

**STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
TED STEVENS ANCHORAGE INTERNATIONAL AIRPORT  
ELECTRONIC/STATIC DISPLAY ADVERTISING CONCESSION  
AGREEMENT ADA-31935**

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### Exhibits

- A     Sheet 1 of 1, dated January 1, 2012  
Property Drawing of Ted Stevens Anchorage International Airport
- B     Sheet 1-1 of 1, dated January 10, 2014  
Drawing showing Electronic/Static Display Advertising Locations
- B-1   Drawing showing new Electronic/Static Display Advertising Locations  
[Reserved]
- C     Drawing showing Additional Space  
[Reserved]
- D     Electronic/Static Display Advertising Program
- E     State Designated Groups

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

**TED STEVENS ANCHORAGE INTERNATIONAL AIRPORT**

**ELECTRONIC/STATIC DISPLAY ADVERTISING CONCESSION  
CONCESSION AGREEMENT ADA-31935**

THIS AGREEMENT is made this 28<sup>th</sup> day of February, 2014, between the State of Alaska, Department of Transportation and Public Facilities, Ted Stevens Anchorage International Airport (State), whose mailing address is P.O. Box 196960, Anchorage AK 99519-6960 and whose physical address is South Terminal, Third Floor, Room C3980, 5000 W. International Airport Road, Anchorage, Alaska 99502, and Alaska Channel (Concessionaire) whose address is P.O. Box 100519, Anchorage, Alaska 99510.

In consideration of the Assigned Areas and of the charges, fees, covenants, rights and obligations contained herein, the parties agree to all conditions as follows:

**INTRODUCTION**

- A. The State owns and operates the Ted Stevens Anchorage International Airport (Airport), located in Anchorage, Alaska.
- B. In connection with the Ted Stevens Anchorage International Airport, the State owns the North and South Terminal buildings (Terminals).
- C. The State has determined it is necessary in the promotion and accommodation of air commerce and air transportation and to generate revenue to the State to support the Airport that the State develop and maintain a comprehensive electronic/static display advertising program with a reasonable mix of local, regional and national advertising, totally integrated and coordinated as to design, quality, and content for the Airport that will benefit air travelers and others.
- D. It is in the State's best interest to select a concessionaire to develop and maintain a comprehensive electronic/static display advertising program who has sufficient experience and competence in the display advertising industry.
- E. The State has determined that selecting the Concessionaire through the competitive request for proposal (RFP) process is in the best interest of the State.

The Concessionaire is the successful proposer for the right to develop and maintain a comprehensive electronic/static display advertising program at the Airport.

## ARTICLE I DEFINITIONS

The following definitions apply for this Agreement:

A. Agreement: This Concession Agreement ADA-31935, together with and incorporating the exhibits, the Concessionaire's proposal in response to the Request for Proposals (RFP), the RFP, and all other attachments and exhibits thereto, and all future amendments or supplements executed by the parties to this Agreement.

B. Agreement Year: Twelve (12) consecutive months beginning with the Effective Date of this Agreement as follows:

Base Term:

Agreement Year 1:	April 1, 2014 through March 31, 2015
Agreement Year 2:	April 1, 2015 through March 31, 2016
Agreement Year 3:	April 1, 2016 through March 31, 2017
Agreement Year 4:	April 1, 2017 through March 31, 2018
Agreement Year 5:	April 1, 2018 through March 31, 2019

Extended Base Term:

Agreement Year 6:	April 1, 2019 through March 31, 2020
Agreement Year 7:	April 1, 2020 through March 31, 2021
Agreement Year 8:	April 1, 2021 through March 31, 2022
Agreement Year 9:	April 1, 2022 through March 31, 2023
Agreement Year 10:	April 1, 2023 through March 31, 2024

C. Airport: The Ted Stevens Anchorage International Airport, Anchorage, Alaska, as shown on Exhibit A of this Agreement.

D. Airport Concession Disadvantaged Business Enterprise: A business certified by the State of Alaska, Department of Transportation and Public Facilities as a disadvantaged business enterprise as defined in 49 CFR, Part 23.

E. Annual Guarantee: For each Agreement Year, the minimum amount the Concessionaire must pay to the State in accordance with Article VI (Fees and Payments).

F. Assigned Areas: Each location the State approves for the Concessionaire to use for placement of electronic/static display advertising, and comprised of the area the State specifically approves for each location and for the full duration of that approval. The Concessionaire has non-exclusive rights related to electronic/static display advertising in the Terminals, subject to the limitations in this Agreement. However, the Concessionaire's initially Assigned Areas are limited to the locations shown on

Exhibit B. Additional locations, if any, will be shown on Exhibit B-1. The Assigned Areas are subject to any reductions or expansions thereof as may be designated by the State, pursuant to the terms of this Agreement.

G. Effective Date: As used in this Agreement, April 1, 2014 (the first day of the initial Agreement Year). This Agreement is, however, binding as of the date it is signed by the State.

H. Electronic Displays: All displays including High-Tech Displays, that utilize digital display screens.

I. Gross Revenues: All revenue, income and receipts of the Concessionaire, on an accrual basis, owed to or received by the Concessionaire from sales or other business at, from or related to the Airport.

1. The term "Gross Revenues" includes the following:

a. All Concessionaire sales for either cash or credit, which is collected or that are or were reasonably capable of collection through diligent effort by the Concessionaire, without any exclusions except those expressly permitted under this Agreement from any business conducted in whole or in part on the Airport, including any orders placed at, or completed by delivery at the Assigned Areas, or the Airport, or through any delivery service under the rights granted under this Agreement.

b. Charges for all services performed in, on, or through the business, including electronic commerce, authorized or otherwise conducted under this Agreement. This includes all other income and proceeds from or incidental to any business conducted in whole or in part in, on, or in connection with the rights granted under this Agreement.

c. Goods, work, or services furnished by any person in lieu of payment in exchange for value received from the Concessionaire in connection with business or operations at or from the Airport.

2. The term "Gross Revenues" excludes the following:

a. Commissions paid to recognized advertising agencies or media buying services in amounts up to fifteen percent (15%) of the gross contract amount. The company name, phone number and contact name for the agency or service must be submitted in a separate report when a new agency or service's revenue is included in a monthly report.

b. The amount of any sales tax, so-called "luxury tax," consumer excise tax, gross receipts tax, or other similar tax imposed by a federal, state, municipal, or other government authority directly on any business conducted

in whole or in part in, on, or in connection with the rights granted under this Agreement. The Concessionaire will properly account and record all taxes, if applicable.

- c. Receipts from the sale of waste or scrap material that result from the Concessionaire's business authorized under this Agreement.
- d. Receipts from the sale or trade-in value of Concessionaire-owned furniture, fixtures, or equipment used on the Assigned Areas and not considered stock-in-trade.
- e. The value of supplies or equipment exchanged with or transferred to other business locations of the Concessionaire if the exchange or transfer is not made to avoid a sale by the Concessionaire under this Agreement.
- f. Receipts from refunds of supplies or equipment returned to shippers, suppliers, or manufacturers or discounts the Concessionaire receives from these entities.
- g. Actual telephone utility company local line charges to the Concessionaire for advertising displays where local phone lines are required and have been approved by the State. Copies of billings/receipts from the telephone utility company must be attached as supporting documentation to all certified activity reports where such charges are excluded from the Gross Revenues.

3. The Concessionaire shall not deduct from Gross Revenues any franchise, capital stock, income, or similar tax based on income or profits. The State will not credit or reduce the amount of the Concessionaire's Gross Revenues that result from any illegal rebate, kickback, or hidden credit given or allowed to clients.

J. High-Tech Displays: All displays that utilize technology such as scrolling/motion/projection/interactive/computer-generated or other types of technologies the State determines to be desirable. The State, in its sole discretion, will determine which displays qualify as "High-Tech Displays."

K. Percentage Fee: The percentage of Gross Revenues the Concessionaire is required to pay to the State in accordance with Article VI (Fees and Payments).

L. RFP: All documents issued by the State, and all documents submitted by the Concessionaire, in connection with the Request for Proposals for Agreement ADA-31935, including the Notice Inviting Proposals, Terms of Request, Instructions to Proposers, Acknowledgement of Addenda, Proposer's Infrastructure and Refurbishment Commitment Form, Proposer's Affidavit, Proposer's Questionnaire, the Proposal, responses to the Specific Evaluation Criteria, any addenda, and all other documentation

required in the RFP, and all information submitted by the Concessionaire with its proposal.

M. Sponsorship Opportunities: The Concessionaire's active role in assisting the ten (10) State-designated organizations with the development of the displays for these groups.

N. Static Displays: All displays that do not utilize technology such as backlit and tension fabric displays, wall and column wraps, product displays, etc.

O. Support Space: Premises provided for use by the Concessionaire for office, storage, or other purposes other than Assigned Areas.

P. Terminals: The North and South Terminal buildings at the Airport.

Q. Turnover Date: The date the Assigned Areas are turned over by the State to the Concessionaire for commencement of build-out of any Concessionaire improvements and transition to Concessionaire for occupancy.

## **ARTICLE II** **SCOPE OF AGREEMENT**

The Concessionaire must perform all obligations, conduct all activities, and comply with all promises and representations made in its proposal, which is by this reference incorporated herein in its entirety, including any refinement submitted in response to the State's solicitation of competitive proposals for the rights granted under this Agreement, as finally accepted by the State. This includes all documents generated in the solicitation, competition and award of this Agreement, including but not limited to: the Terms of Request, Instructions to Proposers, Acknowledgement of Addenda, Proposer's Affidavit, Proposer's Questionnaire, the Proposal, responses to the Specific Evaluation Criteria and all other documentation required in the RFP, and all information submitted by the Concessionaire with its proposal.

## **ARTICLE III** **TERM**

A. This Agreement is in effect on the date it is signed on behalf of the State. The State grants the Concessionaire the rights listed in Article IV (Rights Granted and Obligations Undertaken) beginning April 1, 2014, and ending March 31, 2019 (Base Term). The Effective Date, as defined in Article I (Definitions) and as used throughout this Agreement, is April 1, 2014, which is the date the initial term of this Agreement, begins.

B. This Agreement may be extended by mutual agreement between the State and the Concessionaire, for an additional five (5)-year period through March 31, 2024.

C. If this Agreement is extended beyond the Base Term, the Concessionaire agrees to perform during the extension period in accordance with Article XI (Construction, Remodeling, and Refurbishment), Section E (Refurbishment Requirement). The State reserves the option immediately to exercise the option period (up to a maximum total agreement term of ten (10) years) based on further discussions with the Concessionaire and depending on the scope and intent of the proposed advertising plans.

D. In order to avoid an interruption of services to the public or revenues to the State, and to facilitate fair and orderly selection of, and transition to, any successor Concessionaire, the State may by written notice to the Concessionaire not less than sixty (60) days before the end of the Agreement term require the Concessionaire to continue to operate and manage the Electronic/Static Display Advertising Program at the Airport as set forth in this Agreement beyond the end of the term. The extension period, which shall be determined by the State, shall not exceed one (1) year from this Agreement's expiration date.

#### **ARTICLE IV** **RIGHTS GRANTED AND OBLIGATIONS UNDERTAKEN**

The State grants the Concessionaire the authority to exercise the following rights subject to the obligations under this Agreement:

A. The Concessionaire shall have non-exclusive rights to 1) develop, construct, place, operate, maintain and sell advertising on Static Displays and electronic media such as Concessionaire-provided Electronic Displays and High-Tech Displays or other advertising displays; and 2) develop and sell advertising on State-provided and maintained Electronic Displays at specified locations deemed appropriate in the Terminals and other locations on the Airport as defined below.

1. The Concessionaire shall have non-exclusive rights to propose and place advertising in, on or around the Airport at the locations shown on Exhibit B subject to the State's express written approval.
2. Concessionaire may only place advertising in the locations indicated on Exhibit B of this Agreement. Any additional advertising on the Airport by the Concessionaire is subject to the express written consent of the State, and will be shown on Exhibit B-1.

B. The Concessionaire shall develop and maintain the comprehensive Electronic/Static Display Advertising Program as described in Exhibit D. Under this program, the Concessionaire shall establish, operate, service and maintain high quality, professionally designed electronic/static display advertising displays and other forms of advertising as approved in writing by the State.

C. The Concessionaire, its officers, contractors, suppliers, service personnel, guests, patrons, and invitees shall have the right to ingress, egress, and occupy the Assigned Areas, subject to the Airport's security rules.

D. The Concessionaire shall have the right to construct and install fixtures, equipment, and other improvements necessary to operate the business authorized under this Agreement subject to the advance written approval of the State in the form of an approved Airport Building Permit.

E. The Concessionaire shall have the right to subcontract or joint venture, subject to prior written consent by the State. Such subcontract or joint venture agreement must require, at a minimum, strict compliance with the provisions of this Agreement including, but not limited to, insurance and indemnification requirements and naming the State as an additional insured. The Concessionaire agrees that it is responsible for the performance of its subcontractors and joint venture partners under this Agreement. The Concessionaire agrees to initiate and take all corrective action should a subcontractor or joint venture partner fail to comply with its contract with the Concessionaire or any provision of this Agreement. The failure of a subcontractor or joint venture partner to comply with the provisions of this Agreement shall constitute a default by the Concessionaire under this Agreement entitling the State to terminate in accordance with the provisions herein.

F. Specific exclusions from the rights granted to the Concessionaire are defined below.

1. The State allows concessionaires, tenant and subtenant airlines, and other Airport tenants to conduct independent promotion of themselves and their products and services within their leased areas, to the extent permitted under each respective contract.
2. Airport signage, such as directional signage or construction signage used to direct passengers at the Airport are excluded from the Concessionaire's rights.
3. Any advertising and displays by Visit Anchorage are excluded from this Agreement.
4. State-designated organizations are granted display space at the Airport from time to time at the State's discretion. The Concessionaire has specific responsibilities and restrictions related to these State-designated groups as identified in Article VIII (Operation of Concession Services), Section D (Operations), paragraph 4.
5. The Concessionaire will have no rights to any compensation from advertising on the computer screen in any internet kiosk that the State has placed or contracted for placement on the Airport under separate agreement(s).

6. The Concessionaire will have no rights related to e-commerce activities.
7. The Concessionaire shall have no rights related to newspapers, journals, or other print periodicals that are routinely stocked in magazine racks in the Terminals.

**G. Reservations**

1. The Concessionaire may not sell any product or service that is not described in this Agreement without the advance written consent of the State. If a question or dispute arises as to the sale of any product or service, the Concessionaire may submit a written request to the State asking for a review and decision concerning the dispute. The State will deliver a written decision to the Concessionaire and the decision of the State will be final.
2. The State reserves the right to grant to others any rights or privileges not specifically and exclusively granted the Concessionaire. The rights and privileges granted to the Concessionaire under this Agreement are the only rights and privileges granted to the Concessionaire. The Concessionaire has no easements, rights, or privileges, express or implied, other than those specifically granted under this Agreement.
3. This Agreement does not grant the Concessionaire the right to provide or perform any business or commercial activity at the Airport other than as expressly stated in this Agreement, nor does it grant the Concessionaire the right to use the trademarks, symbols, trade names or name of the State or of the Airport, either directly or indirectly, in connection with any production, promotion, service or publication without the prior written discretionary consent of the State.

**H.** Although these obligations will not diminish during the term of this Agreement, the specific areas to which they apply may, in the state's sole discretion, diminish or expand as provided for in this Agreement.

**I.** Unless otherwise provided in this Agreement, upon the expiration, termination, or cancellation of this Agreement, Concessionaire is bound to mitigate damages, to continue to pay rent and to abide by all Agreement obligations, including maintenance obligations and provision of evidence of insurance coverage, though the date on which the Concessionaire relinquishes possession of and completely vacates the Airport as provided generally under 17 AAC 42.250, as applicable, and the locations subject to this Agreement left in a neat and clean physical condition acceptable to the State.

**J.** Due to the potential limitations of the State's systems, the Concessionaire may not be able to develop its advertising program as presented in its proposal. The State agrees to work with the Concessionaire to find a mutually agreeable plan to seek additional digital signage solutions (e.g. virtual server). Any new digital signage system installations may not be installed without the consent of the State.

## **ARTICLE V** **ASSIGNED AREAS**

A. The State will make the Assigned Areas available to the Concessionaire no later than April 1, 2014. The Concessionaire accepts the Assigned Areas in their then-present condition and "as-is." The Concessionaire acknowledges that the State's obligation is limited to making the Assigned Areas available to the Concessionaire for its use, and that the State makes no representation that they are suitable for the Concessionaire's requirements herein.

B. Subject to the provisions of Article XIII (Reduction of Assigned Areas) and Article XIV (State-Directed Relocation), the Assigned Areas designated on Exhibits shall remain the same throughout the term of this Agreement.

C. If so requested by the Concessionaire, the State will provide the Concessionaire with Support Space in accordance with Article XII (Lease of Support Space). The parties acknowledge that no such space is required as of the Effective Date, but will be negotiated during the term should any such Support Space be required.

D. The State has installed a Premises Wiring Distribution System (PWDS) in the Terminal, which provides a Structured Telecommunication System with a fiber optic backbone throughout the Airport. The Concessionaire is required to use the PWDS for its data and telecommunication needs wherever the PWDS exists on the Effective Date of this Agreement or is installed in the future. For new build-out, the Concessionaire will use the PWDS for its data and telecommunication needs wherever the PWDS exists. If the PWDS system is not practical for a specific installation, with the consent of the State, the Concessionaire may use wireless or other methods to update digital displays in certain locations.— However, the Concessionaire agrees that the State cannot guarantee continuous connectivity for wireless access due to the constraints within the current wireless system. The Concessionaire is encouraged to perform advertising uploads during non-peak passenger traffic times to reduce the chance of losing connectivity.

E. It will be the Concessionaire's responsibility to provide power and data (including conduit) to the Assigned Areas. The Concessionaire may use the power connections that exist for all Assigned Areas on Exhibit B. The Concessionaire acknowledges that any additional power and data connections that the Concessionaire desires for the Exhibit B Assigned Areas will be provided at the Concessionaire's sole expense using the PWDS where available.

The Concessionaire, at the Concessionaire's sole expense, shall provide power and data (including conduit) as required by the Concessionaire to any additional locations shown on Exhibit B-1 using the PWDS, if no power or data exists at those locations.

## **ARTICLE VI** **FEES AND PAYMENTS**

A. Concession and Rent Fees: The Concession and Rent Fees are made up of three (3) components: 1) Annual Guarantee; 2) Percentage Fees; and 3) Additional Rent. For the rights and privileges granted under the Agreement, the Concessionaire shall pay the State each month the GREATER of the prorated monthly Annual Guarantee or a percentage of the Concessionaire's monthly gross revenues as described below. Basic utility expenses (electricity, heating/cooling) are included in the Concession and Rent Fees. For the rights and privileges granted under this Agreement, the Concessionaire will pay the State the GREATER of the following fees each month:

1. Annual Guarantee: The State and the Concessionaire will negotiate a mutually agreeable Guarantee amount prior to the end of the Annual Guarantee waived period. If an agreement is not reached, the State will have the option to terminate this Agreement and reimburse the Concessionaire for unamortized capital expenses.

OR

2. Percentage Fees: The Concessionaire will pay the State a percentage of the Concessionaire's monthly Gross Revenues; the percentage(s) to be applied to Gross Revenues for a particular month will be determined based on the category of revenue as indicated below:

- Forty-five percent (45%) of each Gross Revenues for Static Displays and Sponsorship Opportunities
- Forty percent (40%) of each Gross Revenues for High Tech Displays

The Percentage Fees indicated above will be based on accruals for each Agreement Year and, as such, the Agreement Year-to-date totals will be reset to zero on each anniversary of the Effective Date of this Agreement (the first day of each Agreement Year) and the year-to-date totals will begin to accrue again from zero for that Agreement Year.

3. Additional Rent: In addition to paying the greater of the Annual Guarantee or Percentage Fees specified above, the Concessionaire shall also pay monthly, on the first day of each month, the annual terminal rent for additional space occupied that month as shown on Exhibit C. Additional space includes office, storage, or other space occupied by the Concessionaire for purposes other than Assigned Areas.

B. Payments to the State

1. The Concessionaire will pay the prorated monthly amount of the Annual Guarantee by the first day of each month until total cumulative Annual Guarantee and Percentage Fee payments have met or exceeded the Annual Guarantee. This first payment is due on or before October 1, 2015. Due to unforeseen costs associated with this advertising program, the initial Annual Guarantee payment is waived from April 1, 2014, to October 1, 2015. Prior to that date, the State and the Concessionaire will negotiate a mutually agreeable Guarantee amount. If an agreement is not reached, the State will have the option to terminate this Agreement and reimburse the Concessionaire for unamortized capital expenses.
2. By the twentieth (20<sup>th</sup>) day of the each month, the same day the certified activity report is due, the Concessionaire will pay any amount necessary to satisfy the required Percentage Fee for the previous month as calculated in Section A.2 of this Article and reported on the monthly certified activity report for that previous month. The first payment is due on or before the twentieth (20<sup>th</sup>) day following the first month of operation.
3. The Concessionaire will make payments in United States of America currency either in cash or by electronic funds transfer, check, bank draft, or money order payable to the State of Alaska. The Concessionaire will submit payments free from any claim, demand, setoff, or counterclaim of any kind against the State to Airport Accounting, Ted Stevens Anchorage International Airport, P.O. Box 196960, Anchorage AK 99519-6960. The State must receive payments on or before the due date.
4. If the cumulative sum of Concessionaire's Monthly Guarantee payments and Percentage Fee payments, excluding Additional Rent specified in Section A.3 above, during any Agreement Year paid to the State for any ongoing Agreement Year reach or exceed that Agreement Year's Annual Guarantee, the Concessionaire will pay only the Percentage Fees specified in Section A.2. of this Article for the remainder of that Agreement Year.
5. If the cumulative sum of Concessionaire's Monthly Guarantee payments and Percentage Fee payments to the State, excluding Additional Rent specified in Section A.3 above, in any Agreement year exceed both the Annual Guarantee and the Percentage Fees specified in Section A of this Article, the State will, in its discretion, either credit any overpayment toward future payments due the State or refund any overpayment to the Concessionaire. The State will either credit the overpayment or issue a refund within sixty (60) days after the Concessionaire submits the financial information required under Article X (Audits, Reports, Books, and Records), Section D (Financial Information).

6. The State reserves the right to require by written notice that the Concessionaire make all payments of a specified amount or greater by electronic funds transfer, and the Concessionaire agrees to make all payments subject to that requirement in the manner directed in the notice. For payment to be submitted with a certified activity report under paragraph 2, above, a copy of a receipt or other evidence of the fund transfer request must accompany the submittal of the report.

C. Waiver of Annual Guarantee

1. The State will waive the Annual Guarantee payable under this Agreement if any of the following events occur:

a. A twenty percent (20%) or greater drop in total deplaned, enplaned and in-transit passengers at the South Terminal for any month during this Agreement as compared to the average for the same month of the three previous years, AND a corresponding twenty percent (20%) or greater drop in total Gross Revenues related to the Concessionaire's activities under this contract for any month during this Agreement as compared to the average Gross Revenues for the advertising concession for the same month of the three previous years. This waiver applies only to any month in which a twenty percent (20%) or greater drop occurs in BOTH the total passengers at the South Terminal AND the Gross Revenues for this Agreement.

b. Any event, not the fault of the Concessionaire, that so damages the Terminal that the normal operation of the Concessionaire's business is prevented for more than thirty (30) consecutive days. If the normal operation of the Concessionaire's business is prevented for more than thirty (30) consecutive days, this waiver is in effect from the first day of the event and will continue until normal operations can resume.

c. Complete Airport closure to the commercial air transport of passengers for more than thirty (30) consecutive days. If complete Airport closure exceeds thirty (30) consecutive days, this waiver is in effect from the first day and will continue until the Airport is reopened to the commercial air transport of passengers.

2. The Concessionaire will pay the State the Percentage Fees described in Section A.2 of this Article for any period the Annual Guarantee is waived under Section C.1 of this Article.

3. In its discretion, the State will either credit any overpayment resulting from a waiver specified in Section C.1 of this Article toward future payments due the State or refund the overpayment to the Concessionaire. The State will either apply the

credit or issue a refund within sixty (60) days after the State receives the required Gross Revenues information from the Concessionaire.

**D. Certified Activity Reports**

1. On or before the twentieth (20<sup>th</sup>) day of each month during this Agreement, beginning on the twentieth (20<sup>th</sup>) day following the first month of operation, unless such day is an official holiday in the State of Alaska, then the first business day thereafter, the Concessionaire shall deliver a certified activity report to Airport Accounting, Ted Stevens Anchorage International Airport, P.O. Box 196960, Anchorage, Alaska 99519-6960.
2. The Concessionaire shall submit the certified activity report in a form that is acceptable to the State and that reflects the Concessionaire's Gross Revenues for both the previous calendar month and for the Agreement Year-to-date in terms of United States of America currency.
3. Such report must include location-by-location information to reflect the billing for each installation. This report must also include customer information.
4. The Concessionaire shall submit a certified summary of amortization balances as indicated in Article XI (Construction, Remodeling, and Refurbishment), Section F (Ownership of Improvements) on the twentieth (20<sup>th</sup>) day of each month of this Agreement to the Concession Manager, Ted Stevens Anchorage International Airport, P.O. Box 196960, Anchorage, Alaska 99519-6960.
5. On or before the twentieth (20<sup>th</sup>) day of each month during this Agreement, beginning on the twentieth (20<sup>th</sup>) day following the first month of operation, the Concessionaire shall deliver to Airport Accounting, at the above address, a list of all delinquent accounts and the action being taken by the Concessionaire to diligently collect those delinquent amounts. Failure by the Concessionaire to accurately report all delinquent accounts shall be considered a lack of diligent collection efforts by the Concessionaire and the Concessionaire will be liable for the full balance due, but not paid, for the delinquent accounts.

**E. Fees Vest in the State:** Fees payable to the State by the Concessionaire under this Agreement shall be owned by the State at the time of each customer transaction and will be held in trust by the Concessionaire while the funds are in Concessionaire's custody and control. The Concessionaire is responsible for these funds until delivered to the State. If any fees payable to the State are lost, stolen, or otherwise unlawfully removed from the custody and control of the Concessionaire, the Concessionaire remains responsible to the State for these fees.

**F. Liquidated Damages**

1. Time is of the essence in meeting the requirements of this Agreement. Without waiving any of its other legal or equitable remedies, the State shall have the right to assess, and the Concessionaire must then pay to the State, liquidated damages in an amount not to exceed one hundred dollars (\$100) per day per occurrence for failure to comply with the requirements of all Articles of this Agreement, unless a different liquidated damages amount is indicated in writing in this Agreement related to a specific Article or Section of this Agreement. The Concessionaire and the State stipulate that any such assessment shall not be construed as a penalty; rather, the Concessionaire and the State stipulate that actual damages resulting from violations of this Agreement will be hard to ascertain and that one hundred dollars (\$100) per day per occurrence is a reasonable forecast of the damages likely to occur in the event of a breach.
2. The State shall notify the Concessionaire in writing of any deficiency and the State's intent to assess liquidated damages. The Concessionaire shall have seventy-two (72) hours after receipt of the notice to remedy all deficiencies identified in the notice prior to the State assessing the liquidated damages. If the Concessionaire fails to remedy any deficiency by the date indicated in the written notice, the assessment of liquidated damages will be retroactive to the date of the notice.
3. The State recognizes that there may be deficiencies that require more than seventy-two (72) hours to remedy and, as such, will be reasonable when considering requests for additional time to cure deficiencies. The Concessionaire must submit requests for additional time, in writing, prior to the deadline indicated in the written notice by the State. Any permission from the State for an extended period to cure the deficiency shall be granted or denied in writing.
4. The State is not required to issue written notices related to established deadlines that the Concessionaire fails to meet, such as report due dates and payment due dates. Failure by the Concessionaire to meet specified deadlines may result in the immediate assessment of liquidated damages without written notice by the State.
5. The Concessionaire shall pay any assessment of liquidated damages by the State within ten (10) days of receipt of an invoice for such damages. The Concessionaire may protest any assessment of liquidated damages under 17 AAC 42.910.

**G. Unpaid Fees:** Any rent, charge, fee, liquidated damage, or other consideration due but unpaid at the expiration or cancellation of this Agreement is a charge against the Concessionaire and its property, real or personal. The State has any lien rights allowed by law. Either the State or its authorized agent may provide enforcement.

H. Interest: Beginning the day after payment is due, all fees due and unpaid accrue interest at ten and one-half percent (10.5%) per annum until paid. In its discretion, the State may increase this interest rate to the legal rate for post-judgment interest under Alaska law.

I. Badge/Fingerprint Fees: The Concessionaire will pay an Airport Badge Fee and a Fingerprinting Fee, each as established and modified from time-to-time by the State, for each badge issued during the term of this Agreement. The Airport Badge and Fingerprinting Fees are due at the time of service for each transaction. As may be applicable, the Concessionaire will also pay any other badge-related fee duly established, including fees for replacement badges and for lost or otherwise unreturned badges.

J. Other Fees: The State reserves the right to impose and collect charges and fees from the Concessionaire for the following:

1. The use of parking and tenant employee parking on the Airport; and
2. The use of specified equipment, facilities or services when such use is requested by Concessionaire; and
3. The privilege of accessing the Airport to conduct any business other than Electronic/Display Advertising Concession services; and
4. The extraordinary use of lighting, power, or cleaning services caused by the Concessionaire which, in the determination of the State, are beyond the scope of normal services provided by the State; provided, however, that the State shall provide the Concessionaire with written notice of any extraordinary utility expenses and thereafter the Concessionaire shall have ten (10) days from the date of such written notice to dispute the extraordinary utility expenses. The Concessionaire acknowledges that the State's decision shall be final and binding, however, the State agrees that it shall be reasonable when considering such disputes. If the Concessionaire fails to dispute the extraordinary utility expenses within ten (10) days of receipt of written notice, the extraordinary utility expenses shall be deemed valid and the fees shall be immediately due and owing to the State.

## ARTICLE VII AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION

A. State Policy: It is State of Alaska policy that Airport Concession Disadvantaged Business Enterprises (ACDBE) have the maximum opportunity to participate in the performance of Airport concession contracts.

B. Concessionaire's Obligation

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The Concessionaire or subcontractor 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. The Concessionaire or subcontractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
2. The Concessionaire will comply with all applicable laws and regulations that concern the fair and equitable treatment of ACDBE now in effect or which may subsequently take effect during this Agreement. The Concessionaire will include a provision to this effect in any subcontract or other ACDBE participation arrangement the Concessionaire enters into under this Agreement.

**ARTICLE VIII**  
**OPERATION OF CONCESSION SERVICES**

The Concessionaire's operation under this Agreement is a service to airline passengers and other users of the Airport. The Concessionaire acknowledges that the ability of the State to effectively compete with airports outside the State of Alaska and to promote tourism to the State of Alaska depends, in part, on the performance of the Concessionaire. Accordingly, the Concessionaire will conduct its operation in a first-class, businesslike, efficient, courteous, accommodating manner, and will comply with the following:

A. General

1. The Concessionaire shall conduct all business in an orderly and peaceful manner without interfering with other tenants, users, or occupants of the Airport.
2. The Concessionaire shall ensure that it and any joint venture partner or subcontractor shall at all times fully comply with all applicable requirements of the city, state and federal laws, and regulations adopted by municipal, state, federal or any governmental legal authority and the rules and regulations promulgated by the State as same may be amended from time to time.
3. The Concessionaire's business shall be conducted in a manner so as to meet the needs of the Airport's patrons and the State and in a manner that will reflect positively upon the Concessionaire and the State. The Concessionaire shall offer quality services and equip, organize and efficiently manage the Assigned Areas to

provide first class service in a clean, attractive and pleasant atmosphere, abiding by the standards attached to Exhibit D.

4. The Concessionaire shall not permit any defacing of walls, floors and fixtures and shall not permit loitering. The Concessionaire shall keep all the Assigned Areas free from trash and debris and maintain and service all equipment at a high level of efficiency, reliability and appearance.

5. The Concessionaire shall neither commit nor allow any nuisance, noise or waste on the Airport or annoy, disturb or be offensive to other Airport users.

6. The Concessionaire shall not use any space outside the Assigned Areas, but within the Airports, for sale, storage or any other undertaking, unless specifically leased from the State for that purpose.

7. The Concessionaire shall ensure that it provides sufficient equipment, including vehicles, as necessary for efficient operation at the Airport.

**B. Business Development**

1. The Concessionaire shall take all reasonable measures to maintain, develop, and increase its business at the Airport.

2. The Concessionaire shall not divert any business, or by its own action cause or allow any diversion of sales or other business, from the Terminals or the Airport.

**C. Business Solicitation:** The Concessionaire shall not solicit business in the public areas of the Terminals or on Airport property; however, the Concessionaire will be allowed to show advertising locations to prospective clients.

**D. Operations**

1. In accordance with the electronic/static display advertising strategy provided in Exhibit D, the Concessionaire shall:

a. Provide advertisements on Concessionaire-provided Electronic Displays and Static Displays throughout the North and South Terminals as shown on Exhibit B.

b. Provide advertisements on State-provided Electronic Displays throughout the North and South Terminals as shown on Exhibit B.

2. The Concessionaire shall provide an advertising program that uses Alaska images and blends airport themes to create a "sense of place" for visitors to the Airport. The Concessionaire shall have the flexibility to install the best mix of paid and non-paid advertising to achieve this goal but, at a minimum, the

Concessionaire will be required to maintain a minimum of fifteen percent (15%) of the total square footage made available to the Concessionaire for display advertising as Scenic or Public Service Announcement during the peak season and forty percent (40%) of the total square footage made available to the Concessionaire for display advertising during the non-peak season.

For purposes of this Section D.2., the peak season period shall be defined as May 1<sup>st</sup> through October 1<sup>st</sup> of each Agreement year with the non-peak season representing the remainder of the Agreement year. The use of Alaskan images to reflect the uniqueness of the State, the heritage, the wilderness, outdoor activities, and the people are examples of acceptable "scenic content". The State, in its sole discretion, will determine whether displays meet the criteria for "scenic content" or "public service". The Concessionaire shall identify what, if any, scenic content or public service credits it considers to be applicable for each display when those display concepts are presented for State approval.

The State reserves the right, in its sole discretion, to reduce the percentage of available display area that the Concessionaire is required to use for Scenic or Public Service Announcement during this Agreement. If the State exercises this right, the State shall provide written notice to the Concessionaire indicating the percentage reduction and the time period that such a reduction shall be in effect.

3. In accordance with the display advertising strategy and corresponding installation schedule provided in Exhibit D, as subsequently refined or otherwise modified and accepted by the State, the Concessionaire shall:

- a. Remove all existing advertising displays, with the exception of tension fabric frames and specialty displays (e.g. Oomingmak Qiviut display and Made in Alaska display) from the locations shown on Exhibit B and replace them with new displays.
- b. Remove all five (5) existing courtesy phone center (CPC) boards from the locations shown on Exhibit B and replace two (2) of them in the South Terminal and one (1) in the North Terminal with new CPC boards. The Concessionaire reserves the right to install new CPC boards in the remaining locations.
- c. Replace the "Welcome to Anchorage" wall wrap displays in the North Terminal.
- d. Provide a minimum of two (2) digital displays dedicated to the promotion of airport tenants. The existing map directories and one backlit map directory in the South Terminal that indicate the locations of Airport tenants and services, including restrooms, pay phones and other miscellaneous passenger services, will be located next to these digital displays. The Concessionaire shall maintain these directories with current tenant and

service information. The Concessionaire shall not charge airport tenants, service providers, or the State for the privilege of being displayed on the directories, although the Concessionaire may include pay advertising on the directories, subject to approval by the State.

4. The Concessionaire must permit advertising by State-designated groups in five (5) of the advertising locations indicated on Exhibit B unless the State, in its sole discretion, approves alternative locations. The five (5) locations designated for these State-designated groups are subject to approval by the State to ensure that the displays receive adequate exposure. The Concessionaire is not entitled to any advertising revenues related to the use of these locations. The Concessionaire is not required to incur any expenses related to creating these displays, with the exception of providing the State-designated organization with a standard static backlit displays if requested by the group. The sign shall be similar in quality and design to those in use by the Concessionaire in other areas of the Airport. The initial list of organizations is identified on Exhibit E. The Concessionaire acknowledges that the State may add or delete groups from the list throughout the term of the Agreement.

While the Concessionaire is not required to incur any expenses related to assisting these organizations with the creation of their displays, the State strongly encourages the Concessionaire to take a more active, meaningful roll in working with these organizations to ensure that the displays reflect the themes and images of the advertising strategy. As such, if the Concessionaire takes a more active, meaningful role in the development of the displays for these groups, the State will credit those displays towards the Concessionaire's minimum public service and scenic content requirements (fifteen percent (15%) peak, forty percent (40%) non-peak). The State would consider a more active, meaningful role to be providing assistance or funding related to the creation, design, or production processes related to the displays. The Concessionaire may find creative ways to blend pay advertising into a display that will be acceptable to the State-designated organization. The State will determine, in its sole discretion, whether the Concessionaire is providing an active, meaningful role in the development of these displays when they are presented for approval.

5. Prior to removing or installing any display, the Concessionaire shall obtain approval through the Airport Building Permit process described under Article XI (Construction, Remodeling and Refurbishment), Section C (General Construction Requirements).

6. The Concessionaire may request, via an Airport Building Permit, the use of additional locations for advertising in the Terminals and at the Airport that are not initially designated on Exhibit B for use by the Concessionaire. The State will review the proposed use of any new locations on a case-by-case basis to determine whether the advertising proposed for the new location will enhance the image and theme of the advertising strategy, blend with the aesthetics of the

Airport, and/or use new technologies that the State desires. Additional locations may be subject to public notice for competition, and, if approved, will be shown on Exhibit B-1.

7. The Concessionaire shall submit all advertisements to the State for review and approval prior to installation. The State reserves the right to approve or disapprove for any reason not prohibited by law nor inconsistent with the intent and purpose of this Agreement any and all advertising proposed under this paragraph, and does not warrant or represent that any additional locations will be granted to the Concessionaire during the term of this Agreement.

8. Prior to erecting any display, including any structure or fixture associated with any display, and prior to adding new graphic or text to existing displays, the Concessionaire shall identify all structures or materials that are copyrighted, trademarked, patented, subject to exclusive supply agreements or otherwise proprietary, and that the Concessionaire contends should not vest in the State at the expiration of this Agreement. The Concessionaire shall demonstrate to the State the Concessionaire's right to use such materials and shall obtain the State's written acknowledgement of such protected status and approval for installation of such materials. The ownership of materials for which the Concessionaire has obtained the State's prior written acknowledgement of their protected status and approval for installation under this paragraph shall remain in the Concessionaire at the expiration of this Agreement, so long as the Concessionaire timely removes such materials as provided under Articles XXI (Cancellation by the State), XXII (Cancellation by the Concessionaire), or XXIII (Subsequent Contract). The Concessionaire hereby assigns to the State any license or other right the Concessionaire holds in such materials not timely removed under the terms of Articles XXI (Cancellation by the State), XXII (Cancellation by the Concessionaire), or XXIII (Subsequent Contract), as applicable.

9. The Concessionaire shall submit copies of all advertising contracts within thirty (30) days after they are executed.

10. The Concessionaire understands that any advertising contracts extending beyond the term of this Agreement must include provisions that the continuation of that contract is contingent upon execution of a subsequent agreement.

E. Service Quality: The State desires to provide the air traveler with advertising media of the highest quality. The Concessionaire must only offer advertising media of the highest quality, subject to the continuing review and approval of the State.

F. Maintenance Requirements

1. The Concessionaire must provide ongoing maintenance of its Assigned Areas at the Airport (excluding State-provided and maintained electronic displays). The

electronic/static displays installed by the Concessionaire must be kept in working order.

2. The public nature of this program places unusual priority on the maintenance process and it is important that the Concessionaire have an effective maintenance plan and adequate maintenance staff and equipment. The Concessionaire must maintain the Assigned Areas in good repair and appearance and in a safe condition at all times to ensure that neither the condition nor operation of the Assigned Areas or the Concessionaire's equipment adversely affect or pose unnecessary risk to any person, property or Terminal system. The Concessionaire's maintenance plan, staff and equipment must specifically provide for active maintenance of all of the Concessionaire's equipment. The Concessionaire shall do, or cause to be done, without delay, all those things which, in the determination of the State, are necessary or desirable in the interest of safety or are necessary to maintain the Assigned Areas in good repair and appearance. If the State determines, through routine inspection of the Terminal systems or otherwise, that any of the Concessionaire's facilities or operations have resulted in unnecessary potential for or actual damage to any Terminal system, the State will notify Concessionaire in writing of the State's findings and assessment of actual or potential damage to any Terminal system. Concessionaire is required to respond to the State in writing within twenty (20) days of receipt of the notice from the State, documenting a plan to rectify the situation. If Concessionaire fails to rectify the situation within the time period documented (without receiving an extension of time from the State) it must pay to the State liquidated damages in an amount not to exceed one hundred dollars (\$100) per day per occurrence until the source of the potential or actual damage is cured and any actual damage is repaired.
3. In the event, upon regular inspection of the Airport facilities, due to public comment, or by other observation, Airport staff becomes aware of a service level problem (i.e. non-functioning equipment) relating to the Concessionaire's operations, Airport staff will notify the Concessionaire by e-mail, fax or other written form regarding the deficiency. Such repair or maintenance as is necessary shall be performed by the Concessionaire within seventy-two (72) hours of notification, except as provided in the following paragraph.
4. If a needed repair or maintenance that is the subject of a notification as described in the preceding paragraph involves a major repair or replacement, the Concessionaire will notify the State in writing as to the expected delivery/repair date and time. If possible, the Concessionaire shall remove the damaged or defective electronic/static display and post a temporary "Under Construction" notice, which preserves the visual integrity and safety of the area. Any permission from the State for an extended repair shall be requested and granted or denied in writing.

5. If the State notifies the Concessionaire that a deficiency represents an imminent health and/or safety risk and the Concessionaire fails to respond immediately, the State may, in its sole discretion, take action as is deemed necessary by the State to eliminate the immediate hazard or risk of liability. In such case, the Concessionaire shall reimburse the State for any costs the State incurs.

6. Damage or injury to any Airport user or the State, caused in whole or in part due to the unsafe condition or inadequate maintenance of any Concessionaire installed equipment, fixture, or system shall be paid for by the Concessionaire.

**G. Recommendations by Concessionaire**

1. The Concessionaire shall, not less than once per year and upon request of the State, provide ongoing written analyses, and recommendations to the State concerning new technology or concepts which may increase either the economic returns or the visual enhancement of the Airport.

2. If a designated State representative requests information about a specific product or technology, the Concessionaire must respond in writing within thirty (30) days as to the nature, feasibility or potential benefits/conflicts.

3. If any person or firm expresses to the Concessionaire an interest in providing a new advertising-related service or function at the Airport, or if the State reports such an inquiry to the Concessionaire, the Concessionaire is directed to research this idea and report to the State, within thirty (30) days, whether this new idea will improve either the aesthetics or revenues at the Airport. It shall be the sole right of the State to authorize any new concepts or ventures at the Airport.

**H. Pricing**

1. All services provided by the Concessionaire shall be competitive in price, adjusted for local supply and demand and economic considerations, to those services at other airport facilities of a comparable size and nature. Consideration should also be given to comparable off-Airport locations within the greater Anchorage area and other airports of similar size and operation ("Comparable Locations"). Comparable Locations will be determined by the State, in consultation with the Concessionaire and may change throughout the term as deemed necessary by the State. Pricing shall be consistent with the State's objectives as stated in the Introduction section of this Agreement, and is subject to the State's prior written approval. The Concessionaire has submitted an initial price schedule in its proposal.

2. From time to time during the term of the Agreement, upon request of the State, the Concessionaire shall provide an analysis (including economic data) to the State, of the display advertising rates identified herein and the rates of

Comparable Locations, along with any appropriate recommendations. After reviewing the Concessionaire's analysis, the economic data provided by the Concessionaire, and any other information the Concessionaire desires to disclose, the State, in its sole discretion, shall determine if a rate adjustment is necessary and appropriate. The State shall notify the Concessionaire in writing as to its decision regarding each analysis and recommendation.

3. The State and the Concessionaire acknowledge that there may be circumstances beyond the control of the Concessionaire that may warrant a reduction in fees for an advertiser related to a specific location. Some examples of such circumstances may be obstructed views of a display for an extended time related to construction, a substantial rerouting of passenger traffic away from a display, or the relocation or reduction of display area either temporarily or permanently. If the Concessionaire considers a fee reduction to be warranted, the Concessionaire shall submit a written request for a specific fee reduction, including supporting documentation. The State, in its sole discretion, shall determine if a rate adjustment is necessary and appropriate. The State shall notify the Concessionaire in writing as to its decision regarding each request.

I. Non-Discriminatory Pricing: The Concessionaire shall operate its Concession authorized under this Agreement to its customer on a fair, equal, and nondiscriminatory basis. The Concessionaire, however, may make or give to similar types of customers, or other special category customers, discounts or rebates that are not illegally discriminatory.

J. Customer Comments

1. The Concessionaire shall respond in writing to all written customer or public comments it receives or that is forwarded to it by the State, regarding the management, operation and content of the electronic/static display advertising under this Agreement. The Concessionaire shall provide written responses within seven (7) days of receipt of a comment. The Concessionaire shall provide a copy of such written responses to customers to the State contemporaneously with the delivery of such response to the customer. The Concessionaire shall maintain a comment/incident report on all such complaints.

2. Concessionaire shall request the name, address and telephone number of all persons who make oral customer comments, record the oral comment on a comment/incident report and respond in writing within seven (7) days of such comment. A copy of the comment/incident report together with the written response shall also be provided to the State contemporaneously with the delivery of such response to the customer.

3. The Concessionaire shall coordinate responses to major or significant complaints, such as any complaint threatening legal action or alleging a violation of law, with the State prior to responding in writing. The Concessionaire shall use its

best professional judgment in assessing when the State should be notified in advance of a proposed response to a complaint, but shall provide such notice if it believes a reasonable facility manager would desire such notice.

**K. Collection of Bad Checks and Debts**

1. The Concessionaire shall have full responsibility to diligently collect bad checks, uncollectable credit card charges, disputed credit card charges, or debts from customers, suppliers, vendors, etc. The inability of the Concessionaire or its agents to successfully collect any bad checks, charge-backs, or debts will not reduce Gross Revenues by such amount. Any bad checks, charge-backs or debts may be excluded from Gross Revenues only if and to the extent the Concessionaire demonstrates to the satisfaction of the State that such amounts are not collectable despite diligent efforts by the Concessionaire. The State, in its sole discretion, may require the Concessionaire to terminate a contract or remit the past due balance to a collection agency acceptable to the State, if an account is more than sixty days past due. Failure to pursue the course of action required by the State will be considered a lack of diligent collection efforts by the Concessionaire and the Concessionaire will be liable for the full balance due, but not paid, for the delinquent contract.

2. In the event that a customer disputes credit card charges, it shall be the responsibility of the Concessionaire to research such dispute and respond in writing to the bank within the time required by the bank, but in no event more than ten (10) days from the date of the notice of dispute. All credit card charge-backs not properly justified and timely responded to will be charged to the Concessionaire and shall not be excluded from Gross Revenues.

**L. Additional Advertising**

1. The State, in its sole discretion, may determine that there is a need for specific advertising-related displays or services not initially anticipated on the Effective Date of this Agreement. If the State requires the Concessionaire to provide additional displays or services that do not have sufficient revenues to offset the required expenditures, the Concessionaire will be entitled to a combined overhead and profit recovery of fifteen percent (15%) of the marginal (net added) direct costs to the Concessionaire in accordance with this provision. In order to take advantage of the recovery allowed under this provision, the Concessionaire must present to the State documentation of the:

a. marginal (added) direct costs to the Concessionaire, excluding overhead, required to provide the additional displays or services and any corresponding equipment and systems, net of any reductions in direct cost attributable to the addition of new displays or services or any corresponding equipment and systems, and hereafter called Marginal Direct Cost; and

- b. marginal (added) revenue to the Concessionaire attributable to the addition of the new displays or services and net of any decrease in revenue attributable to that addition, hereafter called Marginal Revenue.

Upon presentation of evidence satisfactory to the State indicating that any Marginal Revenue is less than one hundred fifteen percent (115%) of the Marginal Direct Cost, the Concessionaire may deduct from the payments due the following month under Article VI (Fees and Payments), Section B (Payments to the State) an amount calculated as follows:

- a. First, multiply the Marginal Direct Cost times one hundred fifteen percent (115%), then
- b. Second, subtract the Marginal Revenue from that product. This calculation represents the amount of any adjustment to the fees as provided for below.

2. All calculations under this provision shall be clearly stated on the certified activity report required under Article VI (Fees and Payments), Section D (Certified Activity Reports), paragraph 2, due for the month for which the recovery is requested. The deduction shall be taken first from any payment of prorated Annual Guarantee otherwise required for that month under Article VI (Fees and Payments), Section B (Payments to the State), paragraph 1, with any remaining deduction taken from the Percentage Fees under Article VI (Fees and Payments), Section B (Payments to the State), paragraph 2. The Concessionaire must clearly state the amount of any deduction taken, along with all other required information, on the certified activity report due with respect to the payment from which the Concessionaire takes the deduction.
3. The Concessionaire shall not initiate any activities permitted under this Section J (Additional Advertising) without first receiving the advance written approval of the State.

M. Federal Regulations: The Concessionaire will comply with all federal regulations related to the operation of the concession.

N. Security Program

1. The Concessionaire shall comply with all applicable responsibilities of the Airport Security Program, the Airport Certification Manual, and the Airport Emergency Program required by 49 CFR Part 1542 and 14 CFR Part 139. The Concessionaire shall procure any identification badges required by the Federal Aviation Administration ("FAA") or the Transportation Security Administration ("TSA") or the Airport necessary to perform the rights and obligations under this Agreement. The Concessionaire is solely responsible if the FAA, TSA or the State find the Concessionaire, at fault for any fine that results from the Concessionaire's

violation of the Airport Security Program, the Airport Certification Manual, the Airport Emergency Program, 49 CFR Part 1542 and 14 CFR 139 by the Concessionaire, its agents, officers, suppliers, guests, customers, or employees while at the Airport.

2. Any penalty imposed on the State that results from a violation of the Airport's Security Program, Certification Manual, Operational Orders, Emergency Program, or any applicable local, state or federal regulation, caused by the Concessionaire or by any of Concessionaire's agents or personnel, including any officer or employee, or anyone else acting by, on behalf of, or under the authority of the Concessionaire, will, as between the State and the Concessionaire, be the sole responsibility of the Concessionaire, and will be reimbursed to the State within thirty (30) days of written demand if the State pays the penalty.

O. Ted Stevens Anchorage International Airport is a non-smoking facility. Smoking is permitted only in designated areas.

## **ARTICLE IX** **PERFORMANCE GUARANTEE**

A. Performance Guarantee: By April 1, 2014, the Concessionaire will submit and maintain in effect a performance guarantee in the amount of eighty seven thousand five hundred dollars (\$87,500), which equates to fifty percent (50%) of the first year's Annual Guarantee, to guarantee performance of all obligations and payment of all sums due under this Agreement. The Concessionaire will keep a performance guarantee in at least that amount in effect throughout the term of this Agreement.

1. The State may increase or revise the amount of the performance guarantee by written demand. The State will base any such increase or revision on reasonable and justifiable grounds.
2. The State will accept a guarantee in the form of a cash deposit, a time certificate of deposit, a performance bond, an annual renewable bond, or an irrevocable letter of credit, all subject to State approval.
3. The State will base its approval of the form of the guarantee on certainty of the assurance that the Concessionaire's failure to make timely payments or comply with any requirement of the Agreement will readily allow the State to attach and collect the full amount of the guarantee.

B. Release of Performance Guarantee: The State will release the guarantee only by written authorization after the Concessionaire has met all Agreement obligations. Neither cancellation nor expiration of this Agreement constitutes a release or discharge of the bond.

## **ARTICLE X** **AUDITS, REPORTS, BOOKS, AND RECORDS**

A. Maintenance of Books and Records

1. To provide a satisfactory basis to confirm the accuracy of the Concessionaire's certified activity reports, the Concessionaire will establish and maintain books and records that concern the business authorized under this Agreement in accordance with generally accepted accounting principles. The Concessionaire's books and records must, in the determination of the State, enable the Concessionaire to report accurately, and the State to check easily, payments due the State under this Agreement.
2. As used in this Agreement, "books and records" include, without limitation, general ledgers, revenue journals, daily or periodic summary reports, daily and monthly reports, computer terminal tapes, computer disks or other media (including, but not limited to, unedited computer generated printed material if access to the computer tapes or disks are unavailable), bank deposit slips, bank statements, credit/debit card service statements, tax reports to federal, state and local agencies (but not including state or federal income tax reports) and contractual Agreements with third parties (including subcontractors and joint venture partners) on the Airport that contract for services with the Concessionaire.
3. The Concessionaire will preserve all books and records of business conducted under this Agreement for the longer of six (6) months after completion of an audit by the State or five (5) years after the end of this Agreement year to which the books and records pertain. However, if the State objects to any report or statement by the Concessionaire, the Concessionaire will preserve all books and records containing information relevant to that report or statement until resolution of the objection is confirmed in writing by the State.
4. Upon thirty (30) days' notice, the State, or its designee(s), shall have access to the above referenced records at all times with reasonable notice to the Concessionaire regardless of the media in which the information is stored.

B. Audit

1. The Concessionaire will permit the State to inspect, copy, and audit the Concessionaire's books, records, and supporting data related to this Agreement at the State's request during regular business hours. The State may either require the Concessionaire to transport the necessary books and records to a location at the Airport for inspection, copying, or audit, or perform the audit at the location where the Concessionaire maintains the records. The State reserves the right to perform the audit, at its own expense, at the location where the books and records are located if the State desires. If the Concessionaire fails to transport the books and records to a location at the Airport within thirty (30) days after the request by the State, the State reserves the right to perform the audit at the location where the

Concessionaire maintains the records, subject to the Concessionaire paying expenses as provided for in the following paragraph.

2. If the Concessionaire's place of business and record keeping is outside of Anchorage, Alaska, and if the Concessionaire requests that the State perform the audit at that location, or the State elects to perform the audit at that location because the Concessionaire has failed to provide the books and records within thirty (30) days as required in Section B.1, above, the Concessionaire will pay the State for the audit costs incurred. Audit costs include round-trip air and ground transportation from the auditor's duty station to the location where the Concessionaire maintains the books and records, as well as per diem at the then-current State of Alaska rate for each day of travel and on-site audit work. Audit costs do not include the salary and benefit costs of the auditors. After the audit, the State will bill the Concessionaire for the costs incurred and the State will support the billing with a copy of the travel authorization form used by the State. The Concessionaire will pay these costs within thirty (30) days of the State's billing date.
3. The Concessionaire shall provide all information requested by the auditor in a timely manner. If the auditor does not specify a deadline to submit requested information, the term "timely manner" shall mean "not more than thirty (30) days."
4. Such audits are to be limited to once per annum, unless a significant discrepancy or change occurs. Examples of such changes may include, but are not limited to: change of management at Concessionaire; significant drop-off in revenue from one month to the next; complaints related to billing from clients of the Concessionaire; and/or discrepancy between posted copy and billing summary.

C. Concession Underpayments

1. If any State inspection or audit of the Concessionaire's books and records discloses a Concessionaire underpayment, the Concessionaire will pay, within thirty (30) days of the billing date, any underpayment disclosed by the audit plus:
  - a. interest at the rate specified in Article VI (Fees and Payments);
  - b. any actual costs and attorney fees that the State incurs to collect the underpayment; and
  - c. if the underpayment is more than five thousand dollars (\$5,000) (an amount or a percentage equal to one percent (1%) of Gross Revenues) in any fiscal year, all audit costs that the State incurs, including salary and benefit costs of the auditor.
2. If the State collects the difference through litigation, the Concessionaire will pay the State the State's full costs and attorney's fees incurred to collect the

underpayment. Further, the Concessionaire is liable for the full costs and attorney's fees if the State finds it necessary to take legal action either to levy the performance bond under Article IX (Performance Guarantee) or take other action necessary to collect money the Concessionaire owes to the State. If the State initiates litigation and Concessionaire is deemed to not owe any amounts under the Agreement the State will pay Concessionaire the full costs and attorney's fees incurred to defend the case.

**D. Financial Information:** Within sixty (60) days after the end of each Agreement year during this Agreement, the Concessionaire will furnish the State with a true and accurate statement that reflects the Concessionaire's Gross Revenues derived from business transacted under this Agreement during the preceding Agreement year. An independent certified public accountant must certify and sign this special purpose statement as true and correct.

**E. Period for Objection:** If the State does not object to the contents of any report or statement furnished by the Concessionaire within five (5) years after the date the report or statement is furnished to the State, the State will consider the contents of the report or statement correct unless the State establishes that the report or statement was fraudulently prepared. If the State objects to any report or statement, the Concessionaire will preserve all books until the objection is resolved.

**F. Additional Supporting Data**

1. The Concessionaire will furnish the State with other financial or statistical reports that the State may occasionally request regarding this Agreement. This Section does not require the Concessionaire to submit data that is either confidential business information or trade secrets unless reasonably related to determining compliance with this Agreement. Concessionaire must notify the State if it claims certain data or information is either confidential or a trade secret. If such claim is made, the State shall provide for protection of such information.
2. The Concessionaire shall provide all information requested by the State in a timely manner. If the auditor does not specify a deadline to submit requested information, the term "timely manner" shall mean "not more than thirty (30) days."

**G. Public Information:** All books, figures, records, reports, statements, or similar items the Concessionaire submits to the State are public records and available for public inspection, except as may be provided under the previous section. If the Concessionaire clearly marks items as "confidential," stating a good faith basis for confidentiality under Alaska Law, then the State will keep those items confidential and out of public record, to the extent legally permitted to do so, until at least such time as the State has afforded the Concessionaire an opportunity to defend the information from disclosure. The State shall have neither responsibility for defending the confidentiality of the information, nor liability for any disclosure.

**ARTICLE XI**  
**CONSTRUCTION, REMODELING, AND REFURBISHMENT**

**A. Adoption of Electronic/Static Display Advertising Program**

1. The Concessionaire agrees to implement the Electronic/Static Display Advertising Program in accordance with its installation schedule, as subsequently refined or otherwise modified and accepted by the State.
2. The Concessionaire agrees to abide by all applicable building code requirements and understands that the Electronic/Static Display Advertising Program is subject to further modification and refinement during the Airport Building Permit process. Approval of an Airport Building Permit that entails variations from the Electronic/Static Display Advertising Program constitutes the State's acceptance of the variation only if expressly so stated in the permit and then only for the project specifically approved. No general refinement or modification of the Electronic/Static Display Advertising Program will be deemed accepted by the State unless expressly stated in a written supplement to this Agreement, signed by both parties. An approved Airport Building Permit is required prior to the start of any construction, including any construction related to the Electronic/Static Display Advertising Program submitted with the Concessionaire's application.

**B. Investment Requirement**

1. The Concessionaire agrees to expend a minimum of three hundred seventy thousand nine hundred forty one dollars (\$370,941) as an initial infrastructure investment related to the display locations indicated in Exhibit B that were specified as Concessionaire-provided in the Concessionaire's proposed breakdown of investment. This minimum infrastructure investment is defined as including the following items only: costs of construction, displays, equipment, and fixtures, but excludes interest, inventory, pre-opening expenses, architectural and engineering fees, and intra-company charges related to construction.
2. The expenditures shall be made timely, in accordance with the schedules indicated in the Concessionaire's proposal, as subsequently refined or otherwise modified and accepted by the State as stated in Exhibit D.
3. The Concessionaire agrees that the infrastructure investment amount indicated in Section B.1, above, is a minimum amount that must be expended related to the initial display installations for the locations indicated in Exhibit B. As such, the Concessionaire's obligation to implement the complete program as stated in Exhibit D is not reduced or negated if the costs to implement the program exceed the required investment amount, nor is the Concessionaire due any additional compensation from the State.

4. The initial infrastructure investment indicated in Section B (Investment Requirement), paragraph 1, above, shall be fully amortized prior to the end of the initial term of the Agreement on March 31, 2019, and, therefore, shall not be subject to buyout by the State. The ownership of all infrastructure related to the initial infrastructure investment shall immediately vest in the State at the termination of the Agreement, except to the extent the State directs the Concessionaire to remove all or specifically identified improvements.

5. Statement of Investment: Within one hundred eighty (180) days after acceptance by the State of this construction, the Concessionaire shall provide the State with a statement, certified by the Concessionaire's chief financial officer, of those costs that the Concessionaire incurred to meet its minimum investment. This statement must be supported by receipted invoices evidencing payments for these costs. If these costs are less than the proposed minimum investment, the Concessionaire will need to make additional investments during the initial term of this agreement. This payment will not apply toward any concession fees due under this Agreement. The certified statement is subject to review and audit by the State.

6. Amortization: Approval of an Airport Building Permit does not constitute approval of furnishings, fixtures, equipment, and other improvements to be amortized under this Agreement. The Concessionaire shall provide a detailed list to the State of all furnishings, fixtures, equipment, and other improvements that it intends to amortize under this Agreement. The State shall approve or reject furnishings, fixtures, equipment and other improvements to be amortized under this Agreement. The State shall render its decision in writing to the Concessionaire. The Concessionaire shall amortize all approved furnishings, fixtures, equipment and other improvements over a five (5)-year period using the straight-line method.

7. Credit for Additional Investment: The Concessionaire agrees to advance up to an additional one hundred fifty thousand dollars (\$150,000) to replace equipment and displays the Concessionaire deems necessary in fourteen (14) locations that the State previously agreed to pay for and which were accordingly specified as "Airport-provided" in the Concessionaire's proposed breakdown of investment. This capital will be used only for these locations and not for locations budgeted within the three hundred seventy thousand nine hundred forty-one dollar (\$370,941) initial infrastructure investment. The State may request to add additional displays to this credit amount that also were not budgeted in the initial infrastructure investment. The Concessionaire will receive one hundred percent (100%) credit at a seventy percent/twenty-five percent (75%/25%) split against concession fees due under this Agreement until any outstanding amounts of these advances are reimbursed.

#### C. General Construction Requirements

1. Any Concessionaire alteration, construction, or improvement of the Assigned Areas must be in conformity with the Terminal Construction Standards. The Terminal Construction Standards may be found at [www.anchoragairport.com](http://www.anchoragairport.com)

([http://www.dot.state.ak.us/anc/business/engineering/TerminalConstructionStds/terminal\\_construction\\_standards.shtml](http://www.dot.state.ak.us/anc/business/engineering/TerminalConstructionStds/terminal_construction_standards.shtml)). Any Concessionaire alteration, construction, or improvement of the Assigned Areas will be neat, presentable, and compatible with the architecture of the Terminals, as determined by the State, and performed at no cost to the State or concession fee credit from the State.

2. Before constructing any improvement or alteration on the Assigned Areas, including refurbishment, the Concessionaire must obtain the written approval of the State in the form of an Airport Building Permit that includes all required attachments and detailed drawings of the proposed construction. At the State's request, the Concessionaire will also submit architectural renderings of the proposed improvement with samples of materials and colors.

3. The State will review the proposed construction and provide the Concessionaire written approval or disapproval.

4. The Concessionaire will deliver detailed as-built drawings to the State within thirty (30) days after completing construction. The as-built drawings must show the location and dimensions of any structural, electrical, or data and telecommunication improvements the Concessionaire places or constructs on the Assigned Areas. The State may require the Concessionaire to pay liquidated damages in the amount of fifty dollars (\$50) for every day after thirty (30) days after completing construction that the Concessionaire does not supply detailed as-built drawings.

5. The State has installed a Premise Wiring Distribution System (PWDS) in both Terminals. The Concessionaire is required to use the PWDS described in Article V (Assigned Areas), Section D for all operations in the Assigned Areas where it is available to the Concessionaire.

D. Routine Refurbishment: At its own expense, the Concessionaire will maintain and replace Concessionaire-provided electronic/static displays as necessary to maintain the Assigned Areas in a first-class condition throughout the term of this Agreement, or at the State's request. The Concessionaire acknowledges that Concessionaire-provided electronic/static displays installed at the beginning of this Agreement will likely require upgrades prior to the end of this Agreement to ensure the electronic/static displays are in good working order and appearance and that they reflect positively on the Airport, the State, and the Concessionaire. Refurbishment must be accomplished in a way that minimizes negative impacts to all users of the Airport.

E. Refurbishment Requirement

1. The Concessionaire agrees to expend the minimum of two hundred ten thousand dollars (\$210,000) for infrastructure refurbishment that is necessary to maintain the electronic/static displays indicated in Exhibit B, and Exhibit B-1 if applicable, in excellent condition. This minimum infrastructure refurbishment

investment shall include costs of construction, displays, equipment, and fixtures, but shall exclude interest, inventory, pre-opening expenses, architectural and engineering fees, and intra-company charges related to construction.

2. The Concessionaire shall submit a refurbishment plan to the State no later than March 31, 2019. The Concessionaire agrees to implement the refurbishment plan, as subsequently refined or otherwise modified and accepted by the State.

3. The refurbishment investment indicated in Section E.1, above, shall be fully amortized prior to the end of the extension period on March 31, 2024, and, therefore, shall not be subject to buyout by the State. The ownership of all infrastructure related to the refurbishment investment shall immediately vest in the State at the termination of this Agreement, except to the extent the State directs the Concessionaire to remove all or specifically identified improvements.

4. Within one hundred eighty (180) days after acceptance by the State of this construction, the Concessionaire shall provide the State with a statement certified by its chief financial officer of those costs that the Concessionaire incurred to meet its minimum investment. This statement must be supported by receipted invoices evidencing payments for these costs. If these costs are less than the proposed minimum investment, the difference will be paid to the State within thirty (30) days after submitting the certified statement. This payment will not apply toward any concession fees due under this Agreement. The certified statement is subject to review and audit by the State.

5. The minimum required refurbishment investment does not diminish or eliminate any of the Concessionaire's obligations covered by this Agreement, including the requirements of Section D (Routine Refurbishment) of this Article.

**F. Ownership of Improvements**

1. On expiration of this Agreement, title to all improvements required under the original terms of this Agreement, together with all other fully amortized improvements vest in the State, except to the extent the State directs the Concessionaire to remove all or specifically identified improvements.

2. For improvements other than those identified in paragraph 1, above, the State agrees to either purchase, whether by payment or offset credit against rents or fees, or require reimbursement to the Concessionaire by a succeeding concessionaire, the remaining unamortized portions subject to the improvements having been:

- a. approved by the State under an Airport Building Permit;
- b. expressly acknowledged in the Airport Building Permit to be beyond the requirements of this Agreement; and

- c. expressly acknowledged in the Airport Building Permit to be subject to purchase or reimbursement under this Agreement.
3. For reimbursement and purchase issues covered by this Agreement, the Concessionaire shall amortize all improvements over not more than a five (5)-year period using the straight line method. On the twentieth (20<sup>th</sup>) day of the first (1<sup>st</sup>) month of each Agreement year and the twentieth (20<sup>th</sup>) day of the seventh (7<sup>th</sup>) month of each Agreement year, the Concessionaire shall provide a summary report of all unamortized improvements. The report shall include the current balance of any unamortized amounts, the previous balance from the last report, new activity for the current period, and the projected value of any unamortized portions that will be remaining at the end of the initial five (5)-year term, and at the end of the five (5)-year extension period. If any dispute arises over the costs or amortized values, the Concessionaire agrees to abide by the decision of the State.
4. On cancellation of this Agreement, title to all improvements vest in the State as described under Article XXI (Cancellation by State).

## **ARTICLE XII** **LEASE OF SUPPORT SPACE**

If the Concessionaire requests additional space in the Terminals for administrative, storage or other purposes, and the State determines that suitable space is available, the State will lease the space, at the then-current terminal rental rate, through a supplement to this Agreement subject to public notice and other requirements of law concerning the lease of Airport Terminal space. Subject to the provisions of Article XIII (Reduction of Assigned Areas) and XIV (State-Directed Relocation of Assigned Areas), the State reserves the right to reduce or expand the Premises available to the Concessionaire under this Agreement without compensation or obligation to the Concessionaire by the State.

## **ARTICLE XIII** **REDUCTION OF ASSIGNED AREAS**

### **A. Concessionaire Requested Reduction**

1. If the Concessionaire determines that it is not economically feasible to continue operations in any of the Assigned Areas authorized under this Agreement, the Concessionaire may submit a written request to discontinue operations in that area or to reduce the area at that location and surrender the Assigned Area to the State. The Concessionaire will be required to demonstrate in writing, to the State's satisfaction, that discontinuing operations in this area is in the State's best interest. The State may require that the Concessionaire provide financial, statistical, or other data to support the request for a reduction of the Assigned Areas. Any decision to reduce space rests solely with the State and the

Concessionaire will abide by the State's decision. However, after thirty (30) days' written notice to the State, the Concessionaire may surrender to the State Support Space that the Concessionaire no longer requires.

2. If the State approves the Concessionaire's request to discontinue operations in an Assigned Area, the State shall require the Concessionaire to vacate the Assigned Area and surrender it to the State. In the event that the Concessionaire requests to discontinue operations in an Assigned Area, and the State grants its permission, there will be no buy-out of any improvements to that area, and title to any improvements therein constructed will immediately vest in the State, unless the State requests Concessionaire to remove such improvements. If the State requests removal of any improvements and the Concessionaire fails to do so within a reasonable period of time, as so determined by the State, then the State may cause such improvements to be removed and may charge the Concessionaire for the expense of the removal, plus a twenty-five percent (25%) administrative charge.

B. State-Directed Reduction: The State reserves the right, in its sole discretion, to reduce the locations in Assigned Areas authorized under this Agreement if the State determines that it is in its best interest to do so. If the State requires the Concessionaire to remove one or more electronic/static displays from an Assigned Area and does not designate a substitute location for the electronic/static display(s), the State will, in its discretion, either credit the unamortized balance of the electronic/static display toward future payments or reimburse the Concessionaire for the unamortized portions. The unamortized balance shall be consistent with the amount indicated in the amortization report required by Article VI (Fees and Payments), Section D (Certified Activity Reports), paragraph 4 and the depreciation method shall be consistent with the requirements of Article XI (Construction, Remodeling, and Refurbishment), Section B (Investment Requirement), paragraph 6 (Amortization). However, the State is not responsible for any financial loss the Concessionaire may incur because of reduction under this Article unless the loss is a result of a breach by the State of its obligations under this Article.

#### **ARTICLE XIV** **STATE-DIRECTED RELOCATION OF ASSIGNED AREAS**

The Concessionaire acknowledges that the State may require the relocation of some electronic/static display locations, in whole or in part, if the State, in its sole discretion determines that relocation is necessary to meet the needs of the traveling public or is in the best interest of the Airport. The following responsibilities apply if the State requires relocation of any Assigned Areas applicable under this Article:

A. State Responsibilities: If the State requires the Concessionaire to relocate an electronic/static display, the State, at its sole expense, will provide a new location that is structurally capable of supporting the electronic/static display with power/data

connections similar to those from which the State requires the Concessionaire to relocate.

B. Concessionaire Responsibilities: The Concessionaire, at its sole expense, will relocate the electronic/static display and provide any additional equipment that the Concessionaire finds necessary or desirable to fully utilize the new location; and will vacate and surrender the former location to the State when the new space is completed.

C. Duty to Cooperate: The State and the Concessionaