process for Airport concessions that are covered by this solicitation; and the Port may (at its sole discretion and without providing advanced notice to Proposers) waive or modify any process, procedure, or requirement set forth in, implied by, or inferred from the CEP.

Proposer acknowledges that on the same date that the Port notifies all proposers of the apparent successful proposer for each concession opportunity, the Port will also post copies of all proposals for that specific concession opportunity to its public records website, except for the Sections with Potentially Exempt Material. Proposer understands the process the Port will use for making Proposals publicly available under the PRA as set forth in Section 7.9 Public Disclosure, and acknowledges its responsibilities therein, including the obligation to ensure that no PRA-exempt information is included in the Remaining Sections.

Prior to Proposal, all Proposers are required to review the document entitled “Operating a Concession Business at Seattle-Tacoma International Airport” attached as **Exhibit 4**.

Proposal checklist is attached as **Exhibit 1**.

BY SENDING A PROPOSAL, A PROPOSER ACKNOWLEDGES THAT THEY UNDERSTAND ALL INFORMATION CONTAINED IN THIS CEP AND ANY RELATED DOCUMENTS AND UNDERSTAND THAT NO WARRANTY OR REPRESENTATION OF ANY KIND IS BEING MADE THAT THE PROPOSER WILL RECEIVE ANY PARTICULAR LEVEL OF SALES, PROFITS, OR OTHER ECONOMIC BENEFITS IF ENTERING INTO A BUSINESS RELATIONSHIP WITH THE PORT OF SEATTLE. THE PORT WILL NOT CONSIDER ANY REQUESTS FOR RELIEF FROM FINANCIAL OR OTHER OBLIGATIONS COMMITTED TO IN AN EXECUTED LEASE AND CONCESSION AGREEMENT.

END OF REQUEST FOR PROPOSAL DOCUMENT

Exhibit I

Proposal Checklist

Port of Seattle

Seattle-Tacoma International Airport

Airport Dining and Retail



SEATTLE-TACOMA INTERNATIONAL AIRPORT

Proposal Checklist

Please ensure that you have reviewed and submitted all of the necessary information in your proposal as indicated in the checklist below. Please refer to the CEP/RFP documents for specific instructions for the documents that must be submitted.

Check	CEP Documentation	Required Action
<input type="checkbox"/>	CEP/RFP Document	Reviewed
<input type="checkbox"/>	Cover Letter	Submitted
<input type="checkbox"/>	Submittal for Sections 9 through 15 (including adhering to the page restrictions for each section)	Reviewed and Submitted with Proposal
<input type="checkbox"/>	Signatures are in the entity the Port will execute the agreement with	Review and Submitted
<input type="checkbox"/>	For RFPs-Only: Proposal Guarantee Enclosed	Submitted with Proposal
<input type="checkbox"/>	Forms 8.1 to 8.8	Review and Submitted
<input type="checkbox"/>	Sample Lease and Concession Agreement	Reviewed
<input type="checkbox"/>	Bid Protest Procedures	Reviewed

EXHIBIT 2
Resolution No. 3725, as amended

A Resolution of the Port of Seattle Commission establishing a Policy Directive for practices for construction labor for projects located on Port property

WHEREAS, the Washington State Legislature in 1911 authorized local voters to create public port districts as independent government bodies run by directly elected port commissioners with powers to acquire and manage resources that promote trade and commerce; and

WHEREAS, the voters of King County established the Port of Seattle as a county-wide port district in 1911; and

WHEREAS, constructed transportation, industrial and administrative facilities such as terminals, roads, berths, runways, warehouses, parking garages and warehouses are critical to accomplishing the Port's transportation and economic development missions; and

WHEREAS, expanding and diversifying operations as well as need for facilities renewal and replacement drive an ongoing Port program of capital development; and

WHEREAS, effective and economical execution of the Port's capital program depends on a healthy and diverse market of general contractors, sub-contractors and suppliers; and

WHEREAS, to ensure diverse competition and provide fair access to economic opportunity that market should include small, minority-owned and women-owned businesses who successfully compete for a share of direct and subcontracted Port construction work; and

WHEREAS, Port capital program success depends also on availability of a skilled, experienced, capable construction labor workforce; and

WHEREAS, Project Labor Agreements can help ensure construction workplace safety; and

WHEREAS, to meet labor supply needs and to ensure equality of opportunity the construction labor workforce should encourage participation by women and minorities; and

WHEREAS, for timely and efficient delivery of construction projects the

WHEREAS, in helping create economic prosperity across the region, it is important that the jobs generated by Port activity are quality jobs on which workers can build their careers and support their families; and

WHEREAS, apprenticeship and pre-apprenticeship programs play a key role both in providing fair access for individuals aspiring to good construction jobs and in supplying sufficient trained and capable labor to meet the construction needs of the Port and other public and private facilities owners; and

WHEREAS, RCW 39.12 requires the payment of prevailing wages on all public works contracts of government entities such as the Port; and

WHEREAS, some projects constructed on Port property are contracted by the Port under the provisions of RCW 39.04 and other applicable statutes, some projects are contracted by Port lease tenants with all or part of the cost reimbursed by the Port and some are constructed entirely at the cost of Port tenants, within existing leaseholds or on ground leases at developer risk; and

WHEREAS, Project Labor Agreements (PLA), authorized under the National Labor Relations Act (NLRA), 29 U.S.C., Sections 151-169, provide a means for aligning the interests of public owners such as the Port with those of construction labor unions; and

WHEREAS, The Port of Seattle Commission and the CEO together develop Policy Directives as stated under Section 1(A)(2) of the General Delegation of Authority, which Policy Directives, under section (B)(1)(2) and (3), are intended to provide guidance, inform operations, and deliver standards that support the effective use of internal audit functions to verify compliance;

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Seattle as follows:

Section 1:

The following Policy Directive related to practices for construction labor for projects located on Port property is hereby adopted.

Section I. For major construction contracts (excluding small works executed per RCW 39.04.155):

- A. The Port shall evaluate the applicability of a project labor agreement (PLA) for each contract according to the following criteria:
 1. The assumption will be in favor of employing a PLA when projected construction labor costs are \$5 million or greater
 2. Project needs for labor continuity and stability, including analysis of labor needs by trade

3. Project complexity, including cost and duration
 4. Value of having uniform working conditions
 5. Potential impact of PLA on small business opportunities
 6. Past labor disputes or issues indicating risk of delay
 7. Potential PLA impact on project cost
 8. Project presents specific safety concerns to the public
 9. Value of an established PLA grievance process to resolve labor-management or jurisdictional disputes
 10. Other considerations particular to individual projects
- B. The Port shall require the payment and reporting of prevailing wages per RCW and State Department of Labor and Industries requirements.
 - C. Commission approval is needed to employ a PLA.
 - D. For contracts \$1 million in value or greater, the Port shall establish:
 1. Appropriate apprentice and locality hiring goals.
 2. Appropriate aspirational women and minority apprentice hiring goals.

Section II. For tenant-administered construction contracts paid for entirely or in part by the Port through tenant reimbursement or other means, the Port shall:

- A. Encourage tenants to examine the applicability of a PLA for each contract according to the criteria in Section I(A) above.
- B. As a condition of cost reimbursement, require the payment and reporting of prevailing wages as per RCW and State Department of Labor and Industries requirements.
- C. For contracts \$1 million in value or greater:
 1. Require the establishment of appropriate apprentice hiring goals.
 2. Encourage the establishment of appropriate locality hiring and aspirational women and minority apprentice hiring goals.

Section III. For construction contracts performed on Port property at the full cost of tenants, the Port shall:

- A. Encourage tenants to examine the applicability of a PLA for each contract according to the criteria in Section I(A) above.
- B. As a provision of initial requests for proposal or opening negotiations, as appropriate:
 1. As a lease provision, require the payment and reporting of prevailing wages as per RCW and State Department of Labor and Industries requirements.
 2. For contracts \$1 million in value or greater:
 - a. Require the establishment of appropriate apprentice hiring goals.
 - b. Encourage the establishment of appropriate locality hiring and aspirational women and minority apprentice hiring goals.
- C. If an advertised or negotiated development opportunity featuring the above provisions fails to advance staff:

1. Shall investigate the circumstances, to include discussions with potential proposers and labor.
2. Is authorized to incorporate modified construction labor provisions for scoring the solicitation and incorporation in the eventual agreement.

Section IV. The Projects and Procurements Committee is hereby chartered to work with staff and stakeholders to develop standard language to be included in Port PLAs unless otherwise authorized by the Commission.





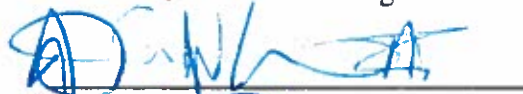
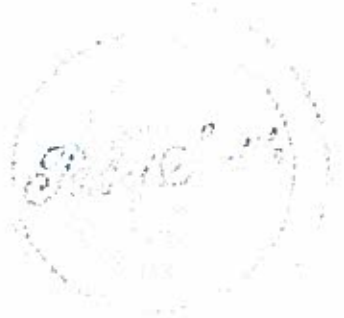
Section V. In each case above, the Port will establish reliable, auditable, and disclosable measures to ensure compliance.

Section VI. The Port staff will seek in cooperation with regional government agencies, construction trade unions, contractors and training institutions to develop cooperative programs to advance the training and placement of apprentices, with emphasis on expanding opportunity for underrepresented groups.

Section 2:

This Policy Directive shall be labeled and codified as appropriate, together with subsequent Policy Directives, and shall be made readily available for use by Port staff and members of the public as a governance document of the Port of Seattle.

APOPTED by the Port Commission of the Port of Seattle at a duly noticed meeting thereof, held this 25th day of OCTOBER, 2016, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.



JOHN CREIGHTON

STEPHANIE BOWMAN

TOM ALBRO

FRED FELLEMAN

COURTNEY GREGOIRE

Port Commission

EXHIBIT 3

EVIDENCE OF LABOR PEACE AGREEMENT **Printed and Executed on Proposer's Letter Head**

_____ (Proposer) has complied with Section 1.3.4 of the Competitive Evaluation Process (CEP)/Request for Proposal (RFP) for Package(s) _____, which stipulates that all non-exempt Proposers must have a signed Labor Peace Agreement, that will eliminate labor-related disruptions of services both to the Port of Seattle's Airport Dining and Retail Program and general operations at Seattle-Tacoma International Airport, with a labor organization that has clear jurisdictional scope.

FOR THE PROPOSER:
(insert name of firm)

By: _____

Print Name: _____

Date: _____

FOR THE LABOR ORGANIZATION:
(insert name of labor organization)

By: _____

Print Name: _____

Date: _____

MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE LEGAL ENTITY SUBMITTING THE PROPOSAL (I.E., THE PROPOSER). IF NOT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER, THE PROPOSAL MAY BE DEEMED NON-RESPONSIVE AND NOT SCORED.

FOR EXAMPLE, IF THE PROPOSER IS A JOINT VENTURE, PROPOSAL FORM(S) MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JOINT VENTURE (NOT JUST ONE OF THE JV MEMBERS) AND THE INDIVIDUAL SIGNING SHOULD BE SIGNING IN HER/HIS CAPACITY AS IT RELATES TO THE JV (NOT A JV MEMBER).

Exhibit 4

Operating a Concession Business at Seattle-Tacoma International Airport



SEATTLE-TACOMA INTERNATIONAL AIRPORT

INTRODUCTION

Welcome to one of the first steps in deciding if operating at Seattle-Tacoma International Airport (Sea-Tac) is right for you and your business. This information is to assist potential new tenants of Sea-Tac in understanding the unique circumstances of conducting business in an airport environment. This also provides an overview of airport operations and the specific steps a business must take to operate at Sea-Tac successfully.

An airport is a challenging environment that is not for every business. There are many positives to doing business at Sea-Tac, including a large number of potential customers each day, a sizable airport employee base, and working in a dynamic community that offers an opportunity for great success. However, the airport also is a demanding environment that poses challenges including difficult logistics, fluctuations in business and strict security requirements just to name a few.

SEA-TAC AIRPORT DINING AND RETAIL GROUP

The Airport Dining and Retail (ADR) Group at Sea-Tac is made up of one Director, three ADR Business Managers, two ADR Program Managers, one ADR Specialist and one ADR Facilities Manager. The team has a strong day-to-day working relationship with concessionaires that can enhance a successful venture for the concessionaire as well as the airport. The hands-on philosophy of the team makes for smooth operations in most instances and quick resolution of problems when they occur. The airport environment is an extremely fluid and dynamic one where the communication and understanding of the procedures and requirements are extremely important on the part of concessionaires.

Topics covered in the following sections include food service and retail operations, sales reporting, management, maintenance, security procedures, leasing, and design and construction processes.

COMMONLY-USED TERMS

The following is a list of commonly-used terms and acronyms for operating at an airport that will help you understand the following sections of information.

- ADR – Airport Dining and Retail
- AOA – The Airport Operations Area, which includes all areas inside Sea-Tac's fenced perimeter designated and used for landing, taking off, or surface maneuvering of aircraft. The AOA also includes ramps, aprons, runways, and taxiways.

- Airport Community – The employees that work at Sea-Tac, totaling approximately 16,000.
- Concessionaire - The term used in the airport industry for food service, retail and service concessionaires (also “tenant”).
- Credentials Center – The airport office that conducts security badging for employees. Also referred to as the “ID Access Office.”
- Enplaned Passenger – A passenger boarding a flight at an airport from a scheduled carrier, whether domestic or international, including passengers connecting from arriving flights on the same or another airline.
- Leasehold Improvements - All improvements and equipment that are built out by a concessionaire and affixed to the leased premises and cannot be removed without damage to the premises.
- Leasehold Excise Tax - This tax is paid at a public facility in lieu of real estate taxes. Currently, the rate is 12.84% paid on the first 7% of sales each month. For more information, refer to the Washington State Leasehold Excise Tax pursuant to Chapter 81.29A of the Revised Code of Washington.
- Marketing Fund – Each concession location contributes a percentage of sales every month to the collective marketing fund that supports common marketing programs managed by the Sea-Tac ADR Group.
- Minimum Annual Guarantee (MAG) - The minimum amount of rent a concessionaire will pay each year for the operation of a concession at Sea-Tac.
- Net Book Value - The unamortized portion of the cost of the eligible fixed leasehold improvements as of the effective date of a lease termination under specific circumstances. The net book value does not apply to the natural termination of a lease.
- Port – The Port of Seattle.
- SIDA - Security Identification Display Area. Specific security badges are required to be in the SIDA area, including the bag well, common trash/recycling areas, loading dock and storage locations.
- Street Pricing – The prices that concessionaires are required to charge at Sea-Tac that must not exceed the usual and customary amount for similar products and services in non-airport locations, such as shopping malls and other high-traffic urban locations.

- TSA – The Transportation Security Administration.
- TSA 25% Rule - Each concessionaire is allowed to have 25 percent of their employees obtain SIDA badges. SIDA badges are required to access the areas for trash disposal, recycling, storage and deliveries.

FOOD SERVICE AND RETAIL OPERATIONS

The goal of the Sea-Tac ADR Program is to provide passengers with an exceptional experience in quality, variety and affordability while at the airport. Specific service standards are required by every concessionaire to ensure a high level of quality and service at all food, retail and service operations. Some of the major categories included in these service standards at Sea-Tac are customer service, hours of operation, pricing policy, product delivery, management of sharp objects, as well as trash and recycling. More detailed standards are included in the lease.

Customer Service

Customer service is the mainstay of any food or retail program and stands as a top priority for the Sea-Tac ADR Program. Every concessionaire is expected to provide all patrons with the highest degree of quality in their products and services and service must be provided promptly, efficiently, and on a fair, equal, and non-discriminatory basis to all patrons of Sea-Tac.

Each concession location must be supervised at all times by an active, qualified, manager or assistant manager who has authority to make day-to-day business and operational decisions. To meet the needs of all customers, employees must be well-trained for their positions and demonstrate a first-class approach to customer service. Employees are required to wear a nametag and Sea-Tac security identification badge at all times while working at the airport.

The ADR Group initiates customer service programs at Sea-Tac to promote dining and retail, while building incremental sales. Concessionaires are expected to participate in these programs.

Hours of Operation

Sea-Tac is like a city that never closes. As a result of airport operations, concession locations must be open to the traveling public seven (7) days per week, 365 days per year, during the operating hours defined by the ADR Group based on airline operations and locations. In addition, the airport can be a very fluid environment with the event of flight delays and/or bad weather. In these instances, all concession locations in the areas of the terminal impacted by the delays or bad weather will remain open to accommodate the affected Sea-Tac passengers.

Business Fluctuations in the Airport Environment

The airport environment is dynamic, and unforeseen events can potentially impact the concession operations. Concessionaires should be prepared to operate with flexibility when necessary to ensure success in the airport environment.

Concessionaires may need to adjust their operations to accommodate construction projects, security directives, overall airport efficiency, etc. For example, a portion of a concession space may be reclaimed for a security or airline use. In such instances, concessionaires will need to work with the Port on relocation or other solutions to minimize the impact. Other potential fluctuations could be caused by airline relocations, inclement weather that impacts flight schedules and operating hours, and new security directives, among others.

Managers Meeting

A meeting is held once a month for all concession managers to facilitate communication and address issues that may impact the Sea-Tac ADR program. The meetings are crucial to keeping abreast of changes at Sea-Tac that not only affect concessionaires, but the airport as a whole. These meetings are also a great way to get to know fellow concessionaires and build relationships within the airport community. Various subjects are covered each month, including the items listed below. There are also special meetings held for specific issues, such as major changes in operations, major construction projects, and airline changes.

- Sales
- Marketing
- Operational Issues
- Security
- Recycling and Composting
- Training/Classes
- Construction Impacts
- Parking Impacts
- New Business

Pricing Policies and Enforcement

“Street Pricing” has historically been an important element of the Sea-Tac ADR Program dating back to 2005. The City of Sea-Tac implemented a mandatory minimum employment standard ordinance in 2015, which requires each hospitality and transportation employer to increase the hourly wage rate. In accordance with the ordinance, the Port has made a commitment to improving wages and benefits for workers at Sea-Tac while providing employers a method to address the higher employee costs associated with the ordinance.

