



Lease and Concession Contract

Lease Number _____

Parties And Addresses:

Authority: Hillsborough County Aviation Authority
Post Office Box 22287
Tampa, Florida 33622
Telephone: 813-870-8700
Fax: 813-875-6670

Concessionaire: SecurityPoint Media, LLC
11201 Corporate Circle North, Ste. 120
St. Petersburg, FL 33716
Telephone: 813-345-4002

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LEASE AND CONCESSION CONTRACT[Click HERE and Type Lease Number]

This Lease and Concession Contract for Security Bin Advertising Program (hereinafter referred to as Contract) is made and entered into this ____ day of _____ 2017 between the Hillsborough County Aviation Authority, a public body corporate under the laws of the State of Florida whose post office address is Post Office Box 22287, Tampa, Florida 33622 (hereinafter referred to as Authority), and SecurityPoint Media, LLC, a Florida Limited Liability Corporation, authorized to do business in the State of Florida (hereinafter referred to as Concessionaire), (collectively hereinafter referred to as the Parties).

For and in consideration of the mutual covenants hereof, the Parties do hereby agree as follows:

Article I. DEFINITIONS

Section 1.01 DEFINITIONS

The following terms shall have the meanings set forth below:

- A. **Airport:** Tampa International Airport located at 4100 George J. Bean Parkway, Tampa, Florida.
- B. **Airport Terminals:** The passenger transportation facilities at the Airport, existing or under construction as of the Effective Date of this Contract, or to be constructed during the Term of this Contract, known individually, as of the Effective Date, as the Main Terminal, Airside A, Airside C, Airside E, and Airside F, including all user movement areas, areas leased exclusively or preferentially to any third party or parties, common areas and baggage claim areas therein and interconnecting hallways, concourses, and bridges.
- C. **Assigned Areas:** Authority approved displays located in specific locations, as set forth in Exhibit A.
- D. **Common Areas:** Those areas of the Airport Terminals that are not leased, licensed, or otherwise designated or made available by Authority for exclusive or preferential use by a specific party or parties.
- E. **Concession:** The rights granted to Concessionaire by Authority to operate a business that sells Authority-approved advertising within the security bins as well as provide the security bin and bin housing equipment, in accordance with the terms and conditions of this Contract.
- F. **Concessionaire:** The legal entity that is party to this Contract who is bound by this Contract to develop and operate the Concession at the Airport. Concessionaire shall include all approved sub-concessionaires of Concessionaire who are actually operating within the Assigned Areas pursuant to subleases with Concessionaire. In all provisions of this Contract that require a person to comply with a specific provision requiring representation of Concessionaire, this person shall be an authorized official of Concessionaire.

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- G. **Concessionaire's Operating Obligations:** The various provisions of installation, maintenance, repair, and operating duties hereunder to be performed by Concessionaire, at its own cost and expense, in the performance of the Concession. The performance of the obligations by Concessionaire, or payment to a third party for the performance of these obligations, are not rental payments or other considerations for the right to occupy real property, but are acknowledgements by Concessionaire of its obligation to maintain, repair, and otherwise keep the Assigned Areas in First Class condition.
- H. **Contract:** This Contract, including all exhibits, schedules, subsequent amendments and attachments thereto.
- I. **Contract Dates:**
1. **Effective Date:** The date of full execution of this Contract by the Parties.
 2. **Term:** The period of April 1, 2017 through March 31, 2020.
- J. **Contract Year:** (a) With respect to the first Contract Year during the Term, the period commencing on April 1, 2017 and continuing through March 31, 2020, and (b) with respect to each consecutive twelve-month period thereafter.
- K. **Director of Concessions:** The Authority employee designated by the Authority Chief Executive Officer to manage and oversee this Contract.
- L. **FAA:** The Federal Aviation Administration or any successor thereto.
- M. **First Class:** A manner of operation of the Concessions, a standard of quality of materials and construction, or a standard of quality of services that meets standards in other airports throughout the nation.
- N. **Gross Receipts:** The total amount of monies paid to or earned by Concessionaire at or from the Assigned Areas in its performance of the Concession, as further described in Section 5.03.
- O. **Percentage Fee:** The monthly fee paid by Concessionaire to Authority, based on annual Gross Receipts for the rights and privileges granted herein.
- P. **Tenant Work Permit Handbook:** The compilation of Authority standards, procedures, requirements, and rules and regulations governing Concessionaire's construction activities at the Airport which is incorporated herein by reference. Authority reserves the right to amend the Tenant Work Permit Handbook during the Term. Any such amendment to the Tenant Work Permit Handbook will be binding on Concessionaire without need for amendment of this Contract, provided that such amendment of the Tenant Work Permit Handbook does not conflict with the other terms and conditions of this Contract.

Q. **Trade Fixtures:** All equipment installed by Concessionaire within the Assigned Areas for use in its performance of the Concession which may be removed from the Assigned Areas without causing material damage to the Assigned Areas.

R. **TSA:** The U.S. Department of Homeland Security Transportation Security Administration or any successor thereto.

Section 1.02 CONTRACT

A. Exhibits

The following Exhibits are attached hereto and are hereby incorporated and made a part of this Contract:

1. Exhibit A, Assigned Areas of Security Bin Advertising Program
2. Exhibit B, Memorandum of Understanding Concerning Use of Security Screening Checkpoint Furnishings
3. Exhibit C, Statement of Gross Receipts

B. Interpretations

1. Day(s), as used herein, unless otherwise stated, shall mean calendar day(s).
2. Month(s), as used herein, unless otherwise stated, shall mean calendar month(s).

Article II. SUMMARY OF CONTRACT PROVISIONS

The following table is a statement of key provisions of this Contract (hereinafter referred to as Summary of Contract Provisions).

Summary of Contract Provisions	
Authority Address:	<p>Hillsborough County Aviation Authority Post Office Box 22287 Tampa, FL 33622 Attn: Airport Concessions Department Telephone: 813-870-8700 Fax: 813-875-6670</p> <p><u>Address for courier delivery:</u> Hillsborough County Aviation Authority Tampa International Airport 4100 George J. Bean Parkway, Suite 3311 Tampa, FL 33607</p>
Concessionaire Address:	<p>SecurityPoint Media, LLC 11201 Corporate Circle North, Ste. 120</p>

	St. Petersburg, FL 33716 Joseph Ambrefe, Jr., CEO Tel: 813-345-4002
Concession Assigned Areas:	<u>Locations:</u>
	See Exhibit A, Assigned Areas of Security Bin Advertising Program
Effective Date:	Date of full execution of this Contract by the Parties
Start Date:	April 1, 2017
Expiration Date:	March 31, 2020
Percentage Fee Rate:	20%
Other Services:	Authority reserves the right to add or modify services within the Assigned Areas.

Section 2.01 MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS

The Parties acknowledge and agree that provisions stated in the Summary of Contract Provisions are subject to change throughout the Term in accordance with the provisions of this Contract. The Parties therefore agree to modify the Summary of Contract Provisions by letter executed by the Director of Concessions, without need for formal amendment to this Contract.

Article III. ASSIGNED AREAS

Section 3.01 ASSIGNED AREAS DESCRIPTION

Authority hereby assigns to Concessionaire and Concessionaire hereby agrees to accept from Authority the Assigned Areas within the Airport Terminals as listed and depicted in Exhibit A, including any improvements to be made or modifications to be made thereto. No other part of the Airport Terminals or the Airport shall be part of the Assigned Areas.

Section 3.02 ADDITIONS TO AND DELETIONS FROM THE ASSIGNED AREAS

Authority and Concessionaire may, during the Term and by mutual agreement, add additional space(s) or delete space(s) from the Assigned Areas. All space(s) added to the Assigned Areas pursuant to this Section 3.02 shall be subject to all the terms, conditions, and other provisions of this Contract. The Parties agree to modify the Summary of Contract Provisions and Exhibit A, as necessary, to incorporate other services to the Assigned Areas and space deletions from the Assigned Areas by letter, executed by the Director of Concessions and acknowledged by Concessionaire, without need for formal amendment to this Contract.

Section 3.03 RECLAIMING OF ASSIGNED AREAS FOR AIRPORT PURPOSES

Authority reserves the right to reclaim the Assigned Areas when, in the sole discretion of Authority, such reclaiming is necessary for the development or operations of the Airport or is in the best interest of Authority. Authority will make a reasonable effort to identify other location(s) within the Airport Terminals containing substantially the same area, visibility and exposure to passenger traffic as the portion(s) of the Assigned Areas being reclaimed (such other location(s), if any, hereinafter referred to as the Replacement Assigned Areas).

Authority shall exercise such right to reclaim by giving Concessionaire not less than ninety (90) days prior written Notice of Intent to Reclaim Assigned Areas specifying the effective date of the reclaiming and identifying Replacement Assigned Areas, if any. Concessionaire shall, by written notice given to Authority no later than thirty (30) days after receipt of Notice of Intent to Reclaim Assigned Areas, notify Authority of its acceptance of the Replacement Assigned Areas, if any, whereupon, as of the effective date provided in the Authority Notice of Intent to Reclaim Assigned Areas:

1. All of the terms, covenants, conditions and provisions of this Contract shall continue in full force and effect and apply to the Replacement Assigned Areas;
2. Concessionaire shall move from the Assigned Areas, or portion(s) thereof being reclaimed by Authority, into the Replacement Assigned Areas on or before the effective date stated in the Authority Notice of Intent to Reclaim Assigned Areas and shall vacate and surrender possession of the Assigned Areas or portion(s) thereof being reclaimed by Authority;
3. Subject to the other provisions of this Contract, Concessionaire shall be deemed to have accepted possession of the Replacement Assigned Areas in its "as is" condition as of the effective date stated in the Authority Notice of Intent to Reclaim Assigned Areas; and

Concessionaire shall not be compensated and Authority shall not be liable for any inconvenience to Concessionaire or for any interruption of Concessionaire's business, as a result of moving to Replacement Assigned Areas.

If no Replacement Assigned Areas are available, as determined solely by Authority, if Concessionaire fails to respond to the Authority Notice of Intent to Reclaim Assigned Areas within thirty (30) days after receipt of such notice or otherwise rejects the Replacement Assigned Areas, or if Authority deems the use(s) or concept(s) are not appropriate at the Replacement Assigned Areas, then this Contract for the Assigned Areas or portion(s) thereof being reclaimed will terminate on the effective date provided in the Notice of Intent to Reclaim Assigned Areas and provisions of this Contract related to termination shall apply.

The Parties agree to modify, within ten (10) days of the effective date stated in the Notice of Intent to Reclaim Assigned Areas, the Summary of Contract Provisions and Exhibit A as necessary, to delete the portion(s) of the Assigned Areas being vacated and incorporate the Replacement Assigned Areas, if any. These modifications will be confirmed by letter executed by the Director of Concessions and

acknowledged by Concessionaire, without need for formal amendment to this Contract.

Section 3.04 MINOR MODIFICATIONS TO ASSIGNED AREAS

Authority shall have the right to make minor modifications to any portion of the Assigned Areas at the sole discretion of Authority to accommodate Airport operations, security renovations, maintenance, or other work to be completed in the Airport Terminals. Minor modifications are subject to all provisions in Section 3.02.

Section 3.05 INGRESS AND EGRESS

Concessionaire will have the right of ingress to and egress from the Airport and the Assigned Areas for Concessionaire's officers, authorized officials, employees, agents, and invitees, including customers, suppliers of materials, furnishers of services, equipment, vehicles, machinery and other property. Right of ingress and egress will be subject to FAA Regulations, as amended, applicable laws, and Authority Rules and Regulations and Operating Directives.

Section 3.06 ASSIGNED AREAS ACCEPTANCE AS IS

Concessionaire accepts the Assigned Areas in its present condition, as is and with all faults. Authority shall not be obligated to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any utilities or telephone/data service) on or to the Assigned Areas during the Term other than as explicitly stated in this Contract.

Section 3.07 NO WARRANTY OF ECONOMIC VIABILITY

Authority makes no warranty, promises or representations as to the economic viability of the Assigned Areas or Concessionaire's business concept(s) or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire business operations. Concessionaire acknowledges that airline gate usage and other aspects of Airport operations are subject to change during the Term without notice and that the Authority makes no warranty regarding the location of airline gate usage. Except as is specifically set forth herein, Authority shall not, by virtue of the existence of this Contract, be constrained in connection with its operation of the Airport.

Article IV. TERM

Section 4.01 TERM

This Contract shall be effective and binding upon the Parties as of the Effective Date. The Term of this Contract begins on April 1, 2017 and continues through March 31, 2020, as stated in the Summary of Contract Provisions, unless sooner terminated as herein provided.

Section 4.02 RENEWAL OPTIONS

This Contract may be renewed at the same terms and conditions hereunder for two, one-year renewal periods at the discretion of the Authority Chief Executive Officer or designee, unless terminated earlier as provided herein. Such renewal will be effective by issuance of a written letter to Concessionaire by Authority. If all such renewals are exercised, this Contract will have a final termination date of March 31,

2022.

Section 4.03 HOLDOVER

Any occupancy of Assigned Areas by Concessionaire with the written consent of Authority after the expiration date of this Contract shall be on a month to month basis with all provisions of this Contract, including fees and charges, remaining in place until such time that Authority gives notice to Concessionaire to surrender the Assigned Areas. Notice to surrender Assigned Areas will be provided not less than thirty (30) days prior to the anticipated surrender date.

Any occupancy of Assigned Areas by Concessionaire after the termination of this Contract without the written approval of Authority constitutes a month-to-month lease on the same terms and conditions as this Contract. Concessionaire must pay Percentage Fee for the entire holdover period for that portion of Assigned Areas where this Contract has expired or been terminated. No occupancy of any portion of the Assigned Areas by Concessionaire after the expiration or other termination of this Contract with respect to such portion of the Assigned Areas extends the Term, except as a holdover tenancy. In the event of such holdover tenancy, Concessionaire shall indemnify Authority against all damages arising out of Concessionaire's holdover tenancy, including but not limited to, any costs incurred by Authority to evict Concessionaire, and all insurance policies required to be obtained and maintained by Concessionaire as set forth in this Contract shall continue in full force and effect.

Section 4.04 RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

Concessionaire shall, upon termination of this Contract, with or without cause, surrender the Assigned Areas to Authority peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by Concessionaire or Authority, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore, excepted. Concessionaire shall remove all equipment and signage. Authority shall be entitled to exercise the non-judicial remedy of restricting Concessionaire's access to the Assigned Areas as a means of enforcing Authority right of possession, including without limitation, the de-activation of Concessionaire's security badges or credentials; and this right of de-activation shall not, and legally cannot, limit or otherwise affect Authority governmental police powers to de-activate security credentials for security or other governmental reasons.

Upon expiration or termination of this Contract, Concessionaire shall, subject to the Authority Lien described in Section 5.05, remove all furniture, fixtures and equipment installed by Concessionaire and Concessionaire brand proprietary property, inventory and other personal property, and leave the Assigned Areas in broom clean condition. Any damage to the Assigned Areas caused by Concessionaire's removal of such furniture, fixtures, equipment or property shall be immediately repaired by Concessionaire at Concessionaire's expense and to the satisfaction of Authority. Notwithstanding the foregoing, if Concessionaire fails to remove such furniture, fixtures, equipment or property within ten (10) days from the date of expiration or termination of this Contract, then Concessionaire shall be deemed to have abandoned same and Authority shall have the right, at its option, and in its sole discretion, to take title to said furniture, fixtures, equipment and/or property and sell, contract, salvage, or dispose of the same in any manner permitted by law. Concessionaire shall have no right, interest or

claim in or to any proceeds of the sale or other disposition of such items. Any net expense Authority incurs in disposing of such items shall be immediately reimbursed by Concessionaire. No act by Authority shall be deemed an acceptance of a surrender of the Assigned Areas. No acceptance of a surrender of the Assigned Areas shall be valid unless it is in writing and signed by Authority.

Section 4.05 END OF TERM TRANSITION

During the final year of the Contract, Authority reserves the right to award and transition to a new contract for a security bin advertising program upon termination of this Contract that may include rights to the Assigned Areas or portions thereof. If Concessionaire is not selected for the new contract, Authority will notify Concessionaire in writing of the exact dates of a transition period. Concessionaire will cooperate fully with Authority and Concessionaire's successor to ensure an effective and efficient transition of the Assigned Areas and concession operations to the successor. Concessionaire acknowledges its responsibility to continuously perform the Concession in a First Class manner during the transition to the successor.

Article V. FEES, REPORTING, AND ACCOUNTING RECORDS

Section 5.01 PERCENTAGE FEE

Concessionaire shall pay a Percentage Fee of twenty percent (20%) of annual Gross Receipts during the term of this Contract. Gross Receipts are defined in Section 5.03 below.

Section 5.02 PAYMENT OF PERCENTAGE FEE

Concessionaire's Percentage Fee will be paid in monthly installments, in advance and without demand, on or before the tenth (10) business day of each calendar month beginning on April 1, 2017.

Section 5.03 GROSS RECEIPTS

- A. Definition
For purposes herein, Gross Receipts is defined as all monies paid or payable to Concessionaire for advertising sales made at or from the Airport, regardless of when or where the order therefore is received or delivered, whether on a cash basis or credit.

- B. Statement of Gross Receipts
Within ten (10) business days after close of each calendar month of the Term of this Contract, Concessionaire will submit to Authority, and with detail satisfactory to the Authority, a statement of its Gross Receipts during the preceding month. Said statement, a sample of which is attached hereto in Exhibit C, Statement of Gross Receipts, is to be signed by an authorized management officer of Concessionaire. Concessionaire will remit to the Authority with each monthly statement that amount of the Percentage Fee payments due for that month.

Section 5.04 FAILURE TO MAKE TIMELY PAYMENTS

Without waiving any other right or action available to Authority, in the event Concessionaire is

delinquent in the payment of fees or charges hereunder or rightly due and owing by an audit of Concessionaire's books and records as provided in Section 5.09, and in the event Concessionaire is delinquent in paying to Authority any such fees or charges for a period of seven (7) days after the payment is due, Authority reserves the right to charge Concessionaire interest thereon, from the date such fees or charges became due to the date of payment, at the Federal Reserve Bank of New York prime rate in effect on the date the fees or charges became due plus four percent (FRBNY prime +4%) or 18% per annum, whichever is greater, to the maximum extent permitted by law.

In the event of a dispute as to the amount to be paid, Authority shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, interest shall apply only to the deficiency.

The right of Authority to require payment of interest and the obligation of Concessionaire to pay same shall be in addition to and not in lieu of the right of Authority to enforce other provisions herein, including termination of this Contract, and to pursue other remedies provided by law.

The failure of Authority to take action in the event of a delinquent payment or series of payments shall in no way waive the right of Authority to take action at a subsequent time. Authority expects all fees and charges to be paid on time and Concessionaire agrees to pay on time.

Notwithstanding other provisions of this Contract, and without limiting the other provisions of this Contract concerning, among other things, events deemed to constitute default of Concessionaire, Authority may, in Authority reasonably exercised discretion, terminate this Contract upon written notice to Concessionaire if (i) there are recurring instances in which Concessionaire's payments required hereunder are not timely or are insufficient to cover sums actually due and payable; or (ii) Concessionaire fails to maintain adequate records and accounts reflecting its business operations at the Airport and calculation of Gross Receipts under this Contract; or (iii) Concessionaire fails or refuses to submit the formal supporting paperwork as required herein.

Section 5.05 AUTHORITY LIEN

Authority shall have a lien upon all Trade Fixtures and personal property of Concessionaire placed in or on the Assigned Areas, to the extent permitted by law, for the purpose of securing the payment of all sums of money that may be due to Authority from Concessionaire under this Contract.

This lien shall supersede any other lien including any lien created in connection with Concessionaire's financing. Concessionaire is prohibited from pledging any Trade Fixtures and/or personal property without prior, written permission of the Authority.

Section 5.06 RECORD KEEPING, REPORTS, ANNUAL AUDIT, AND END OF YEAR ADJUSTMENT

- A. Generally Accepted Accounting Principles. Concessionaire shall prepare and maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books and records that include all financial transactions in the performance of this Contract. Concessionaire's system of accounts shall allow each Assigned Area to be distinguished from all other Assigned Areas. Concessionaire shall maintain source documents sufficient to support its

books, records, and reports. All monies related to this Contract shall be deposited to and paid from a business bank account(s), the records for which shall be subject to review and audit in accordance with the provisions hereof.

- B. Annual Audit. No later than ninety (90) days after the end of each Contract Year during the Term, Concessionaire shall, at its sole cost and expense, provide an annual audit report by an independent Certified Public Accountant, licensed in the State of Florida and acceptable to Authority, of Concessionaire's monthly Gross Receipts and the amounts paid to Authority as a Percentage Fee for the subject Contract Year, or part thereof (said annual audit report hereinafter referred to as Annual Report). There may be no limitation on the scope of the engagement that would preclude the auditor from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Receipts. The engagement will include a Schedule of Gross Receipts and Percentage Fees for each month of the Concessionaire's operations in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to Authority. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion on whether the Schedule of Gross Receipts and Percentage Fees has been completely and accurately presented, calculated and reported according to the terms of this Contract.

Authority reserves the right to challenge any findings or conclusions of the Annual Report if it believes an error may have occurred. In such event, Authority may conduct its own audit under the provisions in Section 5.09, or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by Authority of any dispute will be final. Delivery of an Annual Report containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Contract.

If Concessionaire has paid to Authority an amount greater than Concessionaire is required to pay as Percentage Fee for a Contract Year under the terms hereof, Concessionaire shall be entitled to a credit against Concessionaire's monthly installment of the Percentage Fee for the amount of the overpayment. If Concessionaire has paid less than the amount required to be paid as Percentage Fee for such Contract Year, then Concessionaire shall pay the difference to Authority in the next monthly installment of the Percentage Fee.

- C. Form, Frequency, and Method of Reporting. Acceptance of monthly reports and payments by Authority does not constitute agreement by Authority with the amounts reported and paid. Authority reserves the right to change the form and frequency of reports and statements, including, but not limited to, the Statement of Gross Receipts, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Receipts hereunder. Concessionaire agrees to change the form of the required reports and statements as requested

by Authority and to provide any additional statistics and information Authority may request.

Authority shall have the right at any time to require that reports be delivered electronically using technology and procedures designated by Authority. If Authority instructs Concessionaire to deliver any reports and statements required hereunder by computer, e-mail, internet website, or transmission, Authority shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

Section 5.07 PLACE OF PAYMENT AND STATEMENT FILING

Payments, reports, and statements required by this Contract shall be delivered to:

Hillsborough County Aviation Authority
Attn: Finance Department
Post Office Box 22287
Tampa, Florida 33622

The designated place of payment and filing may be changed at any time by Authority upon ten (10) days written notice to Concessionaire. Checks shall be payable to Hillsborough County Aviation Authority. Concessionaire assumes all risk of loss of payments.

Section 5.08 FORM OF PAYMENT

All payments due under this Contract shall be paid in lawful money of the United States of America. Authority may accept payment without prejudice to its right to recover the balance of said amount due and to pursue any other remedies in this Contract or otherwise. Concessionaire shall pay returned check fees as reasonably determined by Authority in the event of a returned check.

Authority may require all payments of Percentage Fee and all other fees and charges to be made by Automated Clearing House electronic transfers, or other method as designated in writing by Authority. Concessionaire shall provide Authority with necessary information and authorizations as needed to facilitate such payments.

Section 5.09 AUTHORITY RIGHT TO PERFORM AUDITS, INSPECTIONS, OR ATTESTATION ENGAGEMENTS

Notwithstanding Concessionaire's requirement to submit the Annual Report set forth herein, Authority, or its representative, will have the right through the expiration of the third year after the expiration or termination of this Contract, through its representatives, and at all reasonable times, to review all books, records, and contracts of Concessionaire and where applicable, all individuals or other business entities who are party to this Contract, requested by Authority representatives to substantiate the accuracy of reported Gross Receipts and Concessionaire's compliance with other provisions of this Contract. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance contracts, records of refunds or voids, and joint venture or

partnership contracts. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire's suppliers or others, assisting Authority in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by Authority, or its representative, to complete the engagement. There may be no limitation in the scope of the engagement that would hinder Authority in testing the accuracy and completeness of the reported Gross Receipts. All such books, records, and contracts shall be kept for a minimum period of five (5) years upon termination or expiration of this Contract.

Engagements will be conducted at the Airport. However, if agreed to by Authority, the engagement can be conducted at another location, in which event Concessionaire shall reimburse Authority for reasonable transportation, food and lodging costs associated with the engagement, accrued in accordance with Authority Policy and Standard Procedure relating to Travel Expenses. Concessionaire shall allow Authority representatives to photocopy any records the representatives determine to be necessary to conduct and support the engagement. Concessionaire shall provide Authority representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the engagement. Concessionaire shall not charge Authority for reasonable use of Concessionaire's photocopy machine while conducting the engagement, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical microform or other media. Concessionaire shall provide all records and retrievals requested within seven (7) days of the request. The Parties recognize that Authority will incur additional costs if records requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree that Authority may assess liquidated damages in the amount of \$100 per day for each record requested that is not received. Such damages may be assessed beginning on the eighth (8th) day following the date the request was made. Accrual of such damages will continue until specific performance is accomplished.

If, as a result of any engagement, it is established that Concessionaire owes additional fees or charges to Authority, Concessionaire will pay such additional fees and charges and Authority may assess interest in accordance with Section 5.04. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by three percent (3%) or more for the period under consideration, the entire expense of the engagement may be billed to Concessionaire. Any additional payments due shall be paid no later than Concessionaire's next payment of the monthly installment of the Percentage Fee, by Concessionaire to Authority. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by five percent (5%) or more for the period under consideration, Authority shall be entitled to terminate this Contract for cause upon thirty (30) days' written notice, regardless of whether the deficiency is paid. If as a result of any engagement, it is established that Concessionaire has correctly reported or over reported Gross Receipts or has paid fees related to Gross Receipts equivalent to or greater than the sum due, Authority shall refund Concessionaire and the entire expense of the engagement shall be paid by Authority.

Article VI. PERMITTED USES

Section 6.01 PERMITTED USE

- A. Uses. The Assigned Areas shall be used by Concessionaire only for the purposes of performing the Concession, as further described in this Article VI, and for such other uses as Authority may agree to in writing. Concessionaire will place advertisements in Authority-approved displays located in specific locations. Concessionaire will provide the security bin advertising program in accordance with this Contract and Exhibit B, Memorandum of Understanding Concerning Use of Security Screening Checkpoint Furnishings, which is attached hereto and made a part hereof. Concessionaire will install, provide, and supply at the Airport: (i) security checkpoint bins, (ii) security checkpoint bin carts, and (iii) and other furnishings. All of the foregoing will be provided by Concessionaire at its sole cost and expense per the terms and conditions of the Contract; there will be no charge whatsoever to the Authority.
- B. Other Services. Authority reserves the right to add or modify services within the Assigned Areas.

Section 6.02 NON-EXCLUSIVE RIGHTS

The rights granted herein for the performance of the Concession shall be non-exclusive. Authority may, at any time, award space (existing or newly created) to other parties who may have rights or may sell goods or products similar to those non-exclusively granted herein. Authority may, in its sole discretion, grant exclusive rights to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

In the event of a dispute between Concessionaire and any other party operating at the Airport as to the rights of the parties under their respective contracts, Authority shall determine the rights of each party and Concessionaire agrees to be bound by Authority decision.

Section 6.03 RESTRICTIONS

Nothing in this Article will be construed as authorizing Concessionaire to conduct any business separate and apart from this Contract or in areas at the Airport other than the Assigned Areas.

Any and all rights and privileges not specifically granted to Concessionaire for its use of and operations at the Airport pursuant to this Contract are hereby reserved for and to Authority.

Section 6.04 PERMITS AND LICENSES

Concessionaire will obtain and maintain throughout the Term all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concession. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed within the Assigned Areas and forwarded to Authority upon issuance and each renewal.

Article VII. **ADVERTISING APPROVALS**

Concessionaire agrees to use the Assigned Areas solely for the sale and placement of advertising copy. All advertisements, advertising copy, advertising materials and manners of commercial presentation and advertising contracts (hereinafter referred to as "Advertisements") will be submitted in advance to Authority for its review and approval. Advertisements submitted for review and approval approval will designate whether the advertiser is a local, regional or a national company. Authority will provide written notice to Concessionaire of its approval or disapproval of such Advertisements within five (5) Authority business days of Concessionaire's submission of a graphics sample to Authority. Concessionaire will not display any Advertisements without previous approval by Authority. Authority approval will not be unreasonably withheld. All Advertisement matter and materials will comply with Chapter 847, Florida Statutes, as may be amended from time to time. Concessionaire will immediately remove from the Airport, upon written demand of Authority, any unapproved Advertisements at Concessionaire's sole cost and expense. In the event that any such Advertisement is not removed immediately upon receipt of written demand by Authority, Authority will have the right, but not the obligation, to remove and store such Advertisement for a period not to exceed ten (10) calendar days, during which time Concessionaire will retrieve and remove such Advertisement or obtain approval to display such Advertisement. Authority will not in any way be held responsible or liable for any damage to or destruction of any Advertisement so removed. Concessionaire will pay all costs associated with the removal and storage of any Advertisement by Authority.

In addition, Concessionaire will promptly remove or modify the presentation of any Advertisement if so directed by Authority. Advertisements that are considered offensive in the sole discretion of Authority will not be permitted.

Article VIII. **OPERATIONS AND PERFORMANCE STANDARDS**

Section 8.01 AUTHORITY RIGHT TO MONITOR PERFORMANCE

- A. Performance Audits. It is the intention of Authority that Concessionaire's business be conducted in a manner so as to meet the needs of Airport patrons and employees and in a manner that will reflect positively upon the Concessionaire and Authority. The Concessionaire shall equip, organize and efficiently manage the Concession to provide First Class service and equipment in a clean, attractive and pleasant atmosphere.

Authority in its sole discretion shall have the right to raise reasonable objections to the condition and quantity of the equipment located in the Assigned Areas, and to require any such conditions or practices objectionable to Authority to be promptly remedied by Concessionaire. If requested by Concessionaire, Authority shall submit its objections in writing and provide Concessionaire an opportunity to reply to the objections. Such reply will be given consideration by Authority.

Authority reserves the right to conduct periodic performance audits of the Assigned Areas to assure that all of the operational, safety and compliance standards of this Contract are

consistently performed by Concessionaire. Concessionaire acknowledges that performance audits will be conducted by Authority, or its representative, and hereby agrees to cooperate with all performance audits.

1. Performance audits may include minimum objective standards in any or all of the areas of (i) equipment quality; (ii) customer service; and (iii) cleanliness and maintenance. If Concessionaire fails to meet minimum standards in any of these areas, Authority may, at its discretion, assess fines as set forth in Section 8.10.
 2. In order to assure consistent adherence to performance standards throughout the Term, the Authority will use a rolling 12-month cycle in the recording of incidents of failure to meet standards. Authority reserves the right to assess fines for violations of performance standards as set forth in Section 8.10.
 3. Repeated violations and deficiencies in performance by Concessionaire may be cause, at Authority sole discretion, to terminate this Contract.
- B. Annual Review. No later than ninety (90) days after the end of each year of the Term, Concessionaire and Authority will meet to review and evaluate the customer service, equipment and operational performance of each Assigned Area. During the course of the review, Authority may determine, in its sole discretion, that the performance of one or more of the Assigned Areas is unsatisfactory.

Section 8.02 OPERATING PROCEDURES AND STANDARDS

- A. Authority Requirements. The occupancy and use by Concessionaire of the Assigned Areas and the rights herein conferred upon Concessionaire shall be subject to Authority Rules and Regulations and Operating Directives as are now or may hereafter be prescribed by Authority through the lawful exercise of its powers.
- B. Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, regulations, codes and permits in the conduct of its operations under this Contract including, but not limited to, TSA regulations regarding procedures.

Section 8.03 QUALITY OF EQUIPMENT AND SERVICES

Concessionaire shall ensure that all customers are provided First Class equipment and services, and Concessionaire shall have at all times of operation a sufficient supply of equipment at each Assigned Area to meet the demand of customers at the Airport.

If Authority identifies any deficiencies with respect to the operations, including, without limitation, quality and quantity of equipment, Concessionaire shall be notified in writing by Authority and shall correct, or cause to be corrected, such deficiency within seven (7) days, unless Authority authorizes in writing a longer period. If Concessionaire fails to correct within seven (7) days after written notice is

given by Authority, Authority may assess fines as described in Section 8.10.

Section 8.04 CLEANING AND ROUTINE MAINTENANCE

- A. General Obligations. Concessionaire shall ensure that the Concession is maintained and operated in a First Class manner and that the equipment is kept in a safe, clean, orderly and inviting condition at all times in a manner satisfactory to Authority. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Assigned Areas and its operations at the Airport.

- B. General Maintenance. Concessionaire will provide at its own expense such janitorial and cleaning services and supplies as may be necessary in the operation and maintenance of the Assigned Areas. Concessionaire also agrees to maintain all displays and keep the Assigned Areas clean, neat and attractive in appearance.

Concessionaire agrees to maintain and make necessary general repairs to all of the improvements, fixtures and equipment placed or installed in the Assigned Areas, including, without limitation, signs, showcases, and displays. Concessionaire agrees to keep and maintain in good condition the electrical equipment located in the Assigned Areas.

- C. Repairs. All repairs done by Concessionaire or on its behalf will be of First Class quality in both materials and workmanship. All repairs will be made to conform to the rules and regulations prescribed from time to time by federal, state or local authorities having jurisdiction over the work in Concessionaire's Assigned Areas.

- D. Routine Refurbishment. On or about the commencement of each Contract Year, representatives of Authority and Concessionaire shall tour the Assigned Areas and jointly agree upon what, if any, routine refurbishment is required to maintain the Assigned Areas in First Class condition. Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and Authority cannot jointly agree upon the type and extent of refurbishment, Authority may determine, in its sole discretion, the refurbishment required. For purposes of this Section 8.04, refurbishment shall mean the replacement or repair of worn equipment.

- E. Authority Sole Judge of Maintenance. Authority shall be the sole judge of the quality of Concessionaire's maintenance of the Assigned Areas. Authority or its representative may at any time, without notice, enter the Assigned Areas to determine if maintenance satisfactory to Authority is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by Authority shall be conclusive evidence of satisfactory maintenance unless Authority determines that there is a present and substantial danger or safety hazard within the Assigned Areas. If Authority determines that maintenance is not satisfactory, Authority shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to the satisfaction of Authority, within 15 days after receipt of written notice or Authority or its representative shall have the right to enter upon the Assigned Areas and perform the maintenance. Concessionaire agrees to promptly reimburse Authority for the

costs thereof, plus an administrative fee of 15 percent (15%) of such maintenance costs.

Section 8.05 BADGING AND SECURITY REQUIREMENTS

All of Concessionaire's personnel who work at the Airport must apply for and be issued a proper security identification badge prior to beginning work at the Airport. Concessionaire shall be responsible for ensuring personnel, vendor and contractor compliance with all security rules, regulations and procedures including, but not limited to, those issued by the FAA, TSA, and Authority. The rules, regulations and procedures of the FAA, TSA and Authority regarding security matters may be modified during the Term and Concessionaire shall be required to comply with all modifications. Concessionaire shall pay all costs associated with obtaining the required security identification badge and security clearances for its personnel, including, but not limited to, the costs of training and badging as established by Authority.

Authority will fine Concessionaire for each security identification badge that is lost, stolen, unaccounted for or not returned to Authority at the time of security identification badge expiration, employee termination, termination of this Contract, or upon written request by Authority. This fine will be due within 15 days from the date of invoice. The fine is subject to change without notice, and Concessionaire will be responsible for paying any increase in the fine.

If any of Concessionaire's personnel is terminated or leaves Concessionaire's employment, Authority must be notified immediately, and the security identification badge must be returned to Authority promptly.

Concessionaire's personnel who are issued security identification badges shall only utilize such badges and access rights in connection with the operation of Concessionaire's business as outlined herein. Concessionaire's personnel shall be informed by Concessionaire in writing of this requirement and a violation of such shall be a basis for the termination of a person's employment if that person violates such restrictions.

Section 8.06 EMPLOYEE PARKING

Nothing in this Contract shall be deemed to require Authority to provide parking to Concessionaire's personnel. Authority may provide parking accommodations to Concessionaire's personnel in common with employees of other concessionaires and users of the Airport subject to the payment of reasonable charges therefor as may be established from time to time by Authority. In such event, Concessionaire's personnel shall be required to park within the designated areas.

Section 8.07 PAGING, AUDIO, VIDEO SYSTEMS AND FREQUENCY PROTECTION

If Concessionaire installs, in accordance with the Tenant Work Permit Handbook and the Concessions Design Criteria Manual, and with Authority approval, any type of radio transceiver or other wireless communications equipment, Concessionaire will provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. Frequency protection will also be provided for all other frequency bands operating in the vicinity of Concessionaire's

equipment. If frequency interference occurs as a result of Concessionaire's installation, Authority reserves the right to shut down Concessionaire's installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. The cost to remedy the frequency interference will be solely at Concessionaire's expense.

Section 8.08 COMPLAINTS

All customer complaints referred to Concessionaire by Authority must be responded to by Concessionaire within 48 hours of notice. A written copy of Concessionaire's response shall be delivered to Authority within the 48-hour period.

Section 8.09 PROHIBITED ACTS

Unless approved in writing in advance by Authority, which approval is in the Authority sole discretion, Concessionaire shall not install or permit to be installed coin-operated vending machines in the Assigned Areas. Authority reserves the right to install and maintain, through independent contractors, coin-operated vending machines at the Airport including in Assigned Areas.

Concessionaire will not place excessive loads on the walls, ceilings, and floor or pavement areas of the Airport and will repair any area damaged by excessive loading to the satisfaction of Authority.

Unless approved in writing in advance by Authority, which approval is in Authority sole discretion, Concessionaire will not permit the active display or operation on the Assigned Areas of any display that flies, flashes, or emits a noise or odor.

Unless approved in writing in advance by Authority, which approval is in Authority sole discretion, Concessionaire will not keep or display any merchandise on or within, or otherwise obstruct, any part of the Airport Terminals outside of the Assigned Areas. Concessionaire shall keep all service corridors, hallways, stairways, doorways, or loading docks leading to and from the Assigned Areas free and clear of all obstructions.

Concessionaire will not interfere or permit interference with the use, operation, or maintenance of Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical or other systems installed or located from time to time at Airport.

Concessionaire will not engage in any activity prohibited by Authority Rules and Regulations and Operating Directives as may be modified during the Term. In the event Concessionaire fails to adhere to Authority Rules and Regulations and Operating Directives or fails to prevent any other of the prohibited acts set forth in this Section, Authority may assess fines as set forth in Section 8.10 until such prohibited act is ended. Moreover, if the prohibited act is not corrected as directed by Authority, Authority or its representative shall have the right to enter upon the Assigned Areas and take corrective action, and Concessionaire agrees to promptly reimburse Authority for any related costs, plus an administrative fee equal to fifteen percent (15%) of the corrective action costs.

Section 8.10 FAILURE TO COMPLY WITH PERFORMANCE STANDARDS

- A. Violations. Concessionaire acknowledges the Authority objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, Authority has established a series of fines, as set forth in the table below, that it may assess, in its sole discretion, as liquidated damages for various violations of the provisions of this Contract and/or Authority Rules and Regulations or Operating Directives. Concessionaire and Authority agree that the fines set forth herein are reasonable, and Concessionaire further agrees to pay to Authority such fines in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation and upon written demand by Authority. The Authority will, in its sole discretion, determine the classification of each fine as per day or per occurrence. Concessionaire further acknowledges that the fines are not exclusive remedies and Authority may pursue other remedies as allowed for in this Contract and at law, in Authority sole discretion. Authority waiver of any fine provided for in this Section shall not be construed as a waiver of the violation or Concessionaire’s obligation to remedy the violation.

- B. Multiple Violations. Except for violations of requirements regarding health and safety and delivery and vendor access infraction, fines for which shall accrue immediately and without notice upon violation, all other fines shall be assessed as follows:
 1. For the first and second violation of a requirement during any twelve (12)-month rolling year, the Authority will provide notice to Concessionaire to correct the violation within the time specified in the notice.
 2. For the third and subsequent violations of the same requirement during any twelve (12)-month rolling year commencing upon the first notice of violation, the fine shall be immediately assessed with no grace period.
 3. Further, after two (2) violations of the same requirement within any twelve (12)-month rolling year, Authority reserves the right, in its sole discretion, to deem the repeated violations a breach of Contract and to seek any other remedies available to it under this Contract including, but not limited to, termination.

Performance Standard Fines

Infraction	Fee Schedule
1. Operational Deficiencies 2. Fees Policy Infraction 3. Late Reporting 4. Other Infractions	\$100 per day until corrected to Authority satisfaction

1. Security Infractions	\$500 per occurrence
2. Other Infractions	

Article IX. Non-Discrimination

During the performance of this Contract, Concessionaire, for itself, its assignees and successors in interest, agrees as follows:

- A. Concessionaire will comply with the regulations relative to non-discrimination in federally assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Contract.
- B. Civil Rights. Concessionaire, with regard to the work performed by it under this Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. During the performance of this Contract, Concessionaire, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:
 - 1.. 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);
 - 2. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - 3. 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);
 - 4 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;
 - 5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - 6. 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);

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7. 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);
 8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - 9 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);
 10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 11. 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, Concessionaire must take reasonable steps to ensure that LEP persons have meaningful access to Concessionaire’s programs (70 Fed. Reg. at 74087 to 74100); and
 12. Title IX of the Education Amendments of 1972, as amended, which prohibits Concessionaire from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- C. In all solicitations either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier must be notified by Concessionaire of Concessionaire’s obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- D. Concessionaire will provide all information and reports required by the Regulations or directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or

refuses to furnish this information, Concessionaire will so certify to Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

- E. In the event of Concessionaire's non-compliance with the non-discrimination provisions of this Contract, Authority will impose such contractual sanctions as it or the FAA may determine to be appropriate, including, but not limited to, withholding of payments to Concessionaire under this Contract until Concessionaire complies, and/or cancellation, termination or suspension of this Contract, in whole or in part.
- F. Concessionaire will include the provisions of Paragraphs A through E of this Article in every subcontract and subconsultant contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued thereto. Concessionaire will take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event Concessionaire becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Concessionaire may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.
- G. Concessionaire assures that, in the performance of its obligations under this Contract, it will fully comply with the requirements of 14 CFR Part 152, Subpart E (Non-Discrimination in Airport Aid Program), as amended from time to time, to the extent applicable to Concessionaire, to ensure, among other things, that no person will be excluded from participating in any activities covered by such requirements on the grounds of race, creed, color, national origin, or sex. Concessionaire, if required by such requirements, will provide assurances to Authority that Concessionaire will undertake an affirmative action program and will require the same of its subconsultants.

Article X. **AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE**

Section 10.01 AUTHORITY POLICY

Authority is committed to a policy and program for the participation of Airport Concession Disadvantaged Business Enterprises (herein referred to as ACDBEs) in concession-related contracting opportunities in accordance with 49 CFR Part 23, as set forth in the Authority Airport Concession Disadvantaged Business Enterprise (ACDBE) Policy and Program, incorporated herein by reference (hereinafter referred to as ACDBE Program). In advancing the Authority ACDBE Program, Concessionaire agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and the Authority ACDBE Program, have a fair opportunity to participate in the performance of this Contract. Concessionaire will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under this Contract.

Section 10.02 NON-DISCRIMINATION

- A. Concessionaire and any subcontractor of Concessionaire will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Concessionaire will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Authority deems appropriate.
- B. This Contract is subject to the requirements of the U. S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- C. Concessionaire agrees to include the statements in paragraphs (A) and (B) above in any subsequent concessions agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further

Section 10.03 ACDBE PARTICIPATION AND COMPLIANCE

- A. ACDBE Goal. No specific goal for ACDBE participation has been established for this Contract; however, Concessionaire agrees to make a good faith effort, in accordance with Authority's ACDBE Program, throughout the term of this Contract, to contract with ACDBE firms certified under the Florida Unified Certification Program pursuant to 49 CFR part 26 in the performance of this Contract.
- B. ACDBE Termination and Substitution. Concessionaire will not terminate an ACDBE for convenience without Authority prior written consent. If an ACDBE is terminated by Concessionaire with Authority consent or, if an ACDBE fails to complete its work on the Contract for any reason, Concessionaire must make good faith efforts, in accordance with the requirements of 49 CFR Part 23.25(e) (1) (iii) and (iv), to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
- C. Monitoring. Authority will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Authority will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Contract. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension or material amendment of this Contract to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Contract, Authority reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.

D. Prompt Payment. Concessionaire agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Authority. This clause applies to both ACDBE and non-ACDBE subcontractors.

Article XI. **DISCLAIMER OF LIENS**

The interest of Authority in the Assigned Areas will not be subject to liens for any work, labor, materials or improvements made by or for Concessionaire to the Assigned Areas, whether or not the same is made or done in accordance with an agreement between Authority and Concessionaire. It is specifically understood and agreed by Concessionaire that in no event will Authority or the interest of Authority in the Assigned Areas be liable for or subject to any mechanic's, laborer's or materialmen's liens for materials furnished, improvements, labor or work made by or for Concessionaire to the Assigned Areas. Concessionaire is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at the Airport or any interest in this Contract without prior, written approval by the Authority. Concessionaire is specifically prohibited from subjecting Authority interest in the Assigned Areas to any mechanic's, materialmen's, or laborers' liens for improvements made by or for Concessionaire or for any materials, improvements or work for which Concessionaire is responsible for payment. Concessionaire will indemnify and hold Authority harmless for any expense or cost associated with any lien or claim of lien that may be filed against the Assigned Areas or Authority, including attorney fees incurred by Authority. Concessionaire will provide notice of this disclaimer of liens to all contractors or subcontractors providing any materials or making any improvements to the Assigned Areas.

In the event any construction, mechanic's, laborer's, materialmen's or other lien or notice of lien is filed against any portion of the Assigned Areas for any work, labor or materials furnished to the Assigned Areas, whether or not the same is made or done in accordance with an agreement between Authority and Concessionaire, Concessionaire will cause any such lien to be discharged of record within 30 days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title Concessionaire or other escrow agent acceptable to Authority, security reasonably satisfactory to Authority to secure payment of such lien, if requested by Authority, while Concessionaire contests to conclusion the claim giving rise to such lien.

Article XII. **DEFAULT, REMEDIES AND TERMINATION RIGHTS**

Section 12.01 **EVENTS OF DEFAULT**

Concessionaire will be deemed to be in default of this Contract upon the occurrence of any of the following:

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- A. The failure or omission by Concessionaire to perform its obligations under this Contract or the breach of any terms, conditions and covenants required herein.
 - B. The conduct of any business or performance of any acts at the Airport not specifically authorized in this Contract or by any other agreement between Authority and Concessionaire, and Concessionaire's failure to discontinue that business or those acts within 30 days of receipt by Concessionaire of Authority written notice to cease said business or acts (which 30 day notice and cure period shall also satisfy the 30-day notice requirement of Section 12.02 below).
 - C. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Concessionaire's assets.
 - D. The divestiture of Concessionaire's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
 - E. The insolvency of Concessionaire; or if Concessionaire will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Concessionaire of a voluntary petition of bankruptcy or the institution of proceedings against Concessionaire for the adjudication of Concessionaire as bankrupt pursuant thereto.
 - F. Concessionaire's violation of Florida Statute Section 287.133 concerning criminal activity on contracts with public entities.

Section 12.02 AUTHORITY REMEDIES

In the event of any of the foregoing events of default of Concessionaire, and following thirty (30) days notice by Authority and Concessionaire's failure to cure, Authority, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law:

- A. Terminate Concessionaire's rights under this Contract and, in accordance with law, take possession of the Assigned Areas. In doing so, Authority will not be deemed to have thereby accepted a surrender of the Assigned Areas, and Concessionaire will remain liable for all payments or other sums due under this Contract and for all damages suffered by Authority because of Concessionaire's breach of any of the covenants of this Contract; or
- B. Treat this Contract as remaining in existence, and cure Concessionaire's default by performing or paying the obligation which Concessionaire has breached. In such event all sums paid or expenses incurred by Authority directly or indirectly in curing Concessionaire's default will become immediately due and payable, as well as interest thereon, from the date such fees or charges became due to the date of payment, at eighteen percent (18%) per annum to the maximum extent permitted by law; or

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- C. Declare this Contract to be terminated, ended, null and void, and reclaim possession of the Assigned Areas, whereupon all rights and interest of Concessionaire in the Assigned Areas will immediately end.

No waiver by Authority at any time of any of the terms, conditions, covenants, or agreements of this Contract, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure, or omission of Authority to re-enter the Assigned Areas or to exercise any right, power, privilege, or option arising from any default nor subsequent acceptance of fees or charges then or thereafter accrued will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment, or acquiescence of the Assigned Areas. No option, right, power, remedy, or privilege of Authority will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to Authority by this Contract are cumulative and that the exercise of one right, power, option, or remedy by Authority will not impair its rights to any other right, power, option, or remedy available under this Contract or provided by law. No act or thing done by Authority or Authority agents or employees during the Term will be deemed an acceptance of the surrender of this Contract, and no acceptance of surrender will be valid unless in writing.

Section 12.03 CONCESSIONAIRE REMEDIES

Upon thirty (30) days written notice to Authority, Concessionaire may terminate this Contract and all of its obligations hereunder, if Concessionaire is not in default of any term, provision, or covenant of this Contract or in the payment of any fees or charges to Authority, and only upon or after the occurrence of the following: the inability of Concessionaire to use the Airport for a period longer than ninety (90) consecutive days due to war, terrorism, or the issuance of any order, rule or regulation by a competent governmental authority or court having jurisdiction over Authority, preventing Concessionaire from operating its business for a period of ninety (90) consecutive days, provided, however, that such inability or such order, rule or regulation is not due to any fault or negligence of Concessionaire.

Section 12.04 CONTINUING RESPONSIBILITIES OF CONCESSIONAIRE

Notwithstanding the occurrence of any event of default, Concessionaire will remain liable to Authority for all payments payable hereunder and for all preceding breaches of this Contract. Furthermore, unless Authority elects to cancel this Contract, Concessionaire will remain liable for and promptly pay any and all payments accruing hereunder until termination of this Contract as set forth in this Contract.

Article XIII. INDEMNIFICATION

- A. To the maximum extent permitted by law, in addition to Concessionaire's obligation to provide, pay for and maintain insurance as set forth elsewhere in the Contract, Concessionaire will

indemnify and hold harmless Authority, its members, officers, agents, employees, and volunteers from any and liabilities, suits, claims, expenses, losses, enforcement actions, costs, fines and damages (including but not limited to claims for attorney's fees and court costs) caused in whole or in part by the: (1) presence on, use or occupancy of Authority property; (2) acts, omissions, negligence (including professional negligence and malpractice), recklessness, intentional wrongful conduct, activities, or operations; (3) any breach of the terms of this Contract; (4) performance, non-performance or purported performance of this Contract; (5) violation of any law, regulation, rule, ordinance, order or permit; (6) infringement of any patent, copyright, trademark, trade dress or trade secret rights; and/or (7) contamination of the soil, groundwater, surface water, storm water, air or the environment by fuel, gas, chemicals or any other substance deemed by the Environmental Protection Agency or other regulatory agency to be an environmental contaminant; of or by Concessionaire or Concessionaire's officers, employees, agents, volunteers, subcontractors, invitees, or any other person directly or indirectly employed or utilized by Concessionaire regardless of whether the liability, suit, claim, expense, loss, cost, fine or damages is caused in part by an indemnified party.

- B. In addition to the duty to indemnify and hold harmless, Concessionaire will have the separate and independent duty to defend Authority, its members, officers, agents, employees, and volunteers from all suits, claims or actions of any nature seeking damages, expenses, losses, costs, fines or attorney's fees in the event the suit, claim, or action of any nature arises in whole or in part from the: (1) presence on, use or occupancy of Authority property; (2) acts, omissions, negligence (including professional negligence and malpractice), recklessness, intentional wrongful conduct, activities, or operations; (3) any breach of the terms of this Contract; (4) performance, non-performance or purported performance of this Contract; (5) violation of any law, regulation, rule, ordinance, order or permit; (6) infringement of any patent, copyright, trademark, trade dress or trade secret rights; and/or (7) contamination of the soil, groundwater, surface water, stormwater, air or the environment by fuel, gas, chemicals or any other substance deemed by the Environmental Protection agency or other regulatory agency to be an environmental contaminant; of or by Concessionaire or Concessionaire's officers, employees, agents, volunteers, subcontractors, invitees, or any other person directly or indirectly employed or utilized by Concessionaire regardless of whether it is caused in part by Authority, its members, officers, agents, employees, or volunteers. This duty to defend exists immediately upon presentation of written notice of a suit, claim or action of any nature to Concessionaire by a party entitled to a defense hereunder.
- C. If the above indemnity or defense provisions or any part of the above indemnity or defense provisions are limited by Florida Statute § 725.06 (2)-(3), then Concessionaire agrees to the following: To the maximum extent permitted by law, Concessionaire will indemnify and hold harmless Authority, its officers and employees from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fee, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of Concessionaire and persons employed or utilized by Concessionaire in the performance of this Contract.

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- D. If the above indemnity or defense provisions or any part of the above indemnity or defense provisions are limited by Florida Statute § 725.06 (1), the monetary limitation on the extent of the indemnification shall be the greater of the (i) monetary value of this Contract, (ii) coverage amount of Commercial General Liability Insurance required under this Contract, or (iii) \$1,000,000.00. Otherwise, the obligations of this Article will not be limited by the amount of any insurance required to be obtained or maintained under this Contract.
 - E. Concessionaire's obligations to defend and indemnify as described in this Article will survive the expiration or earlier termination of this Contract until it is determined by final judgment that any suit, claim or other action against Authority, its members, officers, agents, employees, and volunteers is fully and finally barred by the applicable statute of limitations and repose.
 - F. Nothing in this Article will be construed as a waiver of any immunity from or limitation of liability Authority or its members, officers, agents, employees, and volunteers may have under the doctrine of sovereign immunity under common law or statute.
 - G. The Authority and its members, officers, agents, employees, and volunteers reserve the right, at their option, to participate in the defense of any suit, without relieving Concessionaire of any of its obligations under this Article.
 - H. If this Article or any part of this Article is deemed to conflict in any way with any law, this Article or part of this Article will be considered modified by such law to remedy the conflict.

Article XIV. **INSURANCE**

Section 14.01 INSURANCE TERMS AND CONDITIONS

Concessionaire must maintain the following limits and coverages uninterrupted or amended through the Term of this Contract. In the event the Concessionaire becomes in default of the following requirements the Authority reserves the right to take whatever actions deemed necessary to protect its interests. Required liability policies other than Workers' Compensation/Employer's Liability will provide that the Authority, members of the Authority's governing body, and the Authority's officers, volunteers, and employees are included as additional insureds.

Section 14.02 REQUIRED COVERAGES

A. Commercial General Liability

The minimum limits of insurance (inclusive of any amounts provided by an umbrella or excess policy) covering the work performed pursuant to this Contract will be the amounts specified herein. Coverage will be provided for liability resulting out of, or in connection with, ongoing operations performed by, or on behalf of, Concessionaire under this Contract or the use or occupancy of Authority Assigned Areas by, or on behalf of, Concessionaire in connection with this Contract. Coverage shall be provided on a form no more restrictive than ISO Form CG 00 01. Additional insurance coverage shall be provided on a form no more restrictive than ISO Form CG 20 10 10 01 and CG 20 37 10 01.

	Contract Specific
General Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
Personal and Advertising Injury Each Occurrence	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000

B. Workers' Compensation and Employer's Liability Insurance

Coverage shall be provided on a form no more restrictive than the most recent edition of the NCCI standard Workers' Compensation Policy. Where applicable, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law requiring compensation for employee injuries. The minimum limits of insurance (inclusive of any amount provided by an umbrella or excess policy) are:

Part One	Statutory
Part Two	
Each Accident	\$,1,000,000
Disease – Policy Limit	\$,1,000,000
Disease – Each Employee	\$,1,000,000

C. Business Automobile Liability Insurance

Coverage will be provided for all owned, hired and non-owned vehicles used in connection with work performed pursuant to this Contract. Coverage shall be provided on a form no more restrictive than the most recent edition of ISO Form CA 00 01. The minimum limits of insurance (inclusive of any amounts provided by an umbrella or excess policy) covering the work performed pursuant to this Contract are:

Each Occurrence – Bodily Injury and Property Damage combined	\$1,000,000
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In the event the Concessionaire operates vehicles on the airport operations area (AOA) used or intended to be used for aircraft landings, the minimum limits of Business Automobile Liability insurance (inclusive of any amounts provided by an umbrella or excess policy) covering all owned, hired, and non-owned vehicles are:

Each Occurrence – Bodily Injury and Property Damage combined	\$5,000,000
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D. Waiver of Subrogation

Concessionaire, for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required by this Contract, waives all rights against the Authority, members of Authority's governing body and the Authority's officers, volunteers and employees, for damages or loss to the extent covered and paid for by any insurance maintained by the

Concessionaire.

Section 14.03 CONDITIONS OF ACCEPTANCE

The insurance maintained by Concessionaire must conform at all times with Authority Standard Procedure S250.06, Contractual Insurance Terms and Conditions, which may be amended from time to time.

Article XV. SECURITY FOR PERFORMANCE

Section 15.01 FORM OF SECURITY DEPOSIT

To secure payment for fees, charges and other payments required hereunder, Concessionaire will post with Authority a surety bond or irrevocable letter of credit drawn in favor of the Authority (hereinafter referred to as Security Deposit).

The Security Deposit will be maintained throughout the Term of this Contract and any holdover or extension and will be in an amount equal to the sum of the Percentage Fee payable to Authority hereunder for a period of three (3) months. The Security Deposit will be issued by a bank or surety provider acceptable to Authority and authorized to do business in the State of Florida, and will be in a form and content satisfactory to Authority. Each time the Security Deposit expires it shall be renewed at the amount equal to the sum of the Percentage Fee payable for a period of three months then in effect. The Concessionaire shall provide the Authority with a renewal or replacement Security Deposit no later than sixty (60) days prior to the date of expiration.

Concessionaire shall furnish the Security Deposit within ten (10) days of the Effective Date as security for the full performance of every provision of this Contract by Concessionaire. Failure to maintain the Security Deposit as set forth herein shall be an event of Default hereunder.

Section 15.02 APPLICATION OF SECURITY DEPOSIT

In the event Concessionaire fails to perform the payment terms and conditions of this Contract, Authority, in addition to any other rights and remedies available by law or in equity, may, at any time, apply the Security Deposit or any part thereof toward the payment of Concessionaire's obligations under this Contract. In such an event, within five days after notice, Concessionaire will restore the Security Deposit to its original amount. Authority will not be required to pay Concessionaire any interest on the Security Deposit.

Section 15.03 RELEASE OF SECURITY DEPOSIT

The release of the Security Deposit will be subject to the satisfactory performance by Concessionaire of all terms, conditions, and covenants contained herein throughout the entire Term. Upon termination of this Contract, the release of Security Deposit will not occur until all fees, charges, and other payments due to Authority are satisfied and Authority has accepted the findings of Concessionaire's audit or has successfully conducted an audit in accordance with the provisions of Section 5.09 of this Contract. In the event of a dispute as to the condition of the Assigned Areas, only the amount in dispute will be retained

for remedy. Authority shall release the Security Deposit without interest within 30 days of meeting the above requirements.

Article XVI. PROPERTY DAMAGE

Section 16.01 PARTIAL DAMAGE

In the event all or a portion of the Assigned Areas are partially damaged by fire, explosion, the elements, a public enemy, Act of God, or other casualty, but not rendered unusable, Concessionaire will give Authority immediate notice thereof, and Authority will make the necessary repairs immediately, at its own cost and expense.

Section 16.02 EXTENSIVE DAMAGE

In the event damages as a result of any event outlined in Section 16.01 are so extensive as to render all or a significant portion of the Assigned Areas unusable, but capable of being repaired within 120 days, Concessionaire will give Authority immediate notice thereof, and Authority will make the necessary repairs with due diligence, at its own cost and expense.

Section 16.03 COMPLETE DESTRUCTION

In the event the Assigned Areas are completely destroyed as a result of an event outlined in Section 16.01 and the damages render the entire Assigned Areas unusable and the Assigned Areas cannot be repaired within 120 days, Concessionaire will give Authority immediate notice thereof, and Authority will be under no obligation to repair, replace, or reconstruct said Assigned Areas. In the event Authority elects not to repair, replace, or reconstruct said Assigned Areas, Authority will not be required to grant alternative Assigned Areas to Concessionaire and this Contract and the obligations of the Parties hereunder will terminate.

Section 16.04 ABATEMENT OF FEES

In the event of extensive damage or complete destruction as referenced in Section 16.02 and Section 16.03, the portion of the Percentage Fee attributable to unusable Assigned Areas will abate from the date of casualty until such time as Authority issues notice to Concessionaire that the unusable portion of the Assigned Areas can be re-occupied. For purposes of this Section 16.04, the portion of Percentage Fee attributable to the unusable Assigned Areas shall be the proportion of Percentage Fee equal to the proportion of total Gross Receipts in the prior Contract Year attributable to the unusable Assigned Areas. Notwithstanding the foregoing, in the event the Assigned Areas are damaged or destroyed as a result of an act, omission, or negligence of Concessionaire, its employees, agents, representatives, invitees and/or subcontractors, Concessionaire's Percentage Fee will not abate and Concessionaire will be responsible for all costs to repair or rebuild that portion of the Assigned Areas damaged or destroyed as a result thereof.

Section 16.05 LIMITS OF AUTHORITY OBLIGATIONS DEFINED

Redecoration, replacement, and refurbishment of furniture, fixtures, equipment, and supplies will be the responsibility of and paid for by Concessionaire and will be of equivalent quality to that originally

installed hereunder. Authority will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Assigned Areas regardless of the cause of damage.

Section 16.06 WAIVER OF SUBROGATION

To the extent insurance permits, and then only to the extent collected or collectable by Concessionaire under its property insurance coverage, Concessionaire waives any and all claims against Authority and its directors, officers, agents, servants and employees for loss or damage to property.

Article XVII. DAMAGING ACTIVITIES

No goods or materials will be kept, stored, or used in or on the Assigned Areas that are flammable, explosive, hazardous (as defined below) or that may be offensive or cause harm to the general public or cause damage to the Assigned Areas. Nothing will be done on the Assigned Areas other than as provided in this Contract that will increase the rate of or suspend the insurance on the Assigned Areas or on any structure of the Authority. No machinery or apparatus will be used or operated on the Assigned Areas that will damage the Assigned Areas or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Assigned Areas, with approval by Authority, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Contract.

The term "Hazardous" will mean:

- A. Any substance the presence of which requires or may later require notification, investigation or remediation under any environmental law; or
- B. Any substance that is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any federal, state, or local environmental law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resources Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and the associated regulations; or
- C. Any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state; or
- D. Any substance that contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds; or
- E. Any substance that contains polychlorinated biphenyls, asbestos or urea formaldehyde foam insulation; or

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- F. Any substance that contains or emits radioactive particles, waves or materials, including, without limitation, radon gas.

Article XVIII. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES AND RULES

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with applicable federal, state, and local laws and regulations, Airport Rules, Regulations, Policies, Procedures and Operating Directives as are now or may hereinafter be prescribed by Authority, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or Authority including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of Airport.

Article XIX. AIRPORT SECURITY

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Concessionaire or Authority by the FAA or TSA. If Concessionaire, its officers, authorized officials, employees, agents, subcontractors or those under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against Authority, then, in addition to any other remedies available to Authority, Concessionaire will be responsible and will reimburse Authority in the full amount of any such monetary penalty or other damages. This amount must be paid by Concessionaire within 15 days from the date of the invoice or written notice.

Article XX. AMERICANS WITH DISABILITIES ACT

Concessionaire will comply with the applicable requirements of the Americans with Disabilities Act; the Florida Americans with Disabilities Accessibility Implementation Act; Florida Building Code; and any similar or successor laws, ordinances, rules, standards, codes, guidelines, and regulations and will cooperate with Authority concerning the same subject matter.

Article XXI. FAA APPROVAL

This Contract may be subject to approval of the FAA. If the FAA disapproves this Contract, it will become null and void, and both Parties will bear their own expenses relative to this Contract.

Article XXII. RIGHT OF FLIGHT

Concessionaire expressly agrees for itself, its successors and assigns, to prevent any use of the Assigned Areas which would interfere with or adversely affect the operation or maintenance of Airport, or

otherwise constitute an Airport hazard.

Article XXIII. FEDERAL RIGHT TO RECLAIM

In the event a United States governmental agency demands and takes over the entire facilities of the Airport or the portion thereof wherein the Assigned Areas are located, for public purposes, for a period in excess of 90 consecutive days, then this Contract will terminate and Authority will be released and fully discharged from any and all liability hereunder. In the event of such termination, Concessionaire's obligation to pay the Percentage Fee will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

Article XXIV. PROPERTY RIGHTS RESERVED

This Contract shall be subordinate to the provisions of any existing or future contracts between the Authority (or its predecessor or successor) and the United States of America, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to the Authority (or its predecessor or successor) of Federal funds for the development of the Airport (Grant Assurances). In the event that this Contract, either on its own terms or by any other reason, conflicts with or violates such Grant Assurances, the Authority has the right to amend, alter or otherwise modify the terms of this Contract in order to resolve such conflict or violation and Concessionaire shall not withhold its consent to such amendments, alterations of modifications.

Article XXV. ASSIGNMENT AND SUBCONTRACT

Concessionaire may not assign, subcontract and/or sublease its rights, interests or obligations in whole or in part under this Contract without the prior written consent of Authority in the Authority sole and absolute discretion. Subject to the terms and conditions set forth in this Section, and only after it has received Authority written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Assigned Areas.

Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification or other agreement relating to any such subcontract, must be approved in advance by Authority. The subcontract must contain substantially the same business terms and conditions as those found in this Contract, and the subcontract must acknowledge the existence of this Contract and that the subcontracting parties are bound by the terms and conditions of this Contract, and state that the subcontracting parties shall comply with the satisfy the requirements and obligations of Concessionaire hereunder. All fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-up by Concessionaire. Sub-lessees must independently operate any subcontracted Assigned Areas and adhere to and comply with all of the terms, conditions, requirements, restrictions, obligations and standards set forth herein, including without limitation, all audit standards incorporated herein.

Article XXVI. **NON-EXCLUSIVE RIGHTS**

This Contract will not be construed to grant or authorize the granting of an exclusive right within the meaning of 49 USC 40103(e) or 49 USC 47107(a), as may be amended from time to time, and related regulations.

Article XXVII. **RIGHT TO DEVELOP AIRPORT**

It is covenanted and agreed that Authority reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire or its subcontractors and without interference or hindrance.

Article XXVIII. **APPLICABLE LAW AND VENUE**

This Contract will be construed in accordance with the laws of the State of Florida. Venue for any action brought pursuant to this Contract will be in Hillsborough County, Florida, or in the Tampa Division of the U.S. District Court for the Middle District of Florida.

Concessionaire hereby waives any claim against Authority and its officers, Board members, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Contract or any part hereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

Article XXIX. **RIGHT TO AMEND**

In the event that the FAA or its successors requires amendments, modifications, revisions, supplements, or deletions in this Contract as a condition precedent to the granting of funds for the improvement of the Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions to this Contract as may be reasonably required to obtain such funds; provided, however, that in no event will Concessionaire be required, pursuant to this paragraph, to agree to an increase in the charges provided for hereunder.

Article XXX. **HEADINGS**

The headings contained herein, including the Table of Contents, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Contract. If for any reason there is a conflict between content and headings, the content will control.

Article XXXI. **NOTICES AND COMMUNICATIONS**

All notices or communication, whether to Authority or to Concessionaire pursuant hereto, will be

deemed validly given, served, or delivered upon receipt by the Party by hand delivery, or three days after depositing such notice or communication in a postal receptacle, or one day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

**TO AUTHORITY:
(MAIL DELIVERY)**

Hillsborough County Aviation Authority
Tampa International Airport
P.O. Box 22287
Tampa, Florida 33622-2287
Attn: Chief Executive Officer

**TO CONCESSIONAIRE:
(MAIL DELIVERY)**

SecurityPoint Media, LLC
11201 Corporate Circle North
Suite 120
St. Petersburg, FL 33716
Attn: Joseph Ambrefe, Jr. CEO

OR

(HAND DELIVERY)

Hillsborough County Aviation Authority
Tampa International Airport
Administration Offices Bldg., 2nd floor
4100 George J. Bean Parkway
Tampa, Florida 33607
Attn: Chief Executive Officer

(HAND DELIVERY)

SecurityPoint Media, LLC
11201 Corporate Circle North
Suite 120
St. Petersburg, FL 33716
Attn: Joseph Ambrefe, Jr. CEO

or to such other address as either Party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article.

If the notice is sent through a mail system, a verifiable tracking documentation, such as a certified return receipt or overnight mail tracking receipt, is encouraged.

Article XXXII. SUBORDINATION TO TRUST AGREEMENTS

This Contract and all rights of Concessionaire hereunder are expressly subject and subordinate to the terms, covenants, conditions and provisions of any Trust Agreements or other debt instruments executed by Authority to secure bonds issued by, or other obligations of, Authority. The obligations of Concessionaire hereunder may be pledged, transferred, hypothecated, or assigned at any time by Authority to secure such obligations. Conflicts between the terms of this Contract and the provisions, covenants and requirements of the debt instruments mentioned above will be resolved in favor of the provisions, covenants and requirements of such debt instruments.

Article XXXIII. SUBORDINATION OF AGREEMENT

It is mutually understood and agreed that this Contract will be subordinate to the provisions of any existing or future agreement between Authority and the United States of America, its Boards, Agencies, Commissions, and others, relative to the operation or maintenance of the Airport, the execution of which

has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport, and this Contract will be subordinate to the license or permit of entry which may be granted by the Secretary of Defense.

Article XXXIV. RADON GAS NOTIFICATION

In accordance with requirements of the State of Florida, the following notification statement will be included in all agreements relating to rental of real property. This is provided for information purposes only.

RADON GAS: Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department.

Article XXXV. RELATIONSHIP OF THE PARTIES

Concessionaire is and will be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Authority will in no way be responsible therefore.

Article XXXVI. AUTHORITY APPROVALS

Except as otherwise indicated elsewhere in this Contract, wherever in this Contract approvals are required to be given or received by Authority, it is understood that the Authority Chief Executive Officer, or a designee of the Authority Chief Executive Officer, is hereby empowered to act on behalf of Authority.

Article XXXVII. INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Contract will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Contract will be valid and enforced to the fullest extent permitted by law.

Article XXXVIII. TIME IS OF THE ESSENCE

Time is of the essence of this Contract.

Article XXXIX. TAXES

Concessionaire will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and ad valorem taxes of any kind, against Concessionaire's Assigned Areas, the real property and any improvements thereto, Trade Fixtures and other personal property used in the

performance of the Concession or leasehold estate which are created herein, or which result from Concessionaire's occupancy or use of the Assigned Areas or assessed on any payments made by Concessionaire hereunder, whether levied against Concessionaire or Authority. Concessionaire will also pay any other taxes, fees, or assessments against the Assigned Areas or leasehold estate created herein. Concessionaire will pay the taxes, fees, or assessments reflected in a notice Concessionaire receives from the Authority within 30 days after Concessionaire's receipt of that notice or within the time period prescribed in the tax bill. Authority will attempt to cause the taxing authority to send the applicable tax bills directly to Concessionaire and Concessionaire will remit payment directly to the taxing authority, in such instance. Concessionaire may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to Authority of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of Authority. Concessionaire shall pay to Authority, with each payment of the Percentage Fee to Authority, all sales or other taxes which may be due with respect to such payments, and upon receipt, Authority shall remit such taxes to the applicable taxing authorities.

Article XL. SIGNATURES

Section 40.01 SIGNATURE OF PARTIES

It is an express condition of this Contract that it will not be complete or effective until signed by Authority and by Concessionaire.

Section 40.02 COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

Article XLI. CONCESSIONAIRE AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Concessionaire is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Concessionaire does designate the Secretary of State, State of Florida, as its agent for the purpose of service of process in any court action between it and Authority arising out of or based upon this Contract, and the service will be made as provided by the laws of the State of Florida for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Concessionaire does not have a duly noted resident agent for service of process, as an alternative method of service of process, Concessionaire may be personally served with such process out of this State, by the registered mailing of such complaint and process to Concessionaire at the address set out in this Contract. Such service will constitute valid service upon Concessionaire as of the date of mailing. Concessionaire will have 30 days from date of mailing to respond thereto. It is further expressly understood that Concessionaire hereby agrees to the process so served, submits to the jurisdiction of the court, and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

Article XLII. COMPLIANCE WITH PUBLIC RECORDS LAW

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 870-8721, ADMCENTRALRECORDS@TAMPAAIRPORT.COM, HILLSBOROUGH COUNTY AVIATION AUTHORITY, P.O.BOX 22287, TAMPA FL 33622.

Concessionaire agrees in accordance with Florida Statute Section 119.0701 to comply with public records laws including the following:

- A. Keep and maintain public records required by Authority in order to perform the services contemplated by this Contract.
- B. Upon request from Authority custodian of public records, provide Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract Term and following completion of this Contract.
- D. Upon completion of this Contract, keep and maintain public records required by Authority to perform the service. Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Authority, upon request from Authority custodian of public records, in a format that is compatible with the information technology systems of Authority.

Article XLIII. DATA SECURITY

Concessionaire will establish and maintain safeguards against the destruction, loss or alteration of Authority data or third party data that Concessionaire may gain access to or be in possession of in the performance of this Contract. Concessionaire will not attempt to access, and will not allow its personnel access to, Authority data or third party data that is not required for the performance of the services of this Contract by such personnel.

Concessionaire will adhere to and abide by the security measures and procedures established by Authority. In the event Concessionaire or Concessionaire's subcontractor (if any) discovers or is notified of a breach or potential breach of security relating to Authority data or third party data, Concessionaire will promptly: (i) notify Authority of such breach or potential breach; and ii) if the applicable Authority data or third party data was in the possession of Concessionaire at the time of such breach or potential

breach, Concessionaire will investigate and cure the breach or potential breach.

Article XLIV. FLORIDA PUBLIC ENTITY CRIMES

Concessionaire attests compliance with Florida Statute Section 287.133, concerning Public Entity Crimes.

Article XLV. HAZARDOUS SUBSTANCES AND OSHA COMPLIANCE

- A. No goods, merchandise or material will be kept or stored by Concessionaire at the Airport which are explosive or hazardous; and no offensive or dangerous trade, business or occupation will be carried on therein or thereon. Nothing will be done in the performance of this Contract which will increase the rate of or suspend any insurance policy or coverage of Authority.
- B. Concessionaire assures that all materials, equipment, and all other items used in the performance of this Contract are in compliance with Occupational Safety and Health Administration (OSHA).

Article XLVI. NON-DISCLOSURE

All written and oral information and materials (hereinafter referred to as Information) disclosed or provided by Authority to Concessionaire under this Contract will not be disclosed by Concessionaire, whether or not provided before or after the date of this Contract.

The Information will remain the exclusive property of Authority and will only be used by Concessionaire for purposes permitted under this Contract. Concessionaire will not use the Information for any purpose which might be directly or indirectly detrimental to Authority or any of its affiliates or subsidiaries.

Concessionaire will prevent the unauthorized use, disclosure, dissemination or publication of the Information. Concessionaire agrees that it will cause its employees and representatives who have access to the Information to comply with these provisions and Concessionaire will be responsible for the acts and omissions of its employees and representatives with respect to the Information.

Concessionaire agrees that any disclosure of the Information by Concessionaire's employees and/or representatives will be deemed a breach of this Contract. Concessionaire agrees that in the event of any breach or threatened breach by Concessionaire of its non-disclosure obligation, Authority may obtain such legal remedies as are available, and, in addition thereto, such equitable relief as may be necessary to protect Authority.

The non-disclosure obligation imposed on Concessionaire under this Contract will survive the expiration or termination, as the case may be, of this Contract and the obligation will last indefinitely.

Article XLVII. WAIVERS OF CLAIMS

Concessionaire hereby waives any claim against the City of Tampa, Hillsborough County, State of Florida

and Authority, and its officers, Board Members, agents, or employees, for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

Article XLVIII. **COMPLETE CONTRACT**

This Contract represents the complete understanding between the Parties, and any prior contracts or representations, whether written or verbal, are hereby superseded. This Contract may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Contract.

(The rest of this page was intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have set their hands and corporate seals on this ____ day of _____, 2017.

HILLSBOROUGH COUNTY AVIATION AUTHORITY

ATTEST: _____
Victor D. Crist, Secretary

BY: _____
Robert I. Watkins, Chairman

Address: PO Box 22287
Tampa, FL 33622

Address: PO Box 22287
Tampa, FL 33622

LEGAL FORM APPROVED:

WITNESS: _____
Signature

BY: _____
David Scott Knight, Assistant General Counsel

Printed Name

HILLSBOROUGH COUNTY AVIATION AUTHORITY
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this _ day of _____, 2017, by Robert I. Watkins, in the capacity of Chairman of the Board of Directors and Victor D. Crist, in the capacity of Secretary of the Board of Directors, HILLSBOROUGH COUNTY AVIATION AUTHORITY, a public body corporate under the laws of the State of Florida, on its behalf. They are personally known to me and they did not take an oath.

Stamp or Seal of Notary

Signature of Notary

Printed Name

Date Notary Commission Expires (if not on stamp or seal)

SECURITYPOINT MEDIA, LLC

Signed in the Presence of:

BY:

Signature

Witness

Title

Printed Name

Printed Name

Witness

Printed Address

Printed Name

City/State/Zip

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledge before me this _____ day of _____, 20____, by
_____ in the capacity of _____,
(Individual's Name) (Individual's Title)
at _____, a corporation on its behalf,
(Company Name)
_____ known to me and
(He is / She is) (Personally / Not Personally)
has produced _____.
(Form of Identification)

Stamp or Seal of Notary

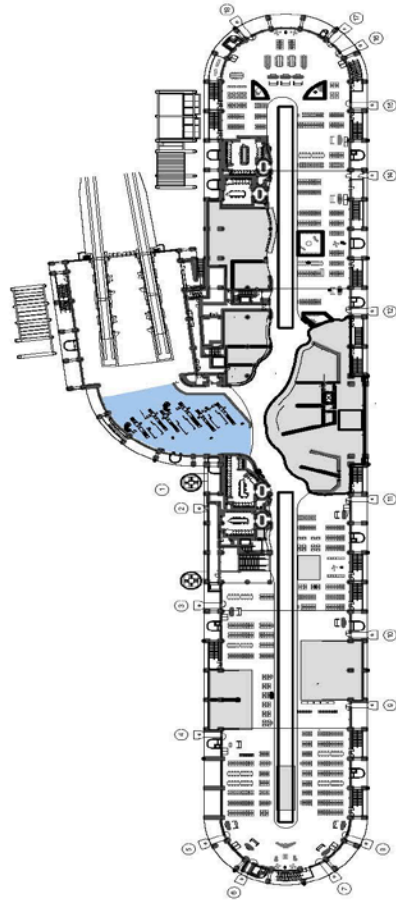
Signature of Notary

Printed Name

Date Notary Commission Expires (if not on stamp or seal)

Exhibits

EXHIBIT A ASSIGNED AREAS OF SECURITY BIN ADVERTISING PROGRAM



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LEGEND

 PREMISES

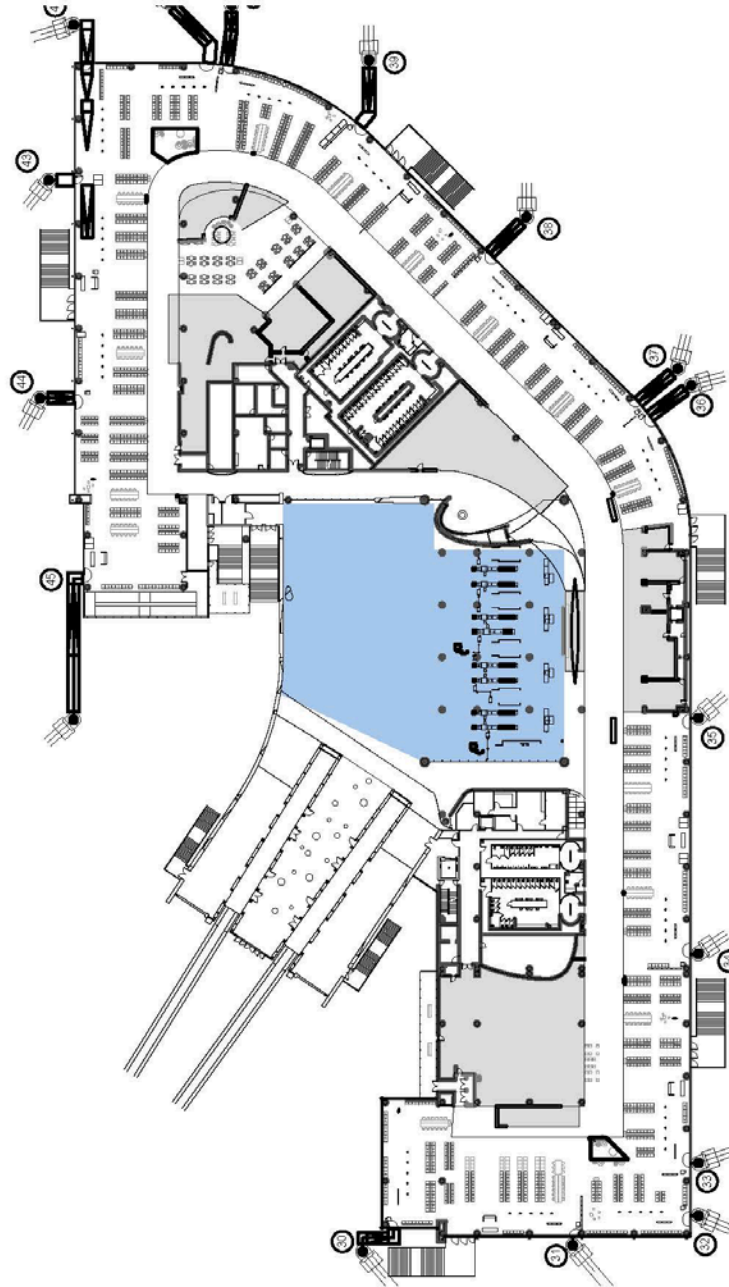


EXHIBIT A
LOCATIONS OF
PASSENGER-SECURITY
CHECKPOINTS



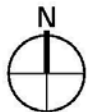
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LEGEND

 PREMISES



**EXHIBIT A
LOCATIONS OF
PASSENGER-SECURITY
CHECKPOINTS**



FEB 2017

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LEGEND

 PREMISES

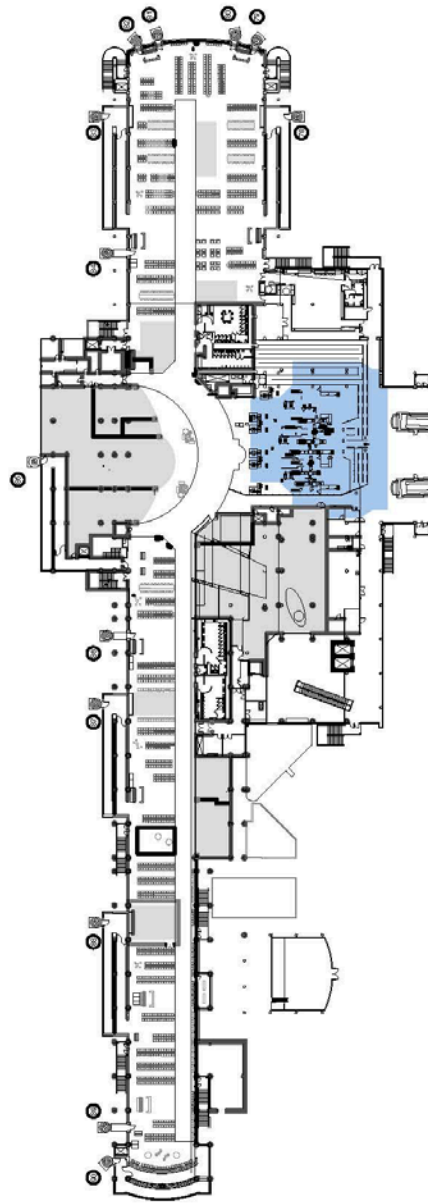


**EXHIBIT A
LOCATIONS OF
PASSENGER-SECURITY
CHECKPOINTS**



FEB 2017

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LEGEND

 PREMISES



**EXHIBIT A
LOCATIONS OF
PASSENGER-SECURITY
CHECKPOINTS**



FEB 2017

**EXHIBIT B MEMORANDUM OF UNDERSTANDING CONCERNING USE OF SECURITY SCREENING
CHECKPOINT FURNISHINGS**

**MEMORANDUM OF UNDERSTANDING
CONCERNING
USE OF SECURITY SCREENING CHECKPOINT FURNISHINGS**

The Transportation Security Administration (TSA) and the [Hillsborough County Aviation Authority] (the "Airport Operator") which operates [Tampa International Airport (TPA)] (the "Airport") hereby enter into the Memorandum of Understanding (the "MOU") in consideration of the following representations and promises mutually exchanged:

1. Purpose. The purpose of this MOU is to set forth the terms by which TSA agrees to use, and the Airport Operator agrees to provide at no cost to TSA, certain items generally known as the "bins" or "tubs," the "bin carts" or "tub carts," and the "divestiture/recomposure tables" described in greater detail and in the quantities listed in the Addendum to this MOU, attached hereto as Attachment A (collectively, the "furnishings"). No funds are obligated under this MOU.
2. Authority. This MOU is authorized under The Aviation and Transportation Security Act, P.L. 107-71, codified at 49 U.S.C. §§ 106(1) and (m), and 114(m).
3. Owner of Furnishings. The Airport Operator is not the owner of the furnishings, a third party Advertising Broker is the legal and controlling owner of the furnishings. In recognition of this third party relationship, the Airport Operator hereby warrants that it has the legal authority, via its agreement with the third party owner of the furnishings, to bind the owner of the furnishings provided to TSA to the provisions of this MOU.
4. The Airport Operator shall provide for TSA's continued use of the furnishings delivered under this MOU in the event of a termination of the agreement between the Airport Operator and the Advertising Broker (with respect to paragraphs 6.B. (3) and 9). This will be accomplished through the assignment of furnishings upon request and through the provision to the TSA of a license to all patent or other intellectual property necessary for use of such furnishings by the TSA in the ordinary course of the Security Screening Checkpoint.
5. Display of Advertisements. In furtherance of an agreement with an Advertising Broker for the display of the advertising entered into by the Airport Operator, advertising may be placed on bins within the space of the Security Screening Checkpoint ("checkpoint") operated by TSA at the Airport for use by airline passengers and TSA personnel in TSA's security screening process.
6. Responsibilities.
 - A. TSA agrees to the following:
 - (1) TSA hereby agrees to permit placement in the checkpoint(s) of only such furnishings that conform to the specifications stated in the "Security Screening Checkpoint Furnishings Specifications Sheet" (the "Spec Sheet") which will be provided by TSA to any interested parties. The Spec Sheet is attached hereto as Attachment A.

**MEMORANDUM OF UNDERSTANDING
CONCERNING
USE OF SECURITY SCREENING CHECKPOINT FURNISHINGS**

- (2) TSA may change or amend the Spec Sheet, in whole or in part, at its sole discretion and without prior notice to any person or entity. TSA agrees that it will not unreasonably exercise its rights under this paragraph, and that it may provide to the Airport Operator prior notice and an opportunity for comment to the extent practicable in the circumstances.
- (3) TSA shall have the right to monitor and access information concerning the arrangement entered into via an agreement between the Airport Operator and the Advertising Broker to place furnishings in the checkpoint and display advertisements in the bins or tubs.
- (4) The Federal Security Director (FSD) will ensure that, where bins with advertisements are used, legible signs containing disclaimers are posted in the screening area to notify passengers and airport personnel that TSA does not directly or indirectly endorse any commercial product or service. If such signs are not practical, the same information can be provided to passengers through pamphlets or handouts upon demand.
- (5) Before TSA officials approve this agreement, they will ensure that the Airport Operator has established uniform standards to govern such advertising. For purposes of this program, the airport's advertising standards may only permit non-offensive, unobtrusive¹, non-controversial², or unrelated to checkpoint³ messages. Once the airport standards are established and approved, TSA officials will generally not screen, select, veto, or otherwise control specific advertisements on the bins, as long as they meet the airport standards and do not impede TSA operations. If, however, a specific advertisement creates serious controversy or adverse public relations for TSA, TSA officials reserve the right to immediately cease using any bins with the advertisement(s) in question.
- (6) TSA officials reserve the right to adopt new or revised functional or operating standards or procedures that may affect the screening of passengers and handling of property at security checkpoints, regardless of whether these standards or procedures impact the use of the airport-provided checkpoint security materials. As a result, the Airport (and its contractors) assume the risk that TSA policies and procedures may reduce or obviate the need for any particular type of checkpoint security materials.
- (7) The FSD will nominate, and the Contracting Officer will appoint, a Technical Representative for administration functions of this MOU, which do not involve changes to the terms and conditions of the MOU. Only the Contracting Officer can alter the terms and conditions of the MOU. The FSD's Technical Representative will ensure that the equipment is received, the equipment meets the specification, and the advertising complies with the conditions listed in paragraph (5) above.

¹ The term "unobtrusive" means that any advertising on screening equipment will be limited to the inside bottom of any bins or trays provided to handle passenger carry-on-items.

² The term "non-controversial" means the advertisements will be consistent with normal standards for mainstream public advertising, as well as the airport's own advertising standards. In addition, the term precludes any political advertising, including but not limited to those pertaining to candidates, issues, parties, campaign committees, specific elections, etc.

³ The term "unrelated-to-checkpoint" means that advertising cannot relate to any equipment, supplies or services associated with checkpoints. This prohibition is intended to avoid giving the appearance that TSA endorses any particular item (e.g., advertisements for checkpoint friendly laptop bags or luggage locks are prohibited).

**MEMORANDUM OF UNDERSTANDING
CONCERNING
USE OF SECURITY SCREENING CHECKPOINT FURNISHINGS**

B. Airport Operator agrees to the following:

(1) The Airport Operator shall permit, in its discretion, bin advertisements if at least two (2) competitors bid to provide the services of the Advertising Broker. The Airport Operator shall select an entity to provide the services of the Advertising Broker. The FSD must concur with the Advertising Broker selection of the Airport Operator. If two bids are not obtained, the Airport Operator must submit a written justification of the attempt to seek competition, and provide it to the Contracting Officer for approval prior to entering into an agreement with the Advertising Broker. The selected Advertising Broker must agree to meet TSA specifications for the furnishings, including timely replacement or replenishment of damaged or otherwise unacceptable items.

(2) The Airport Operator shall ensure that advertising content displayed on screening checkpoint bins is appropriate and consistent with the airport's advertising policies and guidelines.

(3) The Airport Operator agrees that at the termination by any party of the arrangement described within this MOU, and at all times prior to such termination, neither the Airport Operator nor the owner of the furnishings shall (i) attempt to remove the furnishings from the checkpoint; or (ii) to limit or constrain in any way the use of the furnishings by airline passengers or TSA, except that the Airport Operator or the owner of the furnishings **shall** be required to remove all furnishings at any time after the sixtieth (60th) day following the day upon which TSA receives notice, in writing, from the Airport Operator of the Airport Operator's intent to remove such furnishings from the checkpoint. Such notice is to be delivered to TSA at the address provided in this MOU, unless such notice period is altered or waived in advance and in writing by the FSD. This paragraph does not apply to removal of broken or malfunctioning furnishings on a piecemeal or item-by-item basis for repair, replacement, or exchange in performance of the Airport Operator's compliance with requirements stated in the paragraph of the Spec Sheet entitled "Maintenance of Furnishings" or other agreement, if any, for maintenance of the appearance, performance, functionality, or suitability of the furnishings during the term of the arrangement described in paragraph 4 of this MOU.

(4) The Airport Operator shall indemnify and hold harmless the Government and its officers, agents, and employees against liability, including costs, for infringement of Intellectual Property owned by a third party arising from the TSA use of "furnishings" at airport security checkpoints as identified in the Addendum to this MOU.

7. Effective Date. The effective date of this MOU is the date on which it is signed by appropriate representatives for both Parties, and shall be the date of the last signature ("Effective Date"). This MOU shall continue indefinitely until terminated by either party in accordance with Paragraph 8 below.

**MEMORANDUM OF UNDERSTANDING
CONCERNING
USE OF SECURITY SCREENING CHECKPOINT FURNISHINGS**

8. Points of Contact.

For Airport Operator:

Hillsborough County Aviation Authority
Tampa International Airport
Daniel Glennon
Manager of Terminal Operations and Security Administration
P.O. Box 22287
Tampa, FL 33622
813-870-8763
DGlennon@TampaAirport.com

For TSA:

Transportation Security Administration

Kirk Skinner
FSD
4200 George J. Bean Pkwy, Suite 2544
Tampa, FL 33607
813-227-4027
Kirk.Skinner@tsa.dhs.gov

Transportation Security Administration
FSD Technical Representative
TBD - Technical Representative Name
Technical Representative Position
Street Address
City, State, Zip
Phone Number
E-Mail Address

Transportation Security Administration
Contracting Officer
Michael Busansky
701 South 12th Street
Arlington, VA 20598
(571) 227-2814

9. Termination. TSA and the Airport Operator reserve the right to withdraw or otherwise terminate this MOU, in whole or in part, at their sole discretion, with or without cause, and without prior notice to the other party. Upon termination of this Agreement by either party, the Airport Operator shall remove all furnishings provided to TSA in accordance with paragraph 6.B.(3) above. TSA and the Airport Operator agree that they will not unreasonably exercise their rights under this paragraph, and that they may provide to the other party prior notice and an opportunity for comment to the extent practicable in the circumstances.
10. Loss or Damage. TSA assumes no responsibility, financial or otherwise, for any loss or damage to the checkpoint security materials furnished under this MOU.

**MEMORANDUM OF UNDERSTANDING
CONCERNING
USE OF SECURITY SCREENING CHECKPOINT FURNISHINGS**

11. **Modification.** This MOU may be modified upon the mutual written consent of the parties in accordance with paragraph 6.A (7). The modification shall cite the subject Agreement and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this MOU.
12. **Construction of the MOU.** This MOU is issued under 49 U.S.C. 106(1) and (m), and is not a procurement contract, grant, or cooperative agreement. Nothing in this MOU shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation. This MOU is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.
13. **Disputes.** Where possible, disputes will be resolved by informal discussion between the cognizant FSD and Contracting Officer for TSA and an authorizing official of the Airport Operator. The decision is final unless it is appealed to the TSA Assistant Administrator for Acquisition or his designee within 60 days of the decision. The TSA Assistant Administrator for Acquisition or his designee shall issue a final agency decision. This decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.
14. **Severability.** Nothing in this MOU, is intended to conflict with current laws or regulations or the directives of DHS, TSA (or other federal agency), or any other Executive Department. If a term of this MOU is inconsistent with such authority, then those terms shall be invalid but the remaining terms and conditions shall remain in full force and effect.
15. **Protection of Information.** The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as result of this MOU. The parties shall safeguard Sensitive Security Information in accordance with 49 C.F.R. 1520.

**MEMORANDUM OF UNDERSTANDING
CONCERNING
USE OF SECURITY SCREENING CHECKPOINT FURNISHINGS**

Entered into this _____ day of _____, 2017 by and between:

Kirk Skinner
FSD, for TSA
DATE

Michael Busansky
TSA Contracting Officer
DATE

Daniel Glennon
Manager of Terminal Operations and Security Administration,
for Hillsborough County Aviation Authority
DATE

**MEMORANDUM OF UNDERSTANDING
CONCERNING
USE OF SECURITY SCREENING CHECKPOINT FURNISHINGS**

ATTACHMENT A

SPECIFICATIONS SHEET	
Item	Specifications
Bins	<ul style="list-style-type: none"> • 15-inches to 16-inches wide • 20.5-inches long • 5-inches deep • Bins shall be made of a material that is proven not to interfere with the screening process. • Bins shall nest for ease of stacking and retrieving. • Bins shall carry unique identification numbers on the outside of the tray that is visible to travelers and TSOs. • A minimum of 60 bins per security lane shall be made available.
Bin Carts	<ul style="list-style-type: none"> • Carts may be constructed entirely of plastic, or may have metallic content as may be required to minimize breakage under expected operating conditions, at the discretion of the FSD in consultation with the Advertising Broker or the owner (if other than the advertising broker) of the furnishings. • Carts shall be designed to hold the bins (trays), be mobile, and adaptable to diverse checkpoint environments. • Carts shall have two stationary, non-slip legs on the front to secure the cart until required to be moved. • A minimum of four carts per security lane shall be provided.
Tables	<ul style="list-style-type: none"> • Tables shall have type 304 stainless steel tops. • Steel top surface must be a minimum of 16 gauge and 30-in. wide. • Tables shall be available in lengths of both 4-feet and 6-feet. • The under shelf or supports and legs may be stainless steel, galvanized steel, or similar material as long as it is consistent throughout the airport. • Tables shall be custom installed to align with the heights of the screening equipment. • A minimum of three tables per security lane shall be made available.
Maintenance of Furnishings	<ul style="list-style-type: none"> • Furnishings must be maintained at all times in good working order and in appearance appropriate for a high-visibility public service location and acceptable to the FSD. • Each damaged item shall be replaced by the vendor within a reasonable period of time not to exceed 30 days.
Explanatory Brochures	[TBD based on consultation by the FSD with the Airport Operator and the Advertising Broker].
SSA Acceptance	Only items observed and evaluated for use in the security screening checkpoint will be permitted by TSA to be placed in the security screening checkpoint in connection with this program