An addendum to the Street Pricing Policy was issued that allows ADR tenants to temporarily increase their prices based on certain criteria from December 1, 2015 through January 1, 2021 in accordance with the following:

12/01/2015 – 12/31/2016: up to 10.0 percent over street prices

01/01/2017 – 12/31/2017: up to 7.5 percent over street prices

01/01/2018 – 12/31/2018: up to 5.0 percent over street prices

01/01/2019 – 12/31/2019: up to 2.5 percent over street prices

01/01/2020: - 12/31/2020: up to 5.0 percent over street prices

01/01/2021: up to 10.0 percent over street prices

Concessionaires must charge the usual and customary amount for their products or services as those prices charged in comparable non-airport locations, including locations at shopping malls and high-traffic urban shopping venues, and charge no more than the approved percentages above the street prices. Pricing for all products and services are submitted for approval and the prices must be clearly displayed in each location. Baseline street pricing increases shall not be submitted more than two times each year.

Product Delivery and Storage

The logistics at Sea-Tac are particularly difficult as compared to operating at other facilities. Loading dock locations are limited and not easily or quickly accessible for vendors. Strict security inspections are required for all deliveries.

Storage space for support is limited and many times can be in a location that is not in close proximity to the respective restaurant or store. With varying degrees of restocking each day, obtaining inventory from storage locations can be labor intensive. Maintaining a sufficient supply of goods and merchandise in each concession location at all times is crucial.

All concessionaires are strongly encouraged to re-stock during non-peak times that are the least intrusive to the customers and operations.

Control of Knives and Sharp Objects

Every concessionaire is required to maintain a formal log of knives and sharp objects (including box cutters, scissors, razor blades, etc.) that are used for the essential functions of the restaurant and/or store. In addition to the formal inventory log, there must be a register where an employee checks each item in and out on a daily basis. This process is monitored by security and audits are conducted on a regular basis.

If the concessionaire is found to be non-compliant, there can be citations or the removal of security badging.

Trash and Recycling

Concessionaires are provided with a variety of collection points for trash, recycling and compostable materials. Bins or compactors are provided, and the concessionaire is required to transport the materials to the respective collection sites in a cart that is approved by the Port. Each concessionaire is charged a per toss fee for trash. There is no cost for disposing of recycling, composting or used cooking oil.

The current system includes a tank located on the ramp level next to the trash and recycling areas where concessionaires pump their used cooking oil. Concessionaires are required to purchase and maintain the transport caddy used for the disposal.

All areas for trash, recycle and compost materials are located in areas of the airport that require a specific level of security clearance that falls into the TSA 25% rule as noted in the list of commonly-used terms.

Sea-Tac has a dedicated environmental team that is committed to the training and education of concessionaires in the proper and best ways for recycling, composting, bulk grease removal, and general trash removal. They take an active role in working with concessionaires to help them meet the requirements for trash and recycling and reducing their costs for trash disposal.

Trash removal and recycling for the food court areas are handled through the airport's primary janitorial contract. Concessionaires that operate in the food courts pay a fee that covers this service along with the bussing of tables. The fee and frequency is established in each lease agreement.

Sustainable Practices

Sea-Tac is committed to creating a sustainable airport and minimizing the environmental impact from its operations. Concessionaires that are not using washable dishware are required to use compostable and/or recyclable plates, cups, and service ware that will accommodate their food service. This provision may result in additional costs for tenants that do not already use compostable materials.

Concessionaires are also encouraged to implement LEED™ and other "green" best practices in the design, construction, and operation of concessions at Sea-Tac. Examples of these practices include energy-efficient lights and appliances, use of reclaimed materials in construction, and implementation of practices that encourage waste reduction and minimize energy consumption.

Maintenance

Concession units at the airport take a lot of abuse compared to other types of food service and retail locations. Between luggage, strollers and other carry-on items, the wear and tear to walls, surfaces, furniture, displays, cabinets, etc. is extensive. Combined with the high volume

of business in a relatively small space, the equipment can become worn in a short period of time. In addition, by operating in an airport with a large number of people in a more confined space, the fire code and evacuation requirements are stringent.

As part of the maintenance requirements, the ADR Group has implemented the Preventive Maintenance Program (PMP). The PMP program is governed by the Tenant Operational Manual: “The Procedures on Maintenance Services and Required Inspections for Tenants at Seattle-Tacoma International Airport.” This document describes the roles and responsibilities of the Port and the tenants in maintaining the main infrastructure systems.

The ADR Group has a Facilities Manager who oversees the maintenance of the concession units. There are specific cleaning requirements for hood systems, cooking equipment, etc. that are monitored closely by the Facilities Manager and outlined in the lease agreement. Inspections are done to ensure that all scheduled maintenance is being performed. Reports are submitted by the concessionaires’ vendors and tracked closely for compliance.

Utilities

Concessionaires are required to pay for all utilities used based on the charges outlined in the Tariff Rates for Sea-Tac Airport. Charges included cover electricity, water, sewer, natural gas, cable television, and used cooking oil disposal.

Employee Parking

Each company that has a lease agreement at Sea-Tac is provided with a complimentary parking pass (depending on the number of units operated) for access to the parking garage. This card is designated for use only by the employee that is the on-site manager.

There is also a parking lot located just north of the terminal that is for employee parking (North Employee Parking Lot, NEPL). It is a secure, gated lot and buses run every 10 minutes to and from the terminal. The current charge for the NEPL is \$76.00 per employee, per month. Please note that parking prices are subject to change.

For more information on Employee Services at Sea-Tac, see <http://www.portseattle.org/employee-services>.

SECURITY

Security is the most important responsibility for all employees of Sea-Tac. Airport Security and the TSA have established very specific guidelines, requirements, and operating procedures to ensure that a high level of security is maintained at Sea-Tac at all times.

Current security requirements at Sea-Tac are noted in this section. However, requirements are subject to change and can change quickly depending on conditions that are many times not directly associated with Sea-Tac (i.e., a new TSA national security directive). The key is to be aware of your surroundings and maintain good communications with your neighbors and other workers in the airport. The airport community is a large, well-defined group from many different companies and can be a strong force in keeping the airport safe.

Employee Badging Requirements and Process

There are a variety of security badges available at Sea-Tac that provides different types of airport access for employees. However, every employee is required to have a badge when working at the airport. The general purposes of the badges are shown below. Please note that this list is not all-inclusive and can change.

ORANGE BADGE: The orange badge is for employees that will be working in the concession unit only. They have no access to trash, recycling, composting, storage or delivery areas.

RED BADGE: The red badge is for employees that will be working in the concession unit as well as accessing the SIDA areas for trash, recycling, composting, storage and deliveries.

BLUE BADGE: The blue badge is for employees that will drive a vehicle on the AOA, as well as have access to the SIDA areas for trash, recycling, composting, storage and deliveries.

A schedule of fees for completion of the security assessment and obtaining badges may be found at <http://www.portseattle.org/employee-services/Pages/default.aspx>. Concessionaires are billed for all costs associated with security badges.

In order to obtain an airport security badge, each person applying for a badge must bring both proof of citizenship and an additional form of photo identification to the airport's Security ID Access Office/Credentials Center. Each person applying for a badge must complete the following forms and applications. All forms can be found on the Port website listed above.

- Individual Application (http://www.portseattle.org/Employee-Services/ID-Badges/Documents/NEW_RENEWAL_BADGEID_APP%20MAY_2012.pdf)
- Fingerprint Application and Disqualifying Crimes Sheet http://www.portseattle.org/Employee-Services/ID-Badges/Documents/FINGERPRINT_APPLICATION_FEB2012.pdf
- Signed Privacy Act Notice <http://www.portseattle.org/Employee-Services/ID-Badges/Documents/idaccess-privacypolicy.pdf>

There are a number of other requirements to set up a company in the badging system that will be reviewed at an appropriate time if and when a lease agreement is secured.

Sea-Tac's ID Access Office/Credentials Center and training room are located on the Mezzanine Level of the Main Terminal. More information about badges and training can be found at:

<http://www.portseattle.org/Employee-Services/Security-and-Driver-Training/Pages/default.aspx>

Penalties for Non-Compliance

The airport's Security Department has created a handbook regarding security violations at Sea-Tac that provides detailed information regarding what constitutes a violation along with the penalties that may be assessed. This handbook may be found at

<http://www.portseattle.org/Employee-Services/ID-Badges/Documents/idsecurityhandbook.pdf>

TSA Directives

The TSA is the section of the U.S. government that is responsible for securing the nation's airports and screening all commercial airline passengers and baggage. As such, the TSA periodically issues directives that may impact concession operations at Sea-Tac. For example, TSA maintains a list of prohibited items that are not allowed in the post-security areas of an airport. A full list of currently-prohibited items can be found by visiting

<http://www.tsa.gov/traveler-information/prohibited-items>. This list is updated periodically. Changes to the list of prohibited items may impact the types of products that can be sold or the way concessionaires operate at Sea-Tac. Concessionaires will need to demonstrate flexibility in such instances, as all tenants at Sea-Tac are required to comply with TSA rules, regulations, and directives and have procedures in place to ensure compliance by all employees.

LEASE AGREEMENT

The lease agreement dictates all of the operating requirements for a concessionaire at Sea-Tac. Some of the general terms are noted below.

Rent

The rent payment structure at airports is typically different from the structure at non-airport venues. Airports generally do not charge rent on a "per square foot" basis for a retail or restaurant space.

The rental terms at Sea-Tac typically include two components: a minimum annual guaranteed rent and a percentage fee. The concessionaire will pay the greater of these each month. The minimum annual guarantee for the first full calendar year of operations will be set by the Port. During the second and all following years, the minimum annual guarantee will be set at eighty-five (85%) of the actual rent paid the prior year.

For example, if the total rent paid the year before was \$150,000, then the minimum annual guarantee for the next year would be \$127,500. This amount would be paid in equal monthly installments by the first of each month. Any percentage fee above the minimum annual guarantee would be reported and paid by the 15th of each month for the preceding month.

- **Minimum Annual Guarantee (MAG)** - A MAG is the lowest amount of rent that a concessionaire will pay during a calendar year at Sea-Tac, regardless of fluctuations in sales levels.
- **Percentage Fee** - A percentage fee amount calculated as a percentage of gross sales (exclusive of taxes and a few other allowances that are also specified in the lease). The percentage fee can be a single rate applied to all levels of sales, or it may be tiered to increase as gross sales increase. Alternatively, the percentage fee may vary according to the type of products or merchandise sold (i.e., food and non-alcoholic beverages vs. alcoholic beverages).

The monthly rent does not include any support space (storage space, offices) other than what is included within the concession location. If space is available for support, it will be leased on a “dollar per square foot” basis under a separate agreement. The current rates for storage and office space are shown below. Please note that Leasehold Excise Tax is also payable on the storage and office rental amounts. In this case, the tax is paid on the dollar per square foot charge because there are no sales associated with the support space. The current rates are subject to change.

Storage Space	Current Cost per Square Foot
Up to 400 Square Feet	\$15.00
Over 400 Square Feet	\$60.00

Office Space	Current Cost per Square Foot
<ul style="list-style-type: none"> – Up to 150 square feet for tenants that operate between one and three units – Up to 500 square feet for tenants that operate between four and eight units – Up to 1,250 square feet for tenants that operate nine or more units 	\$30.00
Any office space over the thresholds above	\$120.00

Leasehold Excise Tax

Concessionaires at Sea-Tac are responsible for paying all taxes, including the Washington State Leasehold Excise Tax (Chapter 81.29A of the Revised Code of Washington). The Washington State Leasehold Tax (LET) rate is currently 12.84 percent of taxable rent. For the purposes of

the LET, the first seven percent of gross sales is considered the contract rent on which the Leasehold Excise Tax would be computed. LET payments are made at the same time as the reporting and payment of the percentage fee on the 15th of each month. The Port passes the taxes through to the State.

Example:	Monthly sales	\$100,000.00
	First 7% of sales	\$7,000.00
	12.84% (LET)	\$898.80

Marketing Fund

The ADR Group has an active marketing program that is considered one of the best among North American airports. The various events funded by the marketing fund range from promotional events to advertising to a mystery shopper program. Each concession location contributes a percentage of sales each month to the collective marketing fund that supports common marketing activities administered by the ADR Group. The current rate is one half of one percent of monthly gross sales up to a maximum of \$30,000 per concession facility per calendar year. The payment of the marketing fund fees are made at the same time as the reporting and payment of the percentage fee on the 15th of each month.

Insurance Requirements

All concessionaires at Sea-Tac are required to carry specified levels of insurance as stated in their leases. These amounts may vary by type of concession, but typically include the following types of insurance:

- Commercial General Liability (\$2,000,000.00)
- Business Automobile Liability (if vehicles owned by the tenant are operated on the AOA) (\$5,000,000.00)
- Property (including flood and earthquake coverage, amount covered in lease agreement)
- Business Income and Extra Expense (amount covered in lease agreement)
- Liquor Liability (if tenant sells alcoholic beverages in any quantity or form (\$2,000,000.00)
- Workers Compensation
- Any other insurance required due to the form or function of the business

Letter of Credit or Other Security

Every concessionaire is required to provide a letter of credit or other approved security when the lease agreement is executed. The amount of the security is dependent on several factors and an amount is agreed upon and approved in the lease agreement.

Reporting

Concessionaires are required to submit specific reports monthly and annually as outlined in the lease agreement. While the reports required are subject to change from time to time, the primary reports that are currently required are listed below.

- **Daily Sales** - Tenants are required to report sales daily through a proprietary program developed by the Port. These sales are usually reported by the on-site management team and are not audited sales. This reporting provides real-time sales information that is vital to tracking trends and following events, such as airline moves, TSA directives and weather issues.
- **Monthly Sales** - Within 15 days of the close of each month, concessionaires are required to submit a detailed statement of gross sales for the prior month. For concessionaires operating multiple locations, the reports must provide a breakdown of gross sales by concession location and subtenant (when applicable) and must show further detail (i.e., product category) as required in the lease.
- **Annual Sales** - By March 31 of each year, the concessionaire must provide an annual report of gross sales as further detailed in the lease agreement.
- **Net Book Value Report** – At the request of the Port at any time during the term of the agreement, concessionaire must submit a statement of the net book value of the eligible leasehold improvements calculated per the depreciation rules outlined in the lease agreement. If the concessionaire has more than one location, a report is submitted for each location.

Net Book Value/Depreciation

All concession locations leased to tenants are provided in “as-is” condition and require complete build-out, and sometimes demolition, by the concessionaire. The fixed capital improvements made to the concession locations must be depreciated over the term of the lease on a straight-line basis, and must have a value of zero at the end of the initial lease term.

A lease may be terminated early in the event that a concession space is required for a security or airline purpose or another airport operational requirement. In such a circumstance, there may be reason for the Port to reimburse the concessionaire for any remaining, unamortized value of the leasehold improvements made to the concession location(s) at the time of the take back or termination. In such cases, the buyout of the leasehold Improvements is determined to be the unamortized portion of the cost of the eligible leasehold improvements as of the

effective date of the take back or termination. More detailed information regarding depreciation and buyout is provided in the lease.

DESIGN AND CONSTRUCTION

Design and construction costs at an airport are expensive and can run two to three times the cost of a street or mall location. In addition, the time period from when the lease is signed until the concession unit opens can be eight to nine months or more. Concessionaires must be prepared from a capital investment standpoint that includes the design and construction time. Constructing in an airport environment poses many challenges due to security, base building requirements and logistics, among others.

Design Submittal

The design process has a number of levels for submittals and most projects are managed through the Project Management Department or the ADR Facility Manager. The Port has specific standards that many times can be beyond what is required in local or national codes. All concessionaires must adhere to these standards, including the Airport Dining and Retail Design Guidelines, when building out a location. The website below gives an overview of the process and requirements. During the design process, the respective Project Manager will assist the concessionaire and their architect in following the correct procedures. Please visit <http://www.portseattle.org/Business/Construction-Projects/Airport-Tenants/Pages/default.aspx> for additional information.

Permitting Requirements

Sea-Tac has its own Building Department for airport projects. Concessionaires are required to obtain all necessary permits for facility build-out and fit-out. Additional information can be found at the website noted under Design Submittal Requirements.

Capital Investment

The amount of the initial capital investment to be expended by the concessionaire for build-out can be substantially more than a street or mall location. There are no tenant allowances or reimbursements for concession units. Minimum investment costs are included as part of the lease agreement. All concession facilities at Sea-Tac must be designed and finished in a manner that complies with applicable building codes and airport guidelines.

Construction Process Requirements

The Port provides step-by-step instructions on all aspects of the construction process at Sea-Tac, including pre-design development activities, design development phase activities, construction phase activities, and project close-out details and requirements. The website noted under Design Submittal includes the basics for starting the process. In addition, the Project Manager for each concession build-out will assist during the entire process.

Timelines

The Construction Process requirements outline the full design and construction processes and timeframes that must be adhered to from initial design submittal through construction completion. Due to the unique nature of the airport environment, just the facility build-out can take three to four months, on average. Concessionaires should recognize that their locations will not generate sales until construction is completed and the facility is open for business. Tenants should ensure that they have enough working capital to cover this pre-opening phase.

LEASE AND CONCESSION AGREEMENT
FOR
[SPECIALTY RETAIL OPERATIONS/FOOD
AND BEVERAGE
OPERATIONS/PASSENGER SERVICES]

Between

PORT OF SEATTLE

And

[COMPANY]

Lease Group 5 – Sample Agreement

SUMMARY OF KEY LEASE TERMS

Agreement Date					
Concessionaire:	Legal Company Name				
Premises:	Location Square Footage Exhibit				
Notice to Open:	DATE				
Expiration Date:	8 or 10 Years from Notice to Open				
Rent Commencement Date:	The date on which Concessionaire first opens for business from any portion of the Premises whether a temporary operation or final build-out				
Initial Minimum Annual Guarantee Amount:	One Million Two Hundred Thousand and 00/100 (\$1,200,000.00) commencing on January 1, 2022				
Percentage Fees:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; text-align: center;"><i>Annual Gross Sales</i></td><td style="width: 30%; text-align: center;"><i>Percentage of Gross Sales</i></td></tr> <tr> <td style="text-align: center;">Annual Gross Sales</td><td></td></tr> </table>	<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>	Annual Gross Sales	
<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>				
Annual Gross Sales					
Remittance Address For Payments Only:	Port of Seattle PO Box 24507 Seattle, WA 98124-0507				
Late Charges:	Five percent (5%) of the amount due plus interest at the Default Rate; liquidated damages associated with a failure to report may also apply				
Default Rate:	Eighteen Percent (18%) per annum				
Annual Report Due Date:	March 31, except for the Last Partial Year, for which it is ninety (90) days following the end of the Last Partial Year				
Security Deposit:	TBD based on RFP/CEP Proposal				
Use of Premises:	Shall mean the permitted use as set forth in Section 1.4.1				
Initial Improvement Amount:	As describe in the CEP/RFP or proposal				
Build-Out Deadlines:	Design to Building Department DATE Issuance of Temporary Certificate of Occupancy – anticipated to be DATE				
Delay Damages:	Dollar amount based on average daily MAG per day beginning the next calendar day from the Build-Out Deadlines				
Exhibits to Agreement:	A – Legal Description of Airport B – Premises C – Operating Standards D – Street Pricing Policy E – Links to key Port Standards F - Schedule of Liquidated Damages				

Lease Group 5 – Sample Agreement

	G – Additional Non-Discrimination Covenants H – Pertinent Non-Discrimination Authorities
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Lease Group 5 – Sample Agreement
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Lease Group 5 – Sample Agreement

THIS LEASE AND CONCESSION AGREEMENT (“Agreement”) is made as of the date set forth on the first page of this Agreement by and between the PORT OF SEATTLE (“Port”), a Washington municipal corporation, and [Company] (“Concessionaire”). For and in consideration of the mutual promises, covenants and conditions set forth in this Agreement, the parties agree:

SECTION 1: DEFINITIONS

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

- 1.1 **Additional Rent.** “Additional Rent” shall mean other rents due to the Port, including but not limited to, maintenance, repairs, and utility charges, as specified in this Agreement.
- 1.2 **Agreement.** “Agreement” shall mean this Lease and Concession Agreement, including amendments agreed to in writing by the parties.
- 1.3 **Airport.** “Airport” shall mean the Seattle-Tacoma International Airport, a legal description of which is attached as Exhibit A.
- 1.4 **ACDBE.** “Airport Concessions Disadvantaged Business Enterprise” and “ACDBE” shall mean a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as an ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant at 49 CFR Part 23.
- 1.5 **Alterations.** “Alterations” shall have the meaning set forth in Section 1.10.4.
- 1.6 **Annual Report.** “Annual Report” shall mean a report that reflects the amount of Gross Sales for the preceding calendar year, subject to the provisions of Section 4.8.4 of this Agreement.
- 1.7 **Build-Out Deadline.** “Build-Out Deadline” shall mean the date set forth in Section 1.10.2.2 and referenced in the Summary of Key Lease Terms. In the event that the Build-Out Deadline is subject to extension as provided in Section 1.10.2.1, the Port shall confirm the extended Build-Out Deadline in the manner provided for Notices in Section 23.1 of this Agreement. There may be more than one Build-Out Deadline if portions of the Premises have different Occupancy Dates.
- 1.8 **Concessionaire.** “Concessionaire” shall mean and refer to the party executing this Agreement, as identified in the recitals and referenced in the Summary of Key Lease Terms.
- 1.9 **Day.** “Day” or “Days” shall, unless otherwise specified, mean and refer to calendar day(s), not business day(s).
- 1.10 **Default Rate.** “Default Rate” shall mean the rate set forth in Section 1.5.13 and referenced in the Summary of Key Lease Terms or the maximum rate provided by law for a transaction of this nature, whichever is less.
- 1.11 **Delay Damages.** “Delay Damages” shall mean and refer to the dollar amount, expressed per day, set forth in Section 1.10.2.1 and referenced in the Summary of Key Lease Terms.

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- 1.1.12 **Display Allowances.** “Display Allowances” shall mean the total of all display allowances, placement allowances, special purpose allowances, or other promotional incentives received by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) from vendors, suppliers or manufacturers and any other revenue of this type, and further, if such allowances are received as a part of non-differentiated sales by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) operating at multiple airports, Concessionaire shall, subject to the Port’s review, reasonably allocate the allowances between the airports and designate the amount to be allocated to the Airport for the calculation of Percentage Fees due. Display Allowance shall not include any manufacturer’s or supplier’s rebates and/or volume discounts that are properly considered, under general accepted accounting principles, credits against the cost of goods sold.
- 1.1.13 **Enplaned Passenger.** “Enplaned Passenger” shall mean all those passengers boarding flights at the Airport from scheduled or chartered flights, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of the same or another airline. Enplaned Passengers shall generally be measured for the entire Airport and separately for Concourse A, Concourse B, Concourse C, Concourse D, the North Satellite and the South Satellite.
- 1.1.14 **Expiration Date.** [“Expiration Date” shall have the meaning set forth in Section 1.2.1]. In the event that this Agreement contains one or more option periods, the Expiration Date shall be subject to extension on such terms, and subject to such conditions, as provided in this Agreement. Without regard to the number of Notice to Opens and/or Build-Out Deadlines for different portions of the Premises, there shall be only one Expiration Date. In the event that the Expiration Date is tied to a specific Notice to Open or Build-Out Deadline and the Build-Out Deadline (or Build-Out Deadline associated with such Notice to Open) is extended under Section 1.10 due to non-concurrent delays directly caused by the Port (but not Force Majeure events), the Expiration Date will likewise be extended for the same period of time the Build-Out Deadline is extended.
- 1.1.15 **First Full Year.** “First Full Year” shall mean the first, full calendar year of the Agreement term.
- 1.1.16 **First Partial Year.** “First Partial Year” shall mean that portion of the calendar year commencing on the Rent Commencement Date and ending December 31 of the year in which the Rental Commencement Date falls.
- 1.1.17 **Franchise Agreement.** “Franchise Agreement” shall mean granted rights to use any trade name that may be used at the Premises for the entire term of the Agreement, pursuant to a franchise or license agreement.
- 1.1.18 **Gross Sales.** “Gross Sales” shall mean the total dollar amount derived from the sale or delivery of any food, beverages, or merchandise or the performance of any services from, in, upon or arising out of the Premises, whether by Concessionaire, any subtenants, licensees or concessionaires of Concessionaire, or any other person on Concessionaire’s behalf, whether at wholesale or retail, and whether for cash, check, credit (including charge accounts), exchange or in kind (specifically including the amount of credit allowed for any trade-ins). No

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deduction shall be permitted for credit card fees (e.g., interchange or processing fees) or thefts, and for uncollected or uncollectible credit or charge accounts. No deduction shall be permitted for sales discounts (such as prompt-payment discounts) that are not specifically reflected on the original invoice/receipt at the time of the sale. Gross Sales shall, without limiting the generality of the foregoing, also include:

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

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concessionaire's) business and not for the purpose of consummating a sale which has been made at, upon or from the Premises;

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

1.1.19 **Initial Improvements.** "Initial Improvements" shall mean improvements to the Premises, including architectural and engineering fees, construction costs, furniture, fixtures and equipment and other expenditures.

1.1.20 **Initial Improvement Amount.** "Initial Improvement Amount" shall mean and refer to the dollar amount, expressed per square foot of the Premises, set forth in in Section 1.10 and referenced in the Summary of Key Lease Terms and Proposal.

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

1.1.22 **Last Partial Year.** "Last Partial Year" shall mean that portion of the calendar year commencing on January 1 following the Last Full Year and ending on the Expiration Date (or earlier termination date); provided, however, (a) in the event that the Rent Commencement

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Date falls on January 1, there shall be no First Partial Year, and (b) in the event that the Expiration Date falls on December 31, there shall be no Final Partial Year.

- 1.1.23 **Legal Requirements.** “Legal Requirements” shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, including the Port, which may be applicable to or have jurisdiction over the Premises.
- 1.1.24 **Lien.** “Lien” shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises or the Initial Improvements, Midterm Refurbishment, any Alteration, fixture, or improvement.
- 1.1.25 **Midterm Deadline.** “Midterm Deadline” shall mean the date in which Midterm Refurbishments are to be completed by Concessionaire.
- 1.1.26 **Midterm Refurbishment.** “Midterm Refurbishment” shall mean the complete upgrade and refurbishment of the Premises in a manner acceptable to the Port in order to maintain an attractive and inviting appearance to customers.
- 1.1.27 **Minimum Annual Guarantee.** “Minimum Annual Guarantee” shall mean the minimum annual payment amount by Concessionaire to the Port.
- 1.1.28 **Net Book Value of Leasehold Improvements.** “Net Book Value of Leasehold Improvements” shall mean and refer to the dollar amount generated through application of rules established in Section 2.7.5.
- 1.1.29 **Notice to Proceed.** “Notice to Proceed” and “NTP” shall mean written notice provided by the Port establishing the date in which Concessionaire may begin Improvements to the Premises.
- 1.1.30 **Notice to Open.** “Notice to Open” shall mean the date in which the Concessionaire begins operations within the Premises, which date shall be confirmed by the Port in its reasonable judgment. The Port shall confirm the Notice to Open in the manner provided for Notice in Section 4.1 of this Agreement and may modify the Summary of Key Lease Terms. Different portions of the Premises may have different Notice to Opens.
- 1.1.31 **Percentage Fee.** “Percentage Fee” shall mean the percentage fee paid by Concessionaire on Gross Sales according to the Proposal and this Agreement.
- 1.1.32 **Port.** “Port” shall mean the Port of Seattle, a Washington municipal corporation.
- 1.1.33 **Port Standards.** “Port Standards” shall include but not limited to. the Airport Rules and Regulations, the Regulations for Airport Construction, the Tenant Design and Construction Process Manual, Seattle Tacoma International Airport Construction General Requirements, the Safety Manual, the CAD Standards Manual, the Concession Design Guidelines, the Port’s mechanical, electrical, water and waste, and industrial waste and storm drainage standards and

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any other, similar document establishing requirements and/or standards for design and construction at the Airport as more fully defined in Exhibit E.

- 1.1.34 **Premises.** “Premises” shall have the meaning set forth in Section 1.3 and in the Summary of Key Agreement Terms; provided, however, in the event that the Premises include any units the precise boundaries of which have not, as of the date of execution of this Agreement, been determined, the parties agree that they may – without the need for a formal amendment of this Agreement – substitute a revised lease outline drawing accurately identifying the location and boundaries of the particular unit when the same has been finally determined. This ministerial revision shall be reflected by a countersigned letter that reflects that parties’ agreement on the revised lease outline drawing, and upon such written agreement the revised lease outline drawing shall automatically supersede any such drawing originally included as an exhibit to this Agreement.

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

- 1.1.35 **Proposal.** “Proposal” shall mean the proposal submitted by Concessionaire in response to a competitive evaluation process (CEP) or request for proposal (RFP) issued by the Port, in which Proposal identified a specific concept for the Premises, outlined Concessionaire’s plan for operation of the concession, made certain commitments around minimum capital investments, quality jobs, and small business participation. In the event conflict exists between the Proposal and this Agreement, this Agreement shall prevail.

- 1.1.36 **Removable Fixtures.** “Removable Fixtures” shall have the meaning set forth in Section 1.10.6.

- 1.1.37 **Rent.** “Rent” shall mean and refer collectively to sums denominated as either Minimum Annual Guarantee, Percentage Fee, Additional Rent or any other sums or charges otherwise payable by Concessionaire under the terms of this Agreement. Failure by Concessionaire to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.

- 1.1.38 **Rent Commencement Date.** “Rent Commencement Date” shall mean the date on which Concessionaire first opens for business from any portion of the Premises whether a temporary operation or full build-out.

- 1.1.39 **Security.** “Security” shall mean a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, or other security in a form approved by the Port in the amount set forth in the Section 1.7 and referenced in the Summary of Key Lease Terms.

- 1.1.40 **Summary of Key Lease Terms.** “Summary of Key Lease Terms” shall mean a cover page to the Agreement that identifies key terms and conditions. Said Summary of Key Lease Terms may be modified through Section 4.1.

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SECTION 1.2: TERM

- 1.2.1 **Agreement Term.** Unless earlier terminated, pursuant to any provision of this Agreement, the term shall commence on the Notice to Open and continue until _____ (the “Expiration Date”).
- 1.2.2 **Holding Over.** If Concessionaire, with the written consent of the Port, holds over after the expiration or sooner termination of this Agreement, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. Any holding over by Concessionaire after the expiration or earlier termination of the Agreement with the express, written consent of the Port shall not, in any manner, constitute a renewal or extension of the Agreement or give Concessionaire any rights in or to the Premises.

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

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

SECTION 1.3: LEASED PREMISES

- 1.3.1 **Premises.** Effective on the Notice to Open, the Port hereby leases to Concessionaire and Concessionaire hereby leases from the Port, the Premises. In the event that there is different Notice to Opens for different portions of the Premises, the lease for each portion of the Premises shall commence on its respective Notice to Open. Concessionaire may with Port approval operate a temporary operation on the Premises during any construction and/or midterm refurbishment. Such operations will be subject to the Rent as identified in Section 1.5.

Space ID.	Square Footage	Exhibit

- 1.3.2 **Acceptance of the Premises.** Concessionaire shall promptly examine the Premises no later than ninety (90) days from the date of this Agreement. Unless Concessionaire provides the Port with written notice of any defect or problem within ten (10) working days of the examination, Concessionaire shall have accepted them in their present, “as-is” condition, and

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agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Concessionaire's use of the Premises, and obtain necessary permits therefor.

- 1.3.3 **Quiet Enjoyment.** So long as Concessionaire is not in default under this Agreement and subject to the specific provisions, covenants and agreements contained in this Agreement, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Premises by Concessionaire shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.
- 1.3.4 **No Warranty.** The Port makes absolutely no warranty, promises or representations as to the economic viability of any concession location, including the Premises. Passenger counts, passenger flows and other customer traffic are for the most part products of airline schedules and gate utilization. Further, Federal Aviation Administration and Transportation Security Administration rules and regulations governing security and emergency situations may restrict access to the Airport or portions thereof. Except as specifically set forth in this Agreement, Concessionaire shall not be entitled to any relief in the event passenger counts, passenger flow, customer traffic, or Gross Sales are other than Concessionaire predicted or projected.
- 1.3.5 **Office and/or Storage Space.** At Concessionaire's request, the Port may add or delete office and/or storage space to this Agreement through a Premise Notice. Concessionaire agrees and acknowledges that it shall be responsible for any rentals and fees associated with such request. Rentals and fees shall be modified from time to time.
- 1.3.6 **Lease Outline Drawings (LOD).** Concessionaire agrees that the Port may make modifications to any LOD provided in Exhibit B, to reflect final build-out conditions. Such modifications shall be made through a Premise Notice.
- 1.3.7 **Annual Review.** At the Port's discretion on or about the anniversary of the Rent Commencement Date, the Port and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in a First Class Manner, as required by Section 1.4.3, and Concessionaire shall, except to the extent any such work is the responsibility of the Port under Section 1.11.1, promptly undertake any necessary repair, maintenance, or Alterations at Concessionaire's expense. If the Port and Concessionaire cannot jointly agree upon the type and extent of refurbishment necessary, the Port may, as set forth in Section 1.4.3, determine the refurbishment required. For purposes of this Section, "refurbishment" shall generally be limited to the routine repainting or redecoration of concession space within the Premises, including the replacement or repair of worn carpet, tile, furnishings, fixtures, finishes, or equipment. Nothing in the requirement for an annual review, however, shall relieve Concessionaire from the obligation to maintain Premises in a First Class Manner on an ongoing basis as required by Section 1.4.3, and Concessionaire shall specifically perform maintenance and refurbishment as needed to continuously comply with that standard. The failure to timely undertake required refurbishment shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.

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SECTION 1.4: USE OF PREMISES

- 1.4.1 **Use of Premises.** Concessionaire shall use the Premises for the following purposes only:

[INSERT FULL USE HERE]

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

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

- 1.4.3 **Port Standards**

1.4.3.1 **First Class Operations.** In addition to, and not in lieu of, any other more specific Port Standards that may be set forth in this Agreement, Concessionaire shall maintain a first class standard of service equivalent to the highest standards within the food and retail service industry ("First Class Manner"). For the purposes of this Agreement, First Class Manner shall mean the standard of products, cleanliness, and customer service that would be reasonably expected in upscale shopping malls and other similar high-quality airport and non-airport retail and food service facilities. The Port desires to provide the air travelers and the public with facilities, service, food, beverages and retail merchandise of first class quality. For food and beverage operations, Concessionaire must ensure that the air travelers and the public are provided first class quality foods with adequate portions, comparable to or better, than that offered for sale in similar food service operations in the greater Seattle-Tacoma region offering like products. Unless shown to be arbitrary and capricious by "clear, cogent and convincing evidence," the Port shall be the final arbiter of what constitutes a First Class Manner. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 2.6 and Exhibit F.

1.4.3.2 **General Operating Standards.** Concessionaire shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements or Port Standards, (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, (iii) violate the certificate of occupancy then in force with respect to the Agreement, (iv) constitute a public or private nuisance, (v) impair, in the Port's reasonable judgment, with the character, reputation or appearance of the Airport or the

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Port, or (vi) occasion discomfort, inconvenience or annoyance to either the Port or its adjoining tenants. Without limiting the foregoing, Concessionaire specifically agrees to comply with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to (a) the Airport and its terminals, which exist for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public, and (b) the common food and beverage areas located within the Airport. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 2.6 and Exhibit F.

- 1.4.3.3 **Specific Operating Standards.** Concessionaire shall, at all times, comply with the operating standards set forth on Exhibit C, as may from time to time be amended, substituted, supplemented or extended. Without limitation to Concessionaire's other obligations under this Agreement, Concessionaire acknowledges that it is subject to inspection as set forth on Exhibit C. In addition, the failure to comply with the operating standards shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F. The Port reserves the right, in the Port's sole and absolute discretion, to amend, substitute, supplement and/or extend the operating standard set forth on Exhibit C, including the terms and conditions set forth therein, and upon written notice to Concessionaire of any such modification(s), such modified operating standards shall be complied with by Concessionaire, without need for formal amendment to this Agreement.
- 1.4.3.4 **Food Handling Standards.** Without limiting any other requirements of this Agreement, Concessionaire shall comply with all local health department and HACCP standards regarding the proper and safe receiving, storage, preparation and serving of all food and beverage items as more fully defined in Exhibit C. The failure to comply with these standards shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.
- 1.4.3.5 **Unified Pest Control Standard.** Without limiting any other requirements of this Agreement, Concessionaire shall comply with the Port's unified pest control standard as more fully outlined in Exhibit C. The failure to comply with this standard shall be grounds for the imposition of Liquidated Damages as provided in Section 2.6 and Exhibit F.
- 1.4.3.6 **Street Pricing Policy.** Concessionaire shall, at all times, comply with the street pricing policy set forth on Exhibit D. Without limiting any other rights that may exist under this Agreement, Concessionaire acknowledges that the failure to adhere to the policy shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.
- 1.4.3.7 **Franchise Standards.** Without limiting or otherwise reducing any of the standards otherwise imposed under this Agreement, Concessionaire shall also meet or exceed all franchise standards that are imposed on Concessionaire by any Franchisor. Copies of those franchise standards and performance audit forms shall be sent to the Port prior to the Notice to Open. Copies of inspections conducted by the Franchisor or any mystery

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shopper service hired by the Franchisor shall be sent to the Port within ten (10) days of receipt by Concessionaire or any subtenant.

1.4.3.8 **Employment Standards.** It is the stated expectation of the Port of Seattle Commission that Airport employers, including Concessionaires, provide quality jobs for its employees. To this end Concessionaire shall comply with all, applicable federal, state, and local laws and ordinances related to wages and benefits as well as Concessionaire's specific commitments regarding wages and benefits made as part of its Proposal. The Port also expects Concessionaire to participate in, and otherwise provide documentation relevant for, an employment continuity pool established by the Port. Likewise, Concessionaire shall comply with its specific commitments regarding hiring from the employment continuity program made as part of its Proposal. Concessionaire shall, as required by Section 4.8.6, provide such reports as may be requested by the Port to document Concessionaire's compliance with these requirements.

1.4.3.9 **Small Business Standards.** It is also the policy of the Port of Seattle Commission to encourage Airport businesses, including Concessionaire, to make every reasonable effort to maximize the contracting opportunities for small business (including ACDBEs, as addressed below in Section 3.2) in the construction and operation of the concession. To this end, Concessionaire shall comply with its specific commitments regarding use and inclusion of small business that it made as part of its Proposal. Concessionaire shall, as required by Section 1.6.5, provide such reports as may be requested by the Port to document Concessionaire's compliance with these requirements.

1.4.3.10 **Airport Rules and Regulations.** The use by Concessionaire of the Premises, the public area and all other area of the Airport shall be subject to such Airport Rules and Regulations as are now or may in the future be adopted by the Port, provided that such Rules and Regulations do no conflict with applicable provisions of state or federal law.

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

After the Concessionaire comments to the Port Commission of its objections, or if the Concessionaire fails to comment to the Port Commission during the allotted twenty

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(20) calendar day period, the Port shall implement the proposed Rules and Regulations. Exhibit E provides the most current link to the Airport's Rules and Regulations.

- 1.4.3.11 **Conflict.** Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the Rules and Regulations, or any operating standards of the Port (including, without limitation, the Additional Operating Standards, the most stringent law, regulations rule or standard applicable to this Agreement and Concessionaire's performance shall control.
- 1.4.4 **Franchise.** If the Premises are operated under a franchise or license arrangement, Concessionaire represents and warrants to the Port that Concessionaire has been granted the right to use any trade name or brand that may be used at the Premises for the entire term of this Agreement, pursuant to a franchise or license agreement (the "Franchise Agreement") with the trade name or brand owner (a "Franchisor"). At the Port's request, Concessionaire agrees to provide the Port with a copy of the Franchise Agreement, or a certification from Franchisor that such Franchise Agreement exists, and reasonable evidence that such agreement remains in full force and effect. Concessionaire agrees that if the Franchise Agreement is terminated, expires or is amended so that compliance with the amended provisions will cause Concessionaire to be in breach of its obligations under this Agreement or results in the termination of Concessionaire's right to use Concessionaire's trade name or brand at the Premises or to conduct an operation at the Premises of the type then conducted by or under license from Franchisor under Concessionaire's trade name, shall constitute a material breach of this Agreement and the Port shall have the right to exercise all of its remedies pursuant to Section 2.6 of this Agreement.
- 1.4.5 **No Liens.** Concessionaire will not directly or indirectly create or permit to be created and/or to remain, a Lien upon the Premises, including any Initial Improvements, Midterm Refurbishment, Alterations, fixtures, improvements or appurtenances, except those Liens expressly permitted in writing by the Port. In the event any such Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Concessionaire shall also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding brought on or for the enforcement of such lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises, any Alteration, fixture, improvement or appurtenance to the Premises, or any larger building and/or property of which the Premises may be a part.
- 1.4.6 **Copyright Clearance.** Concessionaire and Concessionaire's Subtenants are responsible for obtaining permission to transmit any copyrighted music, including but not limited to, radio broadcasts, recorded music, and television broadcasts, in their Leased Premises at the Airport in compliance with Federal Copyright Law found in Title 17 of the United States Code, or as amended.

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- 1.4.7 **Signs.** No signs, promotions or other advertising matter, symbols, canopies or awnings (collectively “Signs”) shall be attached to or painted on within, or outside the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. Any permitted Sign shall be professionally prepared. The Port may, without notice and without any liability therefore, enter the Premises and remove any items installed or maintained by Concessionaire in violation of the provisions of this Section 1.4.14. At the termination or sooner expiration of this Agreement, Concessionaire shall remove all such Signs attached to or painted by Concessionaire at its own expense, and Concessionaire shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of its Signs.

If Concessionaire fails to comply with the requirements of this Section 1.4.14, the Port shall have the right to require Concessionaire to restore the Premises to the condition existing immediately prior to the unauthorized installation or modification of the Sign. In the event that Concessionaire fails to restore the Premises within three (3) days following notice by the Port, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Port may have (whether under this Agreement or in law or in equity), pay the Port liquidated damages as provided in Section 2.6 and Exhibit F until Concessionaire has restored the Premises. Concessionaire and the Port agree that the Port will incur damages as a result of the failure to restore the Premises, which damages are impractical or impossible to determine, and that this amount is a reasonable forecast of the damages to be suffered by the Port.

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

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

SECTION 1.5: RENT AND FEES PAYABLE TO THE PORT

- 1.5.1 **Calendar Year Accounting.** For the convenience of the Port, this Agreement will generally be administered financially on a calendar year basis. Consequently, in the event that the Rent Commencement Date falls on anything other than January 1 or the Expiration Date falls on anything other than December 31, the Agreement term will include partial calendar years at the beginning and end of the Agreement term.
- 1.5.2 **Minimum Annual Guarantee.** Beginning on January 1, 2022, Concessionaire shall pay the Port a Minimum Annual Guarantee in the amount of [Dollar Amount]. If Concessionaire has

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multiple Premises the Minimum Annual Guarantee is divided evenly amongst the Premises as follows:

<u>Space ID.</u>	<u>Minimum Annual Guarantee</u>	<u>Minimum Monthly Guarantee</u>
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- 1.5.3 **Second Full Year Through Final Full Year.** For the second full calendar year through the Last Full Year, the Minimum Annual Guarantee shall be an amount equal to eighty five percent (85%) of the total amount (whether by Minimum Annual Guarantee or Percentage Fees) paid by Concessionaire to the Port for the previous calendar year; provided, however, the Minimum Annual Guarantee shall not (subject only to the pro-ration provided in Section 1.5.5 and relief in the event of exceptional circumstances set forth in Section 1.5.7) be less than Minimum Annual Guarantee for the first, full calendar year stated in Section 1.5.2. This annual adjustment will generally be performed based on the Monthly Report submitted in January for the preceding December, not the Annual Report. As such, the Minimum Annual Guarantee amount shall be subject to adjustment following the receipt of the Annual Report as provided in Section 1.6.3.
- 1.5.4 **Final Partial Year.** For the Final Partial Year, the Minimum Annual Guarantee shall be calculated as provided in Section 1.5.3 using the total amount paid by Concessionaire during the Last Full Year but the resultant amount shall be prorated based on the number of *days* in the Last Partial Year. For example, if the Expiration Date falls on May 14, the Minimum Annual Guarantee for the Last Partial Year shall be equal to 36.71% (i.e. 134 days / 365 days x 100%) of the Minimum Annual Guarantee calculated as provided in Section 1.5.3.
- 1.5.5 **Multiple Units with Different Notice to Opens.** In the event that the Premises covered by this Agreement include multiple units and it is expected that the Notice to Opens for such units are expected to vary, the Minimum Annual Guarantee for the First Full Year of this Agreement will be divided among the respective units. The Minimum Annual Guarantee associated with those units with the earliest Notice to Open shall be payable on the first day of the month on or after the Rent Commencement Date as provided in Section 0. For any unit with a later Notice to Open, the Minimum Annual Guarantee associated with such unit shall be payable the first day of the first full month on or after the earlier of (i) the Build-Out Deadline for the unit or (ii) the date on which Concessionaire first opens for business from that unit.
- 1.5.6 **Payment.** The Minimum Annual Guarantee amount shall be divided into equal monthly payments. The Minimum Annual Guarantee shall be payable monthly, in advance, without notice from the Port and without abatement, setoff, or deduction, beginning on the first day of the month after the Rent Commencement Date and thereafter on or before the first day of each and every month during the Agreement term.
- 1.5.7 **Relief for Exceptional Circumstances.** In the event that the total number of Enplaned Passengers for any month decreases by more than twenty percent (20%) from the same month of the prior year, then: (a) the Minimum Annual Guarantee payment due for the next month shall automatically be adjusted downward by the percentage decrease in the number of

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Enplaned Passengers for the month experiencing the decrease, and (b) the Minimum Annual Guarantee for the calendar year in which the reduced monthly payment amount falls shall also be reduced by a like dollar amount.

In making the foregoing calculation, the number of Enplaned Passengers will be determined relative to the particular area(s) of the Airport in which the Premises are located. For units located in the Central Terminal, the number of Enplaned Passengers for the Airport as a whole will be used. For units located in Concourse A, Concourse B, Concourse C, Concourse D, the North Satellite or the South Satellite, the number of Enplaned Passengers for the particular concourse in which the Premises are located will be used. In the event that the Premises are located in more than one portion of the Airport, the Port will weight the number of Enplaned Passengers for the particular portions of the Airport in which the Premises are located based on the relative percentage of Gross Sales from each of the units constituting the Premises for the prior calendar year.

As an example, assume there are two units within the Premises and they are located, respectively, on Concourse A and in the Central Terminal. Further assume that 33.3% of the Concessionaire's Gross Revenue in 2016 came from the unit on Concourse A and 66.7% came from the unit in the Central Terminal. If the number of Enplaned Passengers on Concourse A for the month of July 2017 declined by 40% and the number of Enplaned Passengers for the overall Airport declined 15%, both for the month of July 2017 relative to the number of Enplaned Passengers for the month of July 2016, then the Port will: (a) reduce the Minimum Annual Guarantee amount payable for the month of August 2017 by 23.325% (i.e. 40% reduction on Concourse A x 33.3% Gross Revenue share for Concourse A + 15% reduction Airport wide x 66.7% Gross Revenue share for Central Terminal), and (b) reduce the Minimum Annual Guarantee for calendar year 2017 by a like dollar amount.

- 1.5.8 **Percentage Fees.** Commencing on the Rent Commencement Date, Concessionaire shall also pay the Port a percentage fee (the "Percentage Fee") according to the following schedule and referenced in the Summary of Key Lease Terms and the Proposal, to the extent the Percentage Fee is higher than the monthly payment of the Minimum Annual Guarantee paid to the Port pursuant to Section 1.5.2.

<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>
Annual Gross Sales	

For the First Partial Year and the Final Partial Year, any breakpoints identified in the schedule for payment of a higher Percentage Fee shall be pro-rated based on the number of *days* in the partial year. For example, if the Percentage Fee set forth in the Summary of Key Lease Terms is 12% of Gross Sales up to and including the first \$1,000,000 and 14% of Gross Sales in excess of \$1,000,000 and the First Partial Year commences on May 15, the breakpoint for the First Partial Year shall be \$632,876.71 (i.e. 231 days / 365 days x \$1,000,000).

- 1.5.9 **Notice to Open Incentive.** Should Concessionaire complete its Initial Improvements prior to January 25, 2019, the Port agrees to reduce the Percentage Fees in the Summary of Key Lease

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Terms by 25% for the period of **January 25, 2019** to December 31, 2019. In addition the Minimum Annual Guarantee will not commence until January 1, 2020.

If for any reason (regardless of fault), Concessionaire is not able to complete its Initial Improvements prior to **January 25, 2019**, the original terms and conditions for both the Percentage Fee and Minimum Annual Guarantee as stated in Section 4 shall remain in effect

- 1.5.10 **Contract Rent.** The Port and Concessionaire agree that the first seven percent (7%) of Concessionaire's Gross Sales paid to the Port (whether paid as part of the Minimum Annual Guarantee or as Percentage Fees) shall be the contract rent for the Premises for purposes of the Leasehold Excise Tax Payable pursuant to Chapter 81.29A of the Revised Code of Washington, unless the Washington State Department of Revenue imposes a different percentage allocation. All amounts in excess of the amount deemed subject to Leasehold Excise Tax shall be consideration for the concession rights granted under this Agreement.
- 1.5.11 **Additional Rent.** During the term of this Agreement, Concessionaire shall also pay to the Port, within thirty (30) days of invoice, any maintenance and repair charges required by Section 1.11, any utility charges required by Section 1.12, any Unified Pest Management charges required by Section 1.4.8, and such other amounts as may be owing by Concessionaire to the Port pursuant to the terms of this Agreement.
- 1.5.12 **Payments; Automatic Transfer.** All Rent due under this Agreement shall be paid in lawful money of the United States of America. Concessionaire may not pay any Rent due under this Agreement utilizing a credit card or other, similar instrument for which the Port must pay a commission or discount on the gross funds remitted; all payments shall be made by check, ACH credit transfer, or other form of payment approved by the Port. In the event the Concessionaire delivers a dishonored check or draft to the Port in payment of any obligation arising under this Agreement, Concessionaire shall pay a service charge in the amount established by the Port from time to time, along with interest thereon at eighteen percent (18%) per annum from the original due date of such dishonored check or draft without further demand. In such event, the Port may require that future payments be made by cashier's check or other means acceptable to the Port.

Instead of requiring Concessionaire to pay Rent or other charges in a manner pursuant to Section 0, the Port may, at its sole option, upon not less than sixty (60) days prior notice to Concessionaire, require Concessionaire to promptly execute and deliver to the Port any documents, instruments, authorizations, or certificates required by the Port to give effect to an automated debiting system, whereby any or all payments by Concessionaire of whatsoever nature required or contemplated by this Agreement shall be debited monthly or from time to time, as provided in this Agreement, from Concessionaire's account in a bank or financial institution designated by Concessionaire and credited to the Port's bank account as the Port shall designate from time to time.

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

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In the event that Concessionaire elects to designate a different bank or financial institution from which any fees or other charges under the Agreement are automatically debited, notification of such change and the required documents, instruments, authorizations, and certificates specified in Section 0 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.

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

Concessionaire's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this Section 0 shall constitute a default of this Agreement.

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

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

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

1.5.14 **Accounting Procedures.**

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

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any such records be retained for a longer period of time, in which case Concessionaire, at its option, may deliver such records into the custody of the Port

1.5.14.2 **Monthly Sales Reporting.** With thirty (30) days written notice from the Port, Concessionaire agrees to submit all monthly sales electronically using the Port provided link. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.

1.5.14.3 **Cash Handling.** Without limiting any more general requirements of this Section 1.5, Concessionaire shall observe the cash handling and point-of-sale requirements set forth below.

- A. **Establish Procedures.** Concessionaire shall at all times observe cash and record handling policies and procedures and maintain cash and record handling systems in accordance with reasonable written policies and procedures adopted by Concessionaire. Concessionaire may revise those procedures from time to time upon the advent of generally-accepted technological changes and shall provide the Port notification in the event that it does so. All of Concessionaire's cash and record handling policies and procedures shall be subject to review and approval by the Port upon request.
- B. **Point of Sale Equipment.** Concessionaire's point-of-sale equipment or devices shall properly, accurately and reliably record all information pertaining to each and every transaction entered into between Concessionaire and its customers. The required information includes but is not limited to, the time and date of the transaction; payment method; the sales amount or amounts for all goods or services purchased; the transaction location and operating name; and all other information obtained from the customer or other sources as pertaining to each transaction.
- C. **Sequentially Numbered Transactions.** Concessionaire agrees to sequentially number all transactions, and agrees to provide upon request by the Port a list of transactions that were initiated, but which were eventually voided or cancelled, or for which Concessionaire received no sales or other revenue.
- D. **Changes in Operations.** Concessionaire agrees to notify the Port of any changes in business operations that change or alter the accounting processes or procedures or information storage or data retrieval for Concessionaire's business operations covered under this Agreement.

1.5.15 **Audit.**

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- 1.5.15.1 **Right to Audit.** The Port shall have the right to time to time to inspect and audit, through its accountants or representatives, Concessionaire's records with reference to the determination of any matters relevant to this Agreement, and Concessionaire shall make or cause to be made the records readily available for such examination. The Port may undertake such inspection and/or audit at any reasonable time and from time to time. In the event that Concessionaire's records are not maintained in the Puget Sound region, they shall be made available for audit locally within twenty (20) business days of a request by the Port, or Concessionaire shall pay in full, any travel and related expenses of Port representative(s) to travel to the location outside the Puget Sound region. In addition, the Port shall have the right to conduct a "surprise" audit not more frequently than twice every twenty-four (24) months, and, in the event that Concessionaire's books and records are not maintained locally, Concessionaire shall further pay in full, any travel and related expenses of the Port representative(s) to travel to the location outside the Puget Sound region for such "surprise" audit(s).
- 1.5.15.2 **Right to Review Records of Concessionaire's Other Stores.** In connection with the audit, the Port or its representative will have the right to inspect the records from any other store operated by Concessionaire, but only if such inspection is reasonably necessary to verify Concessionaire's reportable Gross Sales.
- 1.5.15.3 **Right to Copy Concessionaire's Records.** The Port or its representatives shall have the right to copy any records of Concessionaire supporting Gross Sales or any other matter the determination of which is relevant to this Agreement.
- 1.5.15.4 **Concessionaire Must Reconstruct Insufficient Documentation.** If upon examination or audit the Port's accountant or representative determines that sufficient documentation is not maintained, retained, or available to verify Concessionaire's actual Gross Sales or any other matter the determination of which is relevant to this Agreement, Concessionaire shall pay for the cost of such visit, and in addition, should the Port deem it necessary, Concessionaire shall reconstruct, at its sole cost and expense, all records for the determination of Gross Sales or any other matter the determination of which is relevant to this Agreement for any period being audited. If, in the Port's determination, Concessionaire fails to reasonably reconstruct all records in accordance with this Section, then in addition to any remedies under this Agreement or at law, the Port shall be entitled to collect as Additional Rent an amount equal to the greater of: (i) the difference between one hundred twenty five percent (125%) of the Minimum Annual Guarantee for the period in question and the Percentage Fees actually paid for the period in question, or (ii) five percent (5%) of the Percentage Fees actually paid for the period in question.
- 1.5.15.5 **If Gross Sales Are Under-Reported.** If any such audit discloses that the actual Gross Sales exceed those reported:

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- A. Concessionaire shall forthwith pay the Percentage Fee due along with interest at the Default Rate; and
- B. If the audit reveals a discrepancy of more than two percent (2%) of the Percentage Rent reported in accordance with Section 0 above for any twelve (12) month period, Concessionaire shall forthwith pay the cost of such audit along with interest at the Default Rate; and
- C. The Port shall have, in addition to the foregoing rights to costs and any other rights and remedies available to the Port under this Agreement or at law, the right to terminate this Agreement, if such audit discloses that actual Gross Sales exceeded those reported by more than ten percent (10%).

1.5.15.6 **If Gross Sales Are Over-Reported.** If Concessionaire over-reports its Gross Sales and is due a refund, Concessionaire will be granted a credit toward future rents after first deducting the cost of the audit. In the event the cost of the audit exceeds the refund due, Concessionaire shall not be responsible for the balance of the cost of the audit but shall not be entitled to any refund/credit associated with the over-report of Gross Sales.

1.5.15.7 **Subtenant's Records.** If Concessionaire subleases, licenses, or in any manner allows the Premises to be used by another party, Concessionaire is responsible for ensuring that all of such party(ies) records conform to the requirements of this Agreement. The failure of any such party to maintain its records as required under this Agreement, or correctly report gross sales, will be deemed a failure on the part of Concessionaire to conform to the requirements of this Agreement.

SECTION 1.6: METHOD OF PAYMENTS AND REPORTS

1.6.1 **Reporting and Payment.** On or before the fifteenth (15th) of a month, Concessionaire shall submit to the Port a detailed statement showing the Gross Sales generated from the concession during the preceding month (the "Monthly Report") and shall simultaneously pay to the Port the Percentage Fee due for that preceding month less the monthly payment of Minimum Annual Guarantee already paid by the Concessionaire for that month. The Monthly Report shall be filed using the technology and procedures designated by the Port and shall show such reasonable detail and breakdown as may be required by the Port. If the Port instructs Concessionaire to file the Monthly Report or any other report by computer, e-mail, or internet website, the Port shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.

1.6.2 **Annual Reconciliation.** The Percentage Fees shall be subject to annual reconciliation by the Port at the end of each calendar year following receipt of the Annual Report. Under/over payments of less than forty dollars (\$40.00) shall not be subject to adjustment. In the event

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that Concessionaire has underpaid the Rent by forty dollars (\$40.00) or more, Concessionaire shall remit the entire amount of the underpayment together with the Annual Report. In the event Concessionaire has overpaid the Rent by forty dollars or more, the Port will issue Concessionaire a credit that shall be utilized against future Rent payment obligations (or, following the expiration or earlier termination of this Agreement, issue Concessionaire a refund).

- 1.6.3 **Annual Report.** Concessionaire shall provide the Port with a report (the “Annual Report”), due by the deadline set forth in the Summary of Key Lease Terms, that reflects the amount of Gross Sales for the preceding calendar year; provided, however, in the event the First Partial Year is less than six months in duration, the Annual Report for the First Partial Year may be combined with the Annual Report for the First Full Year. The Annual Report shall be accompanied by a signed certificate of an independent Certified Public Accountant (CPA), Concessionaire’s Chief Financial Officer (CFO) or Chief Executive Officer (CEO) stating specifically that (a) he/she has examined the Annual Report, (b) his/her examination included such tests of Concessionaire’s books and records as he/she considered necessary or appropriate under the circumstances, (c) such report presents fairly the information reflected for the preceding calendar year (or, in the case of a report combining the First Partial Year with the First Full Year, from the period from the Rent Commencement Date until the end of the First Full Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Concessionaire’s report is free from material misstatement.

Notwithstanding the foregoing, in the event that the Port conducts an audit of Concessionaire’s operations pursuant to Section 0 and that audit reveals a discrepancy of more than two percent (2%) of the Percentage Rent reported in accordance with Section 0 above for any twelve (12) month period, Concessionaire’s Annual Report must thereafter be accompanied by a signed certificate of an independent Certified Public Accountant; Concessionaire’s CEO and CFO may not certify the report.

The Annual Report shall be provided in writing and/or electronic format as reasonably specified by the Port, and in addition to such other detail as the Port may reasonably require, the Annual Report shall breakdown Gross Sales by month, location, and product category. Any additional or unpaid Rent or fees due for the prior calendar year shall be submitted with the Annual Report. The failure to timely provide the report required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.

In the event that the Annual Report makes a substantial adjustment in Concessionaire’s Gross Sales for the preceding calendar year, the Port reserves the right to adjust the amount of the Minimum Annual Guarantee established pursuant to Section 1.5.3. While the Port will not generally adjust the amount of monthly payment of the Minimum Annual Guarantee unless the adjustment in the prior year’s Gross Sales is likely to result in significant over/under payment by Concessionaire, the Port and Concessionaire will specifically take account of any adjustment in the Minimum Annual Guarantee in connection with the annual reconciliation

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and Concessionaire's submission of the Annual Report for the calendar year following the one for which the adjustment was made.

- 1.6.4 **Other Reports.** In addition to any reports otherwise required under the terms of this Agreement, Concessionaire shall provide the Port with: (i) a statement, due within thirty (30) days of any request by the Port, of Net Book Value of Concessionaire's Leasehold Improvements (the "NBV Report"), calculated in conformance with the rules set forth in Section 0; and (ii) such other and further reports, on such frequency as the Port may reasonably require from time to time, all without any cost to the Port. All such reports shall be provided in writing and/or electronic format as reasonably specified by the Port from time to time. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.
- 1.6.5 **Quality Jobs and Small Business Reporting.** Concessionaire shall provide the Port, upon reasonable request, one or more reports that document Concessionaire's compliance with, and efforts to further, the Port's quality jobs and small business initiatives. Reports relating to quality jobs will generally encompass information about Concessionaire's employee pool, wage rates, benefits (including time-off and Affordable Care Act compliance), and hiring practices. Reports relating to small business will generally encompass information about Concessionaire's inclusion of small businesses within its day-to-day operations, specifically including as suppliers. Without limiting the generality of the foregoing, the Port shall specifically have the right to request a report that documents Concessionaire's compliance with any commitments made by Concessionaire during any competitive process (whether request for proposals or competitive evaluation process) under which Concessionaire was selected to operate a concession at the Airport; provided, however, nothing in this Section shall require Concessionaire to disclose as part of any report any sensitive personally identifiable information about its individual employees.
- 1.6.6 **Improvement Reports.** Within one hundred twenty (120) days of the completion of the Initial Improvements, Midterm Refurbishment, and all Alterations for which the Port's consent is required, Concessionaire shall provide the Port with: (a) a certified statement (subject to verification, audit and approval by the Port) specifying the total construction cost (including architectural, engineering and permitting costs) in such detail as reasonably necessary to ascertain the costs of all leasehold improvements, furniture, fixtures and equipment constructed or installed by Concessionaire in the Premises; (b) a certification that the improvements have been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Port Standards; (c) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (d) a reproducible final copy of the plans as-built for all improvements along with computer discs as electronic files in a format compatible with the Port's CAD Standards Manual, to enable the Port to upgrade its existing files to reflect the as-constructed changes made by Concessionaire. The failure to timely provide the reports, statements and certifications required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.

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SECTION 1.7: SECURITY DEPOSIT

- 1.7.1 **Security Deposit.** Concessionaire shall, prior to the Notice to Open, obtain and deliver to the Port a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, or other security in a form approved by the Port in the amount of **[Enter Amount]** as referenced in the Summary of Key Lease Terms to secure Concessionaire's full performance of this Agreement, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder. In the event that a late charge is payable under Section 1.5.13 (whether or not collected) for three (3) installments of Rent in any twelve (12) month period, the amount of the Security shall, at the Port's election, be doubled.

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

- 1.7.2 **Return of Security Deposit.** The Security is a part of the consideration for execution of this Agreement. If Concessionaire shall have fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to Concessionaire within sixty (60) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.
- 1.7.3 **Application of Security Deposit.** The Port may apply all or part of the Security to unpaid Rent or any other unpaid sum due hereunder, or to cure other defaults of Concessionaire. If the Port uses any part of the Security during the term of the Agreement, Concessionaire shall restore the Security to its then-currently required amount within fifteen (15) days after application of the Security by the Port. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

SECTION 1.8: MARKETING PROGRAM

- 1.8.1 **Program.** The Port has established a marketing program ("Program") to promote the concessions at the Airport. The Program generally includes advertising, media placements, special events, promotional events, social media, brochures, videos and catalogs, etc., promotion and monitoring as appropriate. Annually, the Port will, in consultation with interested Airport concession tenants, develop and establish the Program's annual business plan, objectives, evaluation methodology, and budget for the calendar year based in part on an analysis of the effectiveness of each previous year's Program elements.
- 1.8.2 **Funding.** The Program will be funded by contributions from the Concessionaire and other concessionaires at the Airport (the "Program Fund"). Concessionaire will contribute an amount

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up to one half of one percent (0.5%) of its monthly Gross Sales, but no more than Thirty Thousand Dollars (\$30,000.00) per concession facility, per calendar year (pro-rated based on the number of months in the term for any partial year), to fund the Program; provided, however, in the event the Port assesses a lower percentage rate for other in-line, non-temporary Airport concession tenant's contribution to the Program Fund, Concessionaire's contribution rate will automatically be adjusted to the lowest percentage rate assessed by the Port for any Airport concession tenant. Concessionaire recognizes that certain kiosk tenants and temporary (two years or less) locations will not be required to participate in the Program (or may pay a lesser rate if they elect to participate), and these tenants shall not affect the rate paid by Concessionaire. All contributions to the Program may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Concessionaire shall make its contributions to the Program Fund monthly in arrears concurrently with its payment of the Percentage Fee under this Agreement.

- 1.8.3 **Right to Discontinue.** The Port reserves the right at any time to terminate the Program and thereafter, continue to provide marketing and promotional services until the balances remaining in the Program Fund is exhausted.

SECTION 1.9: COMMON AREAS

- 1.9.1 **Control of Common Areas by Port.** The Port shall at all times have the exclusive control and management of the roof, walls, parking areas, access roads, driveways, sidewalks, concourses, loading docks, washrooms, elevators, escalators, stairways, hallways and other areas, improvements, facilities and/or special services provided by the Port for the general use, in common, of Airport users and tenants ("common areas and facilities"). Without limiting the Port's right of control and management, the Port specifically reserves the right to: (i) use the same for any purpose, including the installation of signs for directional, advertising or other purposes, (ii) change the area, level, location and arrangement of the common areas and facilities; (iii) provided Concessionaire is not deprived of reasonable access to its Premises, close all or any portion of the common areas and facilities; and (iv) do and perform such other acts in and to the common areas and facilities as the Port shall determine to be advisable with a view to the improvement of the convenience and use thereof by the Port and tenants of the Airport.
- 1.9.2 **Common Area Maintenance.** The Port shall have the right to institute and charge a monthly maintenance fee to offset the costs of maintenance and repair of common areas (whether or not public) from which Concessionaire and other concession tenants benefit. The specific amount will be established based on the specific concession type and location reasonably determined by the Port (e.g. retail, service or food & beverage). However, the Port shall have no right to charge Concessionaire, and Concessionaire shall have no obligation to pay, such amount until such time as not less than fifty percent (50%) of other concessions tenants, both in number and total Gross Sales for the particular concession type and location, are subject to payment of such amount.
- 1.9.3 **License.** All common areas and facilities that Concessionaire is permitted to use and occupy are used and occupied under a revocable license. If the amount of such areas or facilities is revised or diminished, such revision or diminution shall not be deemed a constructive or

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actual eviction, and the Port shall not be subject to any liability, nor shall Concessionaire be entitled to any compensation or reduction or abatement of Rent.

- 1.9.4 **Parking.** While the Port may provide parking facilities to the Concessionaire's employees in common with employees of other tenants and users of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. The Port has no obligation to provide parking facilities to Concessionaire's employees.
- 1.9.5 **Centralized Receiving and Distribution.** The Port reserves the right to develop and manage a Centralized Receiving and Distribution Facility (CRDF) to be used by Concessionaire and other parties receiving deliveries for the Airport terminals, which CRDF may be located at a location off the Airport with regular deliveries to the Airport. The Port may also select a single entity to manage receiving and deliveries and to handle product distribution within the Airport terminals. If the Port chooses to select a delivery and distribution management entity, Concessionaire will be required to use the CRDF and the services of such manager and pay its respective costs of the program, at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time. Upon implementation of a CRDF, do direct deliveries will be allowed to Concessionaire in the Airport terminals.

SECTION 1.10: IMPROVEMENTS

- 1.10.1 **Improvements by the Port.** The Port shall have no obligation to make any improvements to the Premises whatsoever. It is, however, understood that the Port may from time to time elect to alter, improve or remodel other portions of the Airport, and Concessionaire agrees that the portion of the Premises, if any, which is visible to the general public may be altered, remodeled or improved at the Port's expense in connection with any such work. The Port shall further have the right, at its sole discretion, to make minor modifications to the Premises to accommodate Airport operations, renovations, maintenance, or other work to be completed on or about the Airport, which modifications will not generally involve the recapture or disruption of more than fifty (50) square feet of the Premises. In the event of any such modifications, the Port will revise the Premises through a written notice to Concessionaire rather than a formal amendment to the Agreement. Concessionaire agrees that any inconvenience resulting from any such work or modifications by the Port or its contractors and agents shall not be grounds for reduction of rent or fee if the same shall not unreasonably interfere with Concessionaire's use of the Premises.

1.10.2 **Improvements by Concessionaire.**

- 1.10.2.1 **Initial Improvements.** Concessionaire shall make a minimum investment in initial leasehold improvements for the Premises, including architectural and engineering fees, construction costs, furniture, fixtures and equipment and other expenditures (the "Initial Improvements"), in an amount not less than **Eight Hundred Ninety and 29/100 (\$890.29) Dollars**; provided, however,

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the Port may, in its sole discretion, agree to a lower amount in the event that Concessionaire can nonetheless satisfy all of the requirements of the Agreement, specifically including Port Standards.

Concessionaire shall complete the Initial Improvements no later than the Build-Out Deadline; provided, however, the Build-Out Deadline may be extended to the extent of non-concurrent delays directly caused by the Port and/or force majeure events beyond the control of Concessionaire as set forth in Section 4.1.8. In the event that Concessionaire has not completed the Initial Improvements prior to the Build-out Deadline, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Port may have (whether under this Agreement or in law or in equity), pay the Port Delay Damages in the amount of **Four Hundred and 00/100 (\$400.00) Dollars per calendar day** until Concessionaire has completed the Initial Improvements and received a Temporary Certificate of Occupancy.

1.10.2.2 **Milestone.** Concessionaire agrees and acknowledged the following milestones have been established during the Initial Improvements design phase:

- A. The Building Permit design submittal shall be no later **than the following and** as referenced on the Summary of Key Lease Terms.

Space ID.	Plans to Building Department	Anticipated TCO

- B. Concessionaire has fourteen (14) calendar days to respond to any comments issued by the Port during the concept approval, 60% design submittal, 90% design submittal, and 100% design submittal. Failure to meet these milestones may result in Liquidated Damages being assessed in accordance with Exhibit F (Other Operating Standards).
- C. Initial Improvements shall begin no later than 30 calendar days after a building permit has been issued

1.10.3 **Midterm Refurbishment.** On or before the Midterm Deadline, Concessionaire shall completely upgrade and refurbish the Premises (the “Midterm Refurbishment”) in a manner acceptable to the Port in order to maintain an attractive and inviting appearance to customers. In order to permit the timely completion of the Midterm Refurbishment, not later than one hundred twenty (120) days before the Midterm Deadline, Concessionaire shall submit to the Port Concessionaire’s proposed plan of refurbishment, specifically identifying those repairs and Alterations, including but not limited to painting and replacement of furniture, trade fixtures and equipment, that it intends to undertake. The Midterm Refurbishment shall be of

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quality equal to or better than the Initial Improvements, and all work (including, but not limited to, any Alterations) shall be subject to the prior written approval of the Port, which shall not be unreasonably withheld, conditioned or delayed. Unless otherwise expressly approved by the Port, Concessionaire's investment in the Midterm Refurbishment shall be not less than the Midterm Refurbishment Amount. In the event that Concessionaire has not completed the Midterm Refurbishment by the Midterm Deadline, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Port may have (whether under this Agreement or in law or in equity), pay the Port liquidated damages in the amount of one-half (50%) of the Delay Damages until Concessionaire has completed the Midterm Refurbishment.

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

1.10.5 **Standards for Alterations and Improvements.**

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

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

1.10.5.3 **Coordination.** Concessionaire understands that the Airport is undergoing extensive remodeling. At all times during construction and installation of the Initial Improvements, the Midterm Refurbishment, any Alterations and any

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furniture, trade fixtures and/or equipment by Concessionaire, Concessionaire, its agents, employees and independent contractors shall cooperate with and coordinate activities and work with the Port construction managers and other concessionaires at or near the Premises.

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

SECTION 1.11: MAINTENANCE AND REPAIR

- 1.11.1 **Maintenance and Repair by Port.** The Port shall keep and maintain the foundations, roof, common areas and common utilities up to the point of Concessionaire’s connection, and structural portions of the exterior walls of the Premises (excepting any walls which are installed by or on behalf of Concessionaire) in good order, condition and repair. The Port shall

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perform this work at its sole cost and expense, except to the extent that any such repairs may be required as a result of damage caused by negligence of Concessionaire or its agents, employees, invitees or licensees, in which event the work shall be at the cost or expense of Concessionaire. The Port shall perform such repair or maintenance work called to its attention by Concessionaire within a reasonable period of time after receipt of such notice by Concessionaire. There shall be no abatement or reduction of Rent, and the Port shall not be responsible for any loss or damages to Concessionaire's business, arising by reason of the Port making any repairs, alterations or improvements.

- 1.11.2 **Maintenance and Repair by Concessionaire.** Subject only to the specific obligations of the Port set forth in Section 1.11.1, Concessionaire shall, at its sole cost and expense, keep the Premises, and every part thereof and any fixtures, facilities or equipment contained therein, in good order, condition and repair at all times. Concessionaire shall likewise comply with any preventative maintenance practices established by the Port and listed in the Airport Dining & Retail Preventative Maintenance Program Manual, as modified from time to time. The manual is available for download on the Port of Seattle's website and Concessionaire is responsible to keep a copy of the most up-to-date version of the manual. Concessionaire shall make all repairs and replacements (ordinary as well as extraordinary, foreseen and unforeseen) which may be necessary or required so that at all times the Premises are in good order, condition and repair. Without limiting the generality of the foregoing, Concessionaire shall keep the heating, air conditioning, electrical, plumbing and sewer systems, floors, doors, security grilles, interior walls, ceilings, window frames, glass and all portions of the storefront area in a good state of repair. Concessionaire shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port.

Concessionaire shall also keep the Premises neat, clean and in sanitary condition and follow best practices for hygiene to keep the Premises free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. Concessionaire shall reimburse the Port for the pest control services provided by the Port pursuant to Section 4.1.8 at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time. In the event that Concessionaire otherwise contracts for the provision of pest control services, any such services shall be supplemental to those provided by the Port under Section 4.1.8, and Concessionaire and its pest control contractor shall specifically coordinate its services with the Port's selected Unified Pest Management Program contractor.

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

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The failure to perform the maintenance and repair required by this Section shall be grounds for the imposition of liquidated damages as provided in Section 2.6 and Exhibit F.

SECTION 1.12: UTILITIES

- 1.12.1 **Utilities.** Concessionaire shall be liable for and shall pay throughout the term of this Agreement, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, gas, water, cable television, grease interceptor, sewerage, fire protection, recycling, garbage disposal and janitorial services. For any utility services furnished by the Port, Concessionaire shall pay the Port for such services at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time.
- 1.12.2 **Connections and Meters.** Without limiting the generality of the language set forth in Section 1.12, the following additional requirements related to utility services for the Premises shall apply unless otherwise expressly agreed by the Port in writing:
- 1.12.3 **HVAC.** Concessionaire shall – at its cost – furnish, install and maintain any ductwork and other connections within or leading into the Premises, and shall connect and complete the heating, ventilating and air conditioning (HVAC) from the Airport’s central system. Thereafter, the Port shall, without charge, furnish normal and reasonable quantities of central air from the central HVAC system to the Premises and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the Port shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Concessionaire properly maintains the ductwork and other connections within or leading into the Premises and complies with the recommendations of the Port regarding reasonable occupancy and use of the Premises.
- 1.12.4 **Electricity and Lighting.** Concessionaire shall – at its cost – furnish, install and maintain an electric meter for the Premises at a location and of a type specified by the Port. Concessionaire shall also – at its cost – furnish, install and maintain all lighting fixtures and wiring for general illumination of the Premises. Levels of illumination and wattage requirements shall be subject to the approval of the Port.
- 1.12.5 **Water, Natural Gas, and Sewerage.** To the extent water or natural gas is required by Concessionaire for its operations, Concessionaire shall – at its cost – furnish, install and maintain a water and natural gas meter for the Premises at a location and of a type specified by the Port.
- 1.12.6 **Cabling and Communications.** Concessionaire shall use the Port’s cabling and communications system for its operations at the Airport when such cabling and communications system has been installed by the Port, and Concessionaire shall pay a user fee as will be determined by the Port. In the event Concessionaire is allowed to install communication equipment, any such installation shall be subject to the Port regulation.
- 1.12.7 **Garbage and Recycling.** Concessionaire shall use the garbage, composting, and recycling system provided by the Port. Concessionaire is required to participate in all garbage and recycling programs. This includes, but is not limited to, composting, mixed cardboard, paper,

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plastic, metal, and glass recycling, bulk grease recycling and such other programs that may from time to time be adopted by the Port.

- 1.12.8 **Utility Interruptions**. The Port shall have the right to shut down electrical energy to the Premises (or portions thereof) when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to the Airport's electrical system (singularly or collectively, "Electrical Work"), regardless of whether the need for such Electrical Work arises in respect of the Premises or elsewhere in the Airport. Whenever possible, the Port shall give Concessionaire no less than two (2) days prior notice for such electricity shutdown. The Port shall use all reasonable efforts to not shut down Concessionaire's electrical energy for such Electrical Work during business hours unless such Electrical Work shall be: (a) required because of an emergency; or (b) required by the electricity company servicing the Airport or by any governmental or quasi-government law, rule, code, directive, or order.

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

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

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

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ARTICLE II

SECTION 2.1: TAXES

- 2.1.1 **Payment of Taxes.** Concessionaire shall be liable for, and shall pay throughout the term of this Agreement, all license fees and all taxes payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Concessionaire on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, the rentals payable hereunder, whether imposed on Concessionaire or on the Port. With respect to any such taxes payable by the Port which are on or measured by the Rent payments hereunder, Concessionaire shall pay to the Port with each Rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Concessionaire shall be payable by Concessionaire to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Concessionaire shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.
- 2.1.2 **Personal Property Taxes.** Concessionaire shall pay or cause to be paid, prior to delinquency, all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Concessionaire. If any such taxes on Concessionaire's personal property or trade fixtures are levied against the Port or the Port's property, and if the Port pays the taxes based upon such increased assessment, Concessionaire shall, upon demand, repay to the Port the taxes so levied.

SECTION 2.2: INDEMNITY

- 2.2 **Indemnity.** The Port, its officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Concessionaire or by others, including but not limited to all persons directly or indirectly employed by Concessionaire, or any agents, contractors, subcontractors, licensees or invitees of Concessionaire, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Concessionaire's use or occupancy of the Premises and adjacent areas.

To the maximum extent permitted by law, Concessionaire shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all claims, loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs arising, directly or indirectly, from: (a) the condition of the Premises or out of the occupancy by the Concessionaire or any subtenant, licensee, concessionaire, or contractor of Concessionaire; and (b) any accident, injury, death or damage, however caused, to any person or property on or about the Premises; and (c) any fault or negligence by Concessionaire or any subtenant, licensee, concessionaire or contractor of the Concessionaire or of any officer, agent, or employee of any such person; and (d) any failure on Concessionaire's part to comply with any of the covenants, terms and conditions contained in this Agreement; *provided, however,*

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nothing herein shall require Concessionaire to indemnify the Port from any accident, injury, death or damage arising out of the sole negligence of the Port or its Commissioners, officers, agents and employees. Concessionaire agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Concessionaire expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity. Such waiver shall not, however, prevent Concessionaire from asserting such immunity against any other person or entity.

Notwithstanding anything to the contrary in Section 0, in the event of the concurrent negligence of Concessionaire, its subtenants, licensees, concessionaires, contractors, or any officer, agent, or employee of any such person on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Concessionaire's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Concessionaire's negligence and that of Concessionaire's subtenants, licensees, concessionaires, contractors, and any officers, agents, and employees of any such person, including Concessionaire's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

CONCESSIONAIRE AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. Concessionaire's obligations under this Section 0 shall survive the expiration or earlier termination of this Agreement.

SECTION 2.3: INSURANCE

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

2.3.1.1 **General Liability Insurance.** Concessionaire shall obtain and keep in force a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects Concessionaire and the Port, as an additional insured using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant thereto, and specifically including the action/inaction of any subtenant, licensee or concessionaire. Such insurance shall be on occurrence basis providing single limit coverage in an amount not less than two million dollars (\$2,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. The policy shall contain a minimum one hundred thousand dollars (\$100,000) sub-limit that covers damage to premises rented or leased to Concessionaire, including fire damage. This limit shall be identified

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on the Certificate of Insurance. The Port shall be submitted upon Agreement inception, a copy of the additional insured endorsement, that validates the Port has been added as an additional insured. Additional endorsements shall include one to validate the Concessionaire's insurance is primary and non-contributory and a waiver of the transfer of the rights of recovery.

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

2.3.1.3 **Automobile Liability Insurance.** Concessionaire shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that provides coverage for claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations. Concessionaire shall provide a Waiver of Subrogation on this policy in favor of the Port. Such insurance shall cover any "Auto" (i.e. owned, hired and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than one million dollars (\$1,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. Driving on the non-movement side of the airfield at STIA will require limits of five million dollars (\$5,000,000) per occurrence.

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

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

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

2.3.2 **Insurance Policies.**

- 2.3.2.1 **Insurance Companies.** Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of "Best's Insurance Guide."
- 2.3.2.2 **Deductibles.** No insurance required herein shall contain a deductible or self-insured retention in excess of two hundred thousand dollars (\$200,000) without the prior written consent of the Port.
- 2.3.2.3 **Cancellation/Non-Renewal.** Insurance is to remain current throughout the term of the Agreement. The Port shall receive documentation annually to include a certificate of insurance and any applicable endorsements to validate the insurance required herein has been purchased and is compliant with the Agreement requirements within ten (10) days of each insurance renewal. Should any insurance required herein be terminated, cancelled, or not renewed, the Concessionaire will have five (5) days to obtain replacement insurance from the date of the termination, cancellation or non-renewal notice Concessionaire receives from their insurer(s). In the event the insurance is not replaced within the five (5) days, the Agreement shall – notwithstanding any other notice period provided for – be in Default under 0 and the Port shall have the right, under Section 0, to procure such insurance as the Port considers reasonable to protect its interests without further notice to Concessionaire.
- 2.3.2.4 **Evidence of Insurance.** Concessionaire shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Agreement, and the amounts of all deductibles and/or self insured retentions. Upon request by the Port, Concessionaire shall deliver or cause to be delivered to the Port, certified copies of the policies of insurance that Concessionaire has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the Concessionaire's insurance policies.

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- 2.3.2.5 **Subtenants.** The Port may require all subtenants, at subtenant's sole cost and expense, to maintain additional insurance coverage, during the subtenant's occupancy of the Premises, and Concessionaire shall cause to be delivered to the Port, certificates which shall include but not be limited to the following: Worker's Compensation as required by Washington State law, Comprehensive General Liability Insurance, Property Insurance, Business Automobile Liability Insurance, Product and/or Liquor Liability Insurance.
- 2.3.2.6 **No Limitation of Liability.** The limits of insurance required by this Agreement or as carried by Concessionaire shall not limit the liability of Concessionaire nor relieve Concessionaire of any obligation hereunder.
- 2.3.3 **Waiver of Subrogation.** Without affecting any other rights or remedies, Concessionaire (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Concessionaire arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, Concessionaire shall cause each insurance policy required by Section **Error! Reference source not found.** to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.
- 2.3.4 **Increase in Port's Cost of Insurance.** Concessionaire shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the term of this Agreement, may be added to the amount of Rent and shall be paid by Concessionaire to the Port upon the monthly rental day next thereafter occurring.

SECTION 2.4: DAMAGE OR DESTRUCTION

- 2.4.1 **Duty to Repair.** If the Premises or any buildings or structures of which the Premises are a part are damaged by fire, the elements, earthquake, accident or other casualty (collectively, "Casualty"), the Port shall, except to the extent either party has the right to terminate this Agreement under Section 0, use reasonable efforts to repair and restore the Premises and/or the buildings or structures of which the Premises are a part to substantially their former condition to the extent permitted by then-applicable Legal Requirements; *provided, however*, the Port's obligation to repair and restore shall not extend to any Initial Improvements, Midterm Refurbishment, Alterations or any of Concessionaire's personal property, specifically including the Removable Fixtures.
- 2.4.2 **Right to Terminate.** The Port may elect to terminate this Agreement in the event that the Port, in its sole judgment, concludes that the damage to the Premises or any buildings or structures of which the Premises are a part cannot be repaired within thirty (30) days of the Casualty (with the repair work and the preparations therefor to be done during regular

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working hours on regular work days). In the event that the Port elects to terminate this Agreement, the Port shall advise Concessionaire of that fact within thirty (30) days of the date of the Casualty and notify Concessionaire of the date, not more than ninety (90) days after the Casualty, on which the Agreement will terminate.

- 2.4.3 **Abatement of Rent.** Unless the casualty results from Concessionaire's negligence or breach of the terms of this Agreement, the Minimum Annual Guaranty (if any) shall be abated in the same proportion that any portion of the Premises that is rendered untenable or inaccessible bears to the whole thereof from the period from the date of the Casualty through the date of substantial completion of the repairs to the Premises (or to the date of termination of the Agreement if either party shall elect to terminate the Agreement). Percentage Fees shall not abate. The Port shall not otherwise be liable to Concessionaire for any loss of the use of the whole or any part of the Premises (including loss of business) and/or any inconvenience or annoyance occasioned by the Casualty, by any damage resulting from the Casualty, or by any repair, reconstruction or restoration.
- 2.4.4 **Concessionaire's Duty to Repair.** Except to the extent the Port elects to terminate this Agreement under Section 0, Concessionaire shall, at its sole cost and expense, be responsible for all repairs or restoration of any Initial Improvements, Midterm Refurbishment, Alterations or any Removable Fixtures, which repair or restoration may be necessary as a result of any casualty.
- 2.4.5 **Waiver.** Except as specifically set forth in this Agreement, Concessionaire hereby waives any right that Concessionaire may have, under any applicable existing or future law, to terminate this Agreement in the event of any damage to, or destruction of, the Premises or any buildings or structures of which the Premises are a part.

SECTION 2.5: ASSIGNMENT AND SUBLEASE

- 2.5.1 **Prohibition.** Concessionaire shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Concessionaire of all or any part of the Premises, without the prior written consent of the Port in each instance. Concessionaire shall at the time the Concessionaire requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee, subtenant or licensee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, subtenant or licensee together with the proposed form of assignment, sublease or license. Within thirty (30) days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (i) to consent to such proposed assignment, sublease or license, (ii) buyout Concessionaire's interest in the Agreement as provided in Section 2.5.3, or (iii) disapprove the assignment, sublease or license, setting forth the grounds for doing so.
- 2.5.1.1 As a condition for the Port's consent to any assignment, sublease or license, the Port may require that the assignee, sublessee or licensee remit directly to the Port on a monthly basis, all monies due to Concessionaire by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Concessionaire pursuant to Section 0). In addition, a condition to the Port's

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consent to any assignment, sublease or license of this Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, sublessee or licensee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Concessionaire hereunder.

- 2.5.1.2 In the event of any assignment, Concessionaire and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the tenant then in possession without notice to or consent of any assignor, including Concessionaire; and any extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Concessionaire and of each respective assignor.
- 2.5.1.3 Concessionaire agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Agreement or the Port should buy out Concessionaire's interest pursuant to Section 2.5.3, then the subtenant or licensee, at the request of the Port, will attorn to the Port and the sublessee or licensee, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant or licensee in such circumstances only by privity of estate. The Port may, in its sole discretion, accept or reject the attornment.
- 2.5.1.4 No assignment, subletting or license by Concessionaire shall relieve Concessionaire of any obligation under this Agreement, including Concessionaire's obligation to pay Rent or any other sum hereunder. Any purported assignment, subletting or license contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.
- 2.5.1.5 Concessionaire shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Concessionaire for consent to an assignment, subletting or license.
- 2.5.2 **Excess Rental.** If in connection with any assignment, sublease or license, Concessionaire receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, after appropriate adjustments to account for any improvements or alterations made by Concessionaire and to assure that all other payments called for hereunder and out-of-pocket

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expenditures, operating costs or concessions incurred by Concessionaire in connection with such assignment, sublease or license, are appropriately taken into account, Concessionaire shall pay to the Port seventy-five percent (75%) of the excess of each such payment of rent or other consideration received by Concessionaire after its receipt.

- 2.5.3 **Buyout.** Within the time provided by Section 2.5.1, the Port shall notify Concessionaire whether it is interested in negotiating a buy-out of Concessionaire's interest in this Agreement. The Port shall have no right to buy-out Concessionaire's interest in this Agreement in the event that a proposed assignment is directly as a result of a proposed merger, acquisition or sale of substantially all of the assets of Concessionaire. If the Port is interested in a buy-out of Concessionaire's interest, the Port shall have sixty (60) days from the date of its notice to Concessionaire to enter into an agreement to buy out Concessionaire's leasehold interest in this Agreement upon substantially the same terms and conditions as proposed between Concessionaire and the third party. The purchase price to be paid by the Port under this buy-out right shall be the proposed transaction purchase price as set forth in the letter of intent or proposed agreement between Concessionaire and the third party.

If the Port and Concessionaire fail to enter into a written agreement for such a purchase within the period of time provided by Section 0, then the Port shall be deemed to have waived its buy-out right. Subject to the other provisions of this 0, Concessionaire may then transfer its interest in this Agreement, but only upon the same terms and conditions as reviewed by the Port.

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

- 2.5.4 **Scope.** The prohibition against assigning or subletting contained in this Section 2.5 shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this Section 2.5, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Concessionaire (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall be deemed an assignment. If this Agreement be assigned, or if the underlying beneficial interest of Concessionaire is transferred, or if the Premises or any part thereof be sublet or occupied by anybody other than Concessionaire, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess Rent so collected in accordance with the terms of Section 0, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Concessionaire from the further performance by Concessionaire of covenants on the part of Concessionaire herein contained. No assignment or subletting shall affect the continuing

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primary liability of Concessionaire (which, following assignment, shall be joint and several with the assignee), and Concessionaire shall not be released from performing any of the terms, covenants and conditions of this Agreement.

- 2.5.5 **Concessionaire's Responsibility for Subtenants.** In the event that Concessionaire subleases any portion of the Premises, Concessionaire shall be responsible for managing all of its subtenants and for ensuring that all its subtenants adhere to the terms of this Agreement. Concessionaire is responsible for ensuring all of its subtenants adhere to proper cash-handling techniques, including without limitation any point-of-sale system and cash-handling criteria required by the Port hereunder. If a subtenant fails to open its unit or goes out of business, Concessionaire is responsible to put up appropriate temporary storefront barriers, curtains, display boxes or signage as directed by the Port. And if Concessionaire fails to comply with this paragraph in the time period specified by the Port, Operator agrees to pay the Port liquidated damages as provided in Section 0 and Exhibit F until such temporary installation is complete. Concessionaire is responsible for terminating any sublease and/or license with subtenants, locking out a subtenant (if legally permissible), instituting suit for rent or for use or occupancy or proceedings for recovery of possession when (a) subtenant defaults; or (b) Concessionaire is entitled to terminate the subtenant's sublease and/or license. All legal expenses incurred in bringing such action are Concessionaire's sole responsibility. The Port agrees not to terminate this Agreement under 0 if the event of default is a result of an action or omission of a subtenant if and only if; (i) after notification to the Port, Concessionaire has taken or is taking all legally permissible corrective action, including initiation of termination actions with respect to its sublease/subcontract with the defaulting subtenant; and (ii) Concessionaire has made the Port financially whole.

SECTION 2.6: DEFAULT

- 2.6.1 **Defaults.** The occurrence of any one or more of the following events constitutes a default of this Agreement by Concessionaire with or without notice from the Port:
- 2.6.1.1 The vacating or abandonment of the Premises by Concessionaire.
 - 2.6.1.2 The failure by Concessionaire to make any payment of Rent, or any other payment required by this Agreement, when due.
 - 2.6.1.3 The failure by Concessionaire to observe or perform any covenant, condition, or agreement to be observed or performed by Concessionaire in this Agreement.
 - 2.6.1.4 The discovery by the Port that any required report, financial statement or background statement provided to the Port by Concessionaire, any successor, grantee, or assignee was materially false.
 - 2.6.1.5 The filing by Concessionaire of a petition in bankruptcy, Concessionaire being adjudged bankrupt or insolvent by any court, a receiver of the property of Concessionaire being appointed in any proceeding brought by or against Concessionaire, Concessionaire making an assignment for the benefit of

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creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Concessionaire's interest in the Premises or on any personal property kept or maintained on the Premises by Concessionaire.

- 2.6.2 **Remedies.** Whenever any default (other than a default under Section 2.6.1.5 above, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues un-remedied, in whole or in part, for: (i) ten (10) days after written notice is provided by the Port to Concessionaire in the case of default for failure to pay any Rent, or other required payment when due, or (ii) thirty (30) days after written notice is provided by the Port to Concessionaire for any non-monetary default, this Agreement and all of Concessionaire's rights under it will automatically terminate if the written notice of default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Concessionaire all unpaid Rent or other payments and damages incurred because of Concessionaire's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the Default Rates from the date such Termination Damages are incurred by the Port until paid.

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

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

- 2.6.2.1 In an accelerated lump-sum payment discounted to present value; or
- 2.6.2.2 In monthly installments, in advance, on the first day of each calendar month following termination of the Agreement and continuing until the date on which the Agreement term would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or
- 2.6.2.3 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Agreement term, reduced to present worth. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subparagraph, "present worth" is computed by applying a discount rate

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equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

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

In addition to the rights granted by Section 1.10.6, if upon any reentry permitted under this Agreement, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Concessionaire. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Concessionaire of the Port's action. All risks associated with removal and storage shall be on Concessionaire. Concessionaire shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property that has been stored for a period of thirty (30) days or more, unless Concessionaire has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Concessionaire to the Port. The balance of sale proceeds, if any, will then be paid to Concessionaire.

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

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

- 2.6.5.1 **Noncompliance.** The Port's ADR Manager or the ADR Manager's authorized representative shall have the right to make reasonable objections to Concessionaire's failure to create and maintain a vibrant first-class concession at the Airport in accordance with the terms of this Agreement, including, without limitation, the standards set forth in Section 1.4.3 (and any requirement or standard imposed by any Exhibit to this Agreement) and to operate its business in a manner satisfactory to the ADR Manager or the ADR Manager's authorized representative. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within the cure period stated in any written notice issued by the ADR Manager or the ADR Manager's authorized representative. "ADR Manager" shall mean the Airport's _____ or the ADR Manager's successor in function.

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- 2.6.5.2 **Reasonable Forecast of Harm to Port.** Concessionaire's failure to adhere to the Agreement (specifically including any requirement imposed by any Exhibit) and any resulting directive from the ADR Manager issued pursuant to Section 2.6.5.1 above is reasonably anticipated to result in inconvenience to the public, adverse effects on the overall business of the Airport, a reduction in the amount of Rent to be paid to the Port, and a significant expenditure of Port resources to address the failure. The parties agree that the damages sustained by the Port for violations of the provisions of the Agreement and these Port Standards will be difficult to determine and track. Therefore, the parties agree that the amounts set forth in the Agreement and its exhibits are reasonable estimates of the damages anticipated to be suffered or incurred by the Port.
- 2.6.5.3 **Notice and Opportunity to Cure.** The Port may assess liquidated damages immediately, and without opportunity to cure, for the Delay Damages and for violations pertaining to (i) minimum hours of operation, (ii) failure to remove a product deemed objectionable by the Port within the time provided for removal, (iii) fire safety, (iv) health and human safety, and (v) for any other violation if the Port has previously provided Concessionaire notice of such violation two or more times in the past twelve months (whether or not liquidated damages were actually imposed). For any other violation, the Port will not assess liquidated damages unless the violation continues for more than three (3) days following written notice thereof. If the violation is such that it cannot reasonably be corrected within three days, the Port will refrain from imposing liquidated damages so long as Concessionaire shall, within the three days, commence the correction, identify the timeframe reasonably necessary to complete the correction and, thereafter, diligently proceed to complete the correction within the stated timeframe.
- 2.6.5.4 **Failure to Cure.** The failure to promptly address or cure any violation for which liquidated damages are payable may, itself, also be cause for continued assessment of liquidated damages.
- 2.6.5.5 **Payment.** Concessionaire shall pay all liquidated damages within thirty (30) days of the imposition thereof. The failure to pay liquidated damages shall represent a separate default under this Agreement.
- 2.6.5.6 **No Waiver; No Obligation.** The Port's failure to impose sanctions for any violation shall not waive any right, or prohibit the Port from doing so for subsequent violations. The Port shall have no obligation, whether to Concessionaire or any third party, to impose fines on or otherwise take action against any party at the Airport for violation of the Agreement or any Operating Standards.
- 2.6.5.7 **Other Fines.** Other fines and liquidated damages amounts may be set forth in the Port Standards, and nothing in this Agreement is intended to limit the ability of the Port to impose those fines and amounts as specifically provided by the Port Standards.

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

SECTION 2.7: RELOCATION OR TERMINATION OTHER THAN FOR DEFAULT

- 2.7.1 **Relocation for Performance.** In the event that Concessionaire either (a) experiences a decrease in its sales per Enplaned Passenger of more than twenty percent (20%) for the Premises, or any discrete portion thereof, for two (2) quarters in any twelve (12)-month period, (b) loses the franchise rights under which the concession for the Premises, or any discrete portion thereof, was operated, or (c) experiences a decline in Gross Sales for the Premises, or any discrete portion thereof, for two (2) consecutive years without a corresponding decrease in the number of Enplaned Passengers for the same two-year period, the Port may initiate a discussion with Concessionaire about termination of this Agreement or the discrete portion of the Premises to which such issue pertains. If the parties mutually agree, then a termination agreement shall be executed under which the Port shall agree to remarket the space and the Concessionaire shall agree to terminate the lease and vacate the space if and when a new tenant lease for the space is executed and the new tenant design for the space is approved by the Port.
- 2.7.2 **Airport Operational Needs.** If at any time the Port determines that the Premises (or any portion thereof) are necessary for the operation, safety, security or convenience of the Airport, the Port may require Concessionaire to close, reduce or relocate (to a location designated by the Port) the Premises, or any discrete portion thereof. In such event, the Port shall provide Concessionaire at least sixty (60) days advance written notice. Concessionaire shall have the right to accept or reject any proposed reduction or relocation of the Premises. If accepted, the Port and Concessionaire shall negotiate, in good faith, for the payment of any costs associated with such change. If Concessionaire rejects the reduction/relocation, or if the parties are unable to reach agreement regarding the payment of costs associated with such change, the Port may, at the Port's election, terminate this Agreement. If Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses.
- 2.7.3 **Condemnation.** In the event that any federal, state or local government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of all or a portion of the Premises, the Port may, at its option, terminate this Agreement as of the date of such taking, and if Concessionaire is not in default under any of

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the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination. In addition, Concessionaire shall be entitled to participate in any compensation paid in the event of a taking, not to exceed the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses, except to the extent such relocation expenses may be awarded to Concessionaire as part of any condemnation proceeding.

2.7.4 **Court Decree.** In the event that any court having jurisdiction in the matter renders a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Agreement, then either party may terminate this Agreement by ten (10) days' written notice, and all rights and obligations of this Agreement (except for any undischarged rights and obligations that accrued prior to the effective date of termination) shall terminate. If Concessionaire is not in default of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargained-for value of the leasehold or any relocation expenses.

2.7.5 **Net Book Value of Leasehold Improvements.** As used in this Agreement, "Net Book Value of Leasehold Improvements" shall mean the dollar amount generated through application of the following rules:

2.7.5.1 **Eligible Improvements.** "Eligible Improvements" shall mean any permanently affixed alterations or improvements made to the Premises and to cabinetry and display fixtures that were custom designed by Concessionaire for the Premises and have no practical use or value outside the Premises: (a) for which the Port's consent has been sought and obtained in writing, (b) for which any and all information required by Section **Error! Reference source not found.** or any Port consent has been timely submitted, and (c) consistently appearing on any NBV Report requested by the Port pursuant to Section **Error! Reference source not found.**, and (d) then currently in use and in such condition as would warrant its continued use. Eligible Improvements shall, however, specifically exclude the Removable Fixtures (other than custom designed cabinetry and display fixtures set forth above) and any inventory maintained by Concessionaire.

2.7.5.2 **Cost of Eligible Improvements.** The "Costs of Eligible Improvements" shall mean the direct costs expended by Concessionaire for any Eligible Improvements, including the cost for the demolition of any existing improvements necessary for the installation of such Eligible Improvements. The Costs of Eligible Improvements shall not, however, include any of the Excluded Costs. The Costs of Eligible Improvements" shall be determined from the information timely submitted by Concessionaire pursuant to Section **Error! Reference source not found.** or any Port consent, subject to

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verification by the Port. “Excluded Costs” shall mean the (i) financing costs; (ii) interest; (iii) inventory; (iv) office equipment and furnishings; (v) pre-opening expenses; (vi) intra-Concessionaire charges related to construction; (vii) professional fees and costs related to design and engineering of Eligible Improvements in excess of twelve percent (12%) of the initial minimum investment; and (viii) professional fees and costs related to the design and engineering of Leasehold Improvements in excess of twelve percent (12%) of the minimum mid-term refurbishment.

- 2.7.5.3 **Calculation of Net Book Value of Leasehold Improvements.** For each Eligible Improvement that does not become the Port’s property under Section 7.4, the Cost of that Eligible Improvement shall be amortized over the useful economic life of such Eligible Improvement. The useful economic life shall in no instance exceed the period of time commencing on the date such Eligible Improvement is installed and terminating on the expiration of this Agreement, or any lesser period that may be specified in any consent, sublease or other writing, on a straight-line basis with no salvage value. The “Net Book Value of Leasehold Improvements” shall be the sum of the unamortized portion (as of the effective date of the applicable termination) of the Cost of Eligible Improvements for each Eligible Improvement directly affected by such deletion or termination. As used in this Section, “useful economic life” shall specifically be determined with respect to the initial investment in the Eligible Improvement, Concessionaire’s repair and maintenance of the Eligible Improvement, and Concessionaire’s custom and usage for assets similar to the Eligible Improvements, both at the Airport and elsewhere.

SECTION 2.8: ACCESS; EASEMENTS

- 2.8.1 **Access to Premises.** The Port may, at any time, enter upon the Premises to ascertain the condition of the Premises or whether Concessionaire is observing and performing its obligations under this Agreement, all without hindrance or molestation from the Concessionaire. The Port shall also have the right to enter the Premises for the purpose of making or performing any necessary maintenance and repair work, for providing pest control services, for performing any work that may be necessary by reason of Concessionaire’s failure to make any such repairs or perform any such work, or for any other reasonable purpose. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance oral or written notice to Concessionaire (except that no notice shall be required in the event of an emergency) or an authorized employee of Concessionaire at the Premises.
- 2.8.2 **Easements.** The Port hereby reserves such continuous access and utilities easements within the Premises, as may in the opinion of the Port from time to time be desirable for the purpose of enabling it to exercise any right or reservation or to perform any obligation contained in this Agreement or in connection with the Port’s ownership or operation of the Airport. If the Port exercises this reservation of easement in any manner which substantially and negatively impacts Concessionaire, the Port agrees to negotiate an equitable adjustment in the Rent, or to bear reasonable costs of any permanent modifications to the Premises necessary to permit

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

SECTION 2.9: NONWAIVER; RIGHT TO PERFORM

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

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

SECTION 2.10: SURRENDER

2.10.1 **Surrender.** At the expiration or sooner termination of this Agreement, Concessionaire shall promptly surrender possession of the Premises to the Port broom-clean, in their improved condition, wear and tear consistent with Section 0 excepted, remove all its Removable Fixtures and other property, and shall deliver to the Port all keys that it may have to any parts of the Premises. If the Premises are not surrendered as provided in this Section, Concessionaire shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Concessionaire in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay.

2.10.2 **Removal of Wires.** Within ten (10) days following the expiration or earlier termination of this Agreement, the Port may elect by written notice to Concessionaire to either:

2.10.2.1 Retain, without necessity of payment, any or all wiring, cables, conduit, risers and similar installations installed by Concessionaire (“Wiring”), whether in the Premises or the larger building of which the Premises are a part. In the event that the Port elects to retain the wiring, Concessionaire covenants that: (i) it is the sole owner of the assets transferred or passing to the Port, (ii) it shall have right to surrender the assets transferred or passing to the Port, (iii) the Wiring transferred or passing to the Port are free from all liens and encumbrances, (iv) the Wiring transferred or passing to the Port is in good condition, working order, in safe condition and comply with the requirements of this Agreement, and (v) that all wiring or cables included within the Wiring transferred or passing to the Port is properly labeled at each end, in each telecommunications/electrical closet and junction box, and otherwise as may be required by Port regulations. OR

2.10.2.2 Remove, or require Concessionaire to remove, all such Wiring and restore the Premises and any larger property of which the Premises are a part to their condition existing prior to the installation of the Wiring, all at Concessionaire’s sole cost and expense.

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

SECTION 2.11: AIRPORT SECURITY

2.11.1 **Airport Security.** Concessionaire covenants that it will, at all times, maintain the integrity of the Airport Security Plan and Transportation Security Administration (TSA) Regulations currently in effect or as may be implemented or modified from time to time, and that it will always maintain the security of the Airport and/or any access which Concessionaire maintains. Concessionaire also hereby agrees that it shall also be responsible for any and all actions of its employees, subcontractors, suppliers, agents, and/or representatives, and shall

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provide any and all necessary escorts as outlined in the Airports Security Plan, at all times. Concessionaire covenants that it will always maintain the security of any airfield access which Concessionaire maintains. Should Concessionaire allow unauthorized access to the Airport Operations or Security Area, and/or should the Port be cited for a civil penalty, Concessionaire agrees to reimburse Port for any monetary civil penalty which may be imposed by the Federal Aviation Administration, the TSA, or any appropriate agency.

- 2.11.2 **Airport Security Program.** Concessionaire shall be responsible for obtaining and coordinating any TSA required and Port administered criminal history record checks, security threat assessments, badging, and/or other activities required to ensure Concessionaire is in compliance with Port Rules and Regulations and TSA Regulations 49 CFR Parts 1500, 1520, 1540, 1542, 1544, 1546, 1548, and 1550, as promulgated, and the terms and conditions of this Agreement.
- 2.11.3 **Background Checks.** Concessionaire shall be responsible for the proper preliminary background checks for its employees, vendors, etc., for which it requests and/or obtains an Airport Security badge. Such checks include those in support of TSA required criminal history record checks, and security threat assessments. In the event Concessionaire fails in its responsibilities for proper certifications, background checks or to return such Airport-issued badges upon cessation of employment or other circumstances, as described in Section 2.11.2, and/or any cause of action that either singularly or collectively would require the Port to be in violation of TSA Regulations, Port-TSA approved Airport Security Program, and applicable Part 1543 security directives, Concessionaire shall bear the total cost of such TSA-issued monetary civil penalties and/or the re-badging process.
- 2.11.4 **Security Regulations.** Concessionaire covenants that it will at all times preserve the integrity of the Airport's Security program and TSA Regulations 49CFR Part 1500, 1520, 1540, 1542, 1544, 1546, 1548, and 1550, as promulgated, and that it will always preserve the security of any Secure Areas/SIDA access which the Concessionaire maintains. Concessionaire agrees that it shall be responsible for any and all actions of its employees, subcontractors, suppliers, agents, and/or representatives and shall provide any and all escorts as outlined in the Airport's Security Program, at all times. Concessionaire agrees that it shall be responsible for its employees, subcontractors, suppliers, agents, and/or representatives shall adhere to all Airport and TSA security policies, procedures and rules.
- 2.11.5 **Compliance.** Should Concessionaire, its employees, subcontractors, suppliers, agents, and/or representatives cause any TSA Letter-of-Investigation (LOI) or TSA monetary civil penalty to be assessed against the Port, Concessionaire agrees to reimburse the Port for all costs which may be imposed by TSA. Concessionaire may have badge/access privileges immediately suspended and/or revoked by the Aviation Managing Director or designee for failure to adhere to the Airport Security Program or for failure to return all badges within the time frames specified herein. In the event of a severe incident, such actions may also result in the immediate suspension and/or termination of this Agreement, at the sole discretion of the Aviation Managing Director.

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2.11.6 **Badging.** In accordance with the Airport Security Program, Concessionaire must obtain Airport security badging and fingerprinting for its eligible employees, subcontractors, suppliers, agents, and/or representatives, and pay any and all related costs associated with this privilege. Note at the sole discretion of the Aviation Managing Director or designee, the rates may be subject to change. Said badges will only be valid for the term of this Agreement and must be returned to the Credential Center Office within twenty-four (24) hours or the next business day after expiration or suspension and/or termination of this Agreement. Concessionaire is responsible to return the badges of employees and representatives that are no longer employees by Concessionaire. Concessionaire agrees to pay any associated fees and/or penalties for all badges not returned within this time frame. Concessionaire will be required to comply with all security requirements currently in effect or as may be implemented from time to time, including but not limited to background checks for each badge requested.

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

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

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

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ARTICLE III

SECTION 3.1: ENVIRONMENTAL STANDARDS

- 3.1.1 **Definitions.** “Law” or “Regulation” as used in this Agreement shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. “Hazardous Substances” as used in this Agreement shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.
- 3.1.2 **Hazardous Substances.** Concessionaire shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Concessionaire shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Upon request from the Port, Concessionaire shall provide the Port with Concessionaire’s USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS) or Generator Annual Dangerous Waste Reports/ Concessionaire shall provide the Port with all environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Concessionaire receives from, or provides to, any governmental unit or agency in connection with Concessionaire’s handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.
- 3.1.3 **Violation of Environmental Law.** If Concessionaire, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Concessionaire shall promptly take such action as is necessary to mitigate and correct the violation. If Concessionaire does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Concessionaire (Concessionaire hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Concessionaire is in violation of any Law or Regulation, or that Concessionaire’s actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Concessionaire upon presentation of an invoice therefor.
- 3.1.4 **Inspection; Test Results.** The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Concessionaire shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port’s expense. Concessionaire shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port’s written consent. Concessionaire shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Concessionaire, and Concessionaire shall provide copies to the Port.

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- 3.1.5 **Removal of Hazardous Substances.** Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Concessionaire shall remove any Hazardous Substances placed on the Premises during the term of this Agreement or Concessionaire's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Concessionaire upon termination or expiration of this Agreement.
- 3.1.6 **Remedies Not Exclusive.** No remedy provided under this Agreement shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Concessionaire whenever the Port incurs any costs resulting from Concessionaire's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).
- 3.1.7 **Environmental Indemnity.** In addition to all other indemnities provided in this Agreement, Concessionaire agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this Agreement, or (2) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement.

SECTION 3.2: ACDBE REQUIREMENTS; NON-DISCRIMINATION

- 3.2.1 **Airport Concessions Disadvantaged Business Enterprises.** It is the policy of the Port to support participation of Airport Concessions Disadvantaged Business Enterprises (ACDBE), as defined in 49 CFR, Part 23, in concession activities at the Airport. To the extent Concessionaire is required to operate the Premises as an ACDBE, Concessionaire agrees to submit to the Port, upon execution of this Agreement, certification from the State of Washington that Concessionaire is a certified ACDBE. Likewise, at all times during the term of this Agreement, Concessionaire shall be and remain certified as an ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and shall timely file all applications, together with all supporting documentation, necessary to maintain such certification. In the event that Concessionaire is certified as an ACDBE and that certification is necessary to satisfy the requirements of this Section, prior to any change in ownership, control or organization of Concessionaire, Concessionaire shall (in addition to any requirements that may be imposed by Section 0) similarly obtain ACDBE certification for Concessionaire as so changed and provide the Port with proof of the same. If Concessionaire shall at any time cease to be so certified, the Port may, at its sole option, terminate this Agreement on not less than ninety (90) days advance written notice to Concessionaire. So

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long as Concessionaire in good faith sought certification, reasonably complied with all requirements and deadlines necessary to maintain certification, and nonetheless ceased to be so certified, the Port shall pay to Concessionaire the Net Book Value of Leasehold Improvements in the event of such termination.

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

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

- 3.2.2 **Nondiscrimination**. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and the DOT's regulations, 49 CFR Part 21. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 21. Furthermore, during the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest (for purposes of this Section and its referenced exhibits only, "contractor") agrees to both (i) comply with the covenants set forth on Exhibit F and (ii) comply with the non-discrimination statutes and authorities set forth on Exhibit G.

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ARTICLE IV

SECTION 4.1: MISCELLANEOUS

- 4.1.1 **Notice to the Port.** All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, by recognized overnight courier, or for day to day operational issues by email.

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

Street Address:

Mailing Address:

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

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

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

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

- 4.1.2 **Notices to Concessionaire.** All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, by recognized overnight courier, or for day to day operational issues, by email.

For any notice directed to Concessionaire, the address shall be as follows as referenced in the Summary of Key Lease Terms:

Company
Legal Notice Person
Title
Address
City, State Zip
Phone
Email

Either party may, however, designate a different address from time to time by providing written notice. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iii) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient. Payments may be made in the manner

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provided for notice or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by the Port.

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

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- 4.1.8 **Force Majeure.** In the event that either party shall be delayed or hindered in or prevented from performing any act required under this Agreement by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar nature beyond the reasonable control of the party, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party; and after the Rent Commencement Date, the provisions of this Section shall not operate to excuse Concessionaire from the prompt payment of Rent as required by this Agreement and shall not extend the term of this Agreement.
- 4.1.9 **Labor Disputes.** Concessionaire agrees to use its best efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Concessionaire, and in the event of a strike, picketing, demonstration or other labor difficulty involving Concessionaire, to use its good offices, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.
- 4.1.10 **Consent.** Whenever the Port's prior consent or approval is required by this Agreement, the same shall not be unreasonably delayed but may, unless otherwise specifically provided by this Agreement, be granted or denied in the Port's sole and absolute discretion.
- 4.1.11 **Wireless Devices.** Concessionaire shall not install any wireless devices and/or transmitters on or about the Premises without the prior written consent of the Port and subject to all conditions in such consent. Concessionaire specifically grants to the Port the power to regulate and control the use of unlicensed frequency bands (including, but not limited to, FCC Part 15 Subpart C, FCC Part 15 Subpart D (both asynchronous and Isochronous), IEEE 802.11 and Bluetooth (ISM), and FCC UNII 1 and UNII 2 (IEEE 802.11a)) on or about the Premises.
- 4.1.12 **Relationship to the Port and Concessionaire.** Nothing in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Concessionaire and the Port shall be deemed to create any relationship other than that of landlord and tenant.
- 4.1.13 **Time.** Time is of the essence of each and every one of Concessionaire's obligations, responsibilities and covenants under this Agreement.
- 4.1.14 **Recording.** Concessionaire shall not record this Agreement or any memorandum thereof without the Port's prior written consent.
- 4.1.15 **Joint and Several Liability.** Each and every party who signs this Agreement, other than in a representative capacity, as Concessionaire, shall be jointly and severally liable hereunder. It is understood and agreed that for convenience the word "Concessionaire" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this

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

- 4.1.16 **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 4.1.17 **Governing Law; Venue.** This Agreement shall be construed under the laws of Washington. Exclusive jurisdiction and venue for any action relating to this Agreement shall be in the state or federal courts located in King County, Washington.
- 4.1.18 **Attorneys' Fees.** In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Port by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle, Washington.
- 4.1.19 **Invalidity of Particular Provisions.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or enforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.
- 4.1.20 **Survival of Indemnities.** All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Concessionaire shall, at the Port's option, defend the Port at Concessionaire's expense by counsel satisfactory to the Port.
- 4.1.21 **Entire Agreement; Amendments.** This Agreement, together with any attached exhibits, shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained in this Agreement. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.
- 4.1.22 **Exhibits.** The exhibits referenced in this Section and listed in the Summary of Key Lease Terms are attached to this Agreement after the signatures and by this reference incorporated as a part of this Agreement.

Exhibits to Agreement:	A – Legal Description of Airport B – Premises C – Operating Standards D – Street Pricing Policy E – Links to key Ports Standards F – Schedule of Liquidated Damages
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	G – Additional Non-Discrimination Covenants H – Pertinent Non-Discrimination Authorities
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SECTION 4.2: SIGNATURES

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

PORT OF SEATTLE

[COMPANY]

By: _____
Its: _____

By: _____
Its: _____

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SECTION 4.3: ACKNOWLEDGMENTS

ACKNOWLEDGMENT FOR CONCESSIONAIRE

STATE OF _____)
) ss.
COUNTY OF _____)

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

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

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

ACKNOWLEDGMENT FOR THE PORT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

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

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

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EXHIBIT A

– Legal Description –

Main Terminal

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

North Satellite

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

South Satellite

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

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EXHIBIT B

– Premises –

EXHIBIT C

– Operating Standards –

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

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 - 8.1 Trash**
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- 9. SAFETY AND SECURITY**
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 - 9.2 Securing Units**
 - 9.3 Prohibited Items Log**

9.4 Lost and Found

9.5 Maintenance and Mid-Term Refurbishment Construction and Repairs

10. INFORMATION SYSTEMS AND TELECOMMUNICATIONS

11. EMPLOYEE SERVICES

11.1 ID Badges

11.2 Parking

11.3 Employment Opportunities

1. DEFINITIONS & ACRONYMS

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

2. GENERAL OVERVIEW

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

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

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

3. FIRST CLASS STANDARDS

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

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

3.1 On-Site Manager

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

Concessionaire will provide (and update) contact information for Concessionaire's Managers so that a Port Representative may contact them in emergencies or during non-business hours.

3.2 Cleanliness

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

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

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

3.3 Condition

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

3.4 Functionality

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

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

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

3.5 Products

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

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

3.6 Prohibited Items

PROHIBITED ITEMS:

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

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

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

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

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

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- e. Training employees received

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

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

3.6.1 Prohibited Item Procedures:

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

3.6.2 Enforcement

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

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

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

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

Some examples of possible violations related to Prohibited Items are:

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

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

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

Federal violations fall under:

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

50 § 1540.105 Security responsibilities of employees and other persons.

(a) No person may:

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

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

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

3.7 Hours of Operations

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

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

3.7.1 Holiday Reduced Hours

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

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3.8 Delivery Schedule

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

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

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

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

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

3.9 Delivery Standards

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

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

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

3.10 Storage Standards

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

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

3.11 Premise Signage

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

3.11.1 Advertising and Promotional Signage

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

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

3.12 Promotional Events and Prohibited Activities

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

Promotional activities will be limited to the following:

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

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

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

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

3.13 Repairs and Preventative Maintenance

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

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

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

3.14 Parking

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

4. FIRST CLASS CUSTOMER SERVICE STANDARDS

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

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

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

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

4.1 ADR Employee Customer Service Standards

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

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

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

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

4.1 Customer Service Training

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

5. QUALITY ASSURANCE PROGRAM

5.1 Reports and Rating System

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

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

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

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

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

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

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

Unacceptable Rating 1-3

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

Needs Improvement Rating 4 – 5

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

Acceptable 6

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

Excellent 7

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

5.2 Comments and Complaints

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

6. FOOD HANDLING

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

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

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

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

Therefore, all Concessionaires must adhere to the following:

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

8. ENVIRONMENTAL AND WASTE REMOVAL

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

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

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

8.1 Trash

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

8.2 Recycling

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

8.3 Composting

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

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

8.4 Waste Collection and Signage

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

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

8.5 Used Cooking Oil (UCO)

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

8.6 Hazardous Materials/Waste

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

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

8.7 Training

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

8.8 Food Donation Programs

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

9. SAFETY AND SECURITY

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

9.1 Emergency Evacuation Plans

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

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

9.2 Secured Units

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

9.3 Prohibited Items Log

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

9.4 Lost and Found

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

9.5 Maintenance and Mid-Term Refurbishment Construction and Repairs

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

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

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9.5.1 Construction and Repairs Safety Protocols

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

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

9.5.2 Construction and Repairs Security Protocols

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

10. INFORMATION SYSTEMS AND TELECOMMUNICATIONS

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

11. EMPLOYEE SERVICES

11.1 ID Badges

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

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

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

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

11.2 Parking

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

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

11.3 Employment Opportunities

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

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

EXHIBIT D

– Pricing Policy –

Pricing Policy for Concessionaires
at
Seattle-Tacoma International Airport

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

SECTION 2 STREET PRICING

Definition Generally

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

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

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

Equivalent Items

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

Comparable Business Locations

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

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SECTION 3 POLICY ADMINISTRATION

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

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

SECTION 4 ESTABLISHMENT OF STREET PRICES

Baseline Pricing

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

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

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

Pricing Adjustments

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

Annual Reporting

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

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

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

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

Pricing Review

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

SECTION 5 ADDITIONAL PRICING GUIDELINES

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

Branded Goods.

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

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Pre-Priced Books and Periodicals.

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

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

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

SECTION 6PRICING PROMOTIONS

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

SECTION 7POSTING PRICES

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

SECTION 8POLICY COMPLIANCE

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

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

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Addendum to Pricing Policy for Concessionaires

Temporary Street Pricing Plus

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

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

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

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

Exhibit E

- Links to Key Port Standards -

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

Click on:

Tenant Construction and Design References for

ADR Preventative Maintenance Program Manual

Tenant Design and Construction Process Manual

Design Guidelines

Design Standard

Airport Tariffs

Rules and Regulations for Sea-Tac

Airport Tenants, Sea-Tac Environmental Resources

EXHIBIT F

– Schedule of Liquidated Damages –

Schedule 1 Liquidated Damages		Schedule 2 Liquidated Damages	
First Occurrence	\$100.00	First Occurrence	\$250.00
Second Occurrence	\$250.00	Second Occurrence	\$500.00
Third and Subsequent Occurrence	\$500.00	Third and Subsequent Occurrence	\$1,000.00

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

Schedule 1 Violations	Schedule 2 Violations
Reporting Standards, including:	Food Handling Standards ¹
• Monthly Reports	Maintenance & Repair Standards ²
• Annual Report	Pest Control Standards ²
• Post Construction Reports	Safety & Security Standards ¹
“First Class” Standards ²	
Customer Service Standards ²	
Hours of Operation Standards ¹	
Delivery & Distribution Standards ²	
Storage Standards ²	
Signage Standards ²	
Other Operating Standards ²	
Environmental & Waste Removal Standards ²	
Pricing Standards ²	

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

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

EXHIBIT G

– Additional Non-Discrimination Covenants –

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the acts and the regulations (“Acts and Regulations”) relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Aviation Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts and Regulations, and related directives and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Aviation Administration to be pertinent to ascertain compliance with the Acts and Regulations and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as

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

EXHIBIT H

– Pertinent Non-Discrimination Authorities –

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT 6
INVESTMENT INCENTIVE PAYMENT AGREEMENT

THIS INVESTMENT INCENTIVE PAYMENT AGREEMENT (this "Agreement") is made and entered into as of _____, 2019 by and between the Port of Seattle (the "Port"), and _____, a _____, ("Proposer").

Recitals:

1. The Port has a strong financial interest in procuring qualified and capable businesses to successfully build out and operate dining or retail establishments at the Airport, and the Port has a proprietary interest in preventing disruptions due to labor disputes at the Airport, which would have significant negative impacts on airport operations, the traveling public, dining and retail services, and revenue under the ADR program.
2. Proposer wishes to submit a Proposal in response to the Port's CEP# _____ (the "CEP").
3. As a pilot program for Lease Group 5 only, the Port is offering an investment incentive payment in the amount of \$5000 to each unsuccessful proposer that is deemed Responsible and that submits a fully Responsive and Competitive proposal for the CEP opportunity.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services and Port Use of Non-Proprietary Concepts and Ideas.**
 - a. Proposer agrees to submit a Proposal in response to the CEP. To be eligible for an Investment Incentive Payment, all of the following must apply:
 - i. The Port must not have canceled the CEP before proposals were due;
 - ii. Proposer must have submitted a Proposal with an executed Investment Incentive Payment Agreement to the Port by the due date and time specified in the CEP;
 - iii. the Proposal must not be a proposal selected by the Port for award of the Lease and Concession Agreement;
 - iv. the Proposer must be deemed Responsible by the Port;
 - v. the Proposal must be deemed Responsive and Competitive by the Port; and
 - vi. the Proposer must not have already received (or be in the process of receiving) an Investment Incentive Payment as a result of a separate unsuccessful proposal submitted for a different CEP as part of Lease Group 5.

- b. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the CEP.
 - c. In consideration for paying the investment incentive payment, Proposer grants the Port the non-exclusive right to use any non-proprietary concepts and ideas contained in the unsuccessful Proposals in connection with any Lease and Concession Agreement executed as a result of this CEP or with any subsequent procurement, without any obligation to pay additional compensation to the Proposer.
- 2. **Term.** Unless otherwise provided herein, the provisions of this Agreement shall remain in full force and effect until execution of the Lease and Concession Agreement for the relevant CEP or until one year from the date of the execution of this Agreement, whichever occurs first. Services are authorized to commence effective upon the execution date of this Agreement and Proposal, and they are due by the dates set forth in the CEP.
- 3. **Compensation and Payment.**
 - a. Compensation payable to Proposer for the services described herein shall be in the amount of \$5,000.
 - b. If the Port awards the Lease and Concession Agreement to Proposer, Proposer will not be entitled to compensation hereunder.
 - c. Payment will be owing hereunder only after the Proposer has been deemed by the Port to be Responsible, and the unsuccessful Proposal has been deemed to be Responsive and Competitive, and will be made within 45 days after execution of the Lease and Concession Agreement between the Port and a different proposer, after receipt of a proper invoice submitted to the Port under this paragraph 3(c). The invoice must be accompanied by a letter stating that the Proposer agrees with the terms of this Agreement. Such invoice may not be submitted until one business day after the earlier to occur of (i) execution of the Lease and Concession Agreement between the Port and a different proposer, and (ii) cancellation of the procurement after proposals were due. The Port will advise Proposer when said Lease and Concession Agreement is executed.
 - d. This Agreement involves the submission of a Proposal by Proposer that must be received by the due date set forth in the CEP and determined Responsive and Competitive by the Port, as well as that the Proposer must be determined to be Responsible, all of which are conditions of payment.
- 4. **Indemnities.**
 - a. The Proposer shall indemnify, protect and hold harmless the Port and its commissioners, directors, officers, employees and contractors from, and Proposer shall defend at its own expense, all claims, costs, expenses, liabilities, demands, or suits at law or equity of, by or in favor of or awarded to any third party arising in whole or in part from the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives or subcontractors or breach of any of Proposer' obligations under this Agreement.

- b. Furthermore, if any claim or suit is caused by or results from the concurrent negligence of Proposer or its agents, officers, employees or representatives, this indemnity provision shall be enforceable only to the extent of Proposer's negligence or the negligence of Proposer's agents, officers, employees, representatives or subcontractors.

5. Compliance with Laws.

- a. Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to the Port during this procurement process, are, upon their receipt by the Port, the property of the Port and are subject to the Washington Public Records Act.
- b. Proposer shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to the work, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- c. Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

- 6. Early Termination.** This Agreement may be terminated by the Port in whole or in part at any time termination is in the interest of the Port. No payment will be owing by the Port in the event of any such termination, except as provided in paragraph 3 above.

- 7. Assignment.** Proposer shall not assign this Agreement without the Port's prior written consent. Any assignment of this Agreement without such consent shall be null and void.

8. Miscellaneous.

- a. Proposer and the Port agree that Proposer, its team members, and their respective employees are not agents of the Port as a result of this Agreement.
- b. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.
- c. This Agreement, together with the CEP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the CEP, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.
- d. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Washington, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall



be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.

- e. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, and the venue for any action to enforce this Agreement shall be in King County Superior Court or the U.S. District Court for the Western District of Washington.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

PORT OF SEATTLE

By: _____

Name: _____

Title: _____

[insert Proposer's name]

By: _____

Name: _____

Title: _____



Investment Incentive Payment INVOICE

Company:	
Address:	
Phone:	
Fax:	
Contact:	
Email:	

Invoice Date:

Payment Terms: Due within 45 Calendar Days after execution of the Lease and Concession Agreement or after cancellation of the CEP after proposals were due.

Invoice #	
Job Reference:	

Bill to:
Port of Seattle
P.O. Box 1209
Seattle, WA 98111

DESCRIPTION	PRICE
Investment Incentive Payment for unsuccessful proposal for CEP# _____	\$5,000

Subtotal	\$5,000
Sales Tax	None
Total	\$5,000

Make checks payable to _____

COMPANY MUST INCLUDE A W-9 WITH THIS INVOICE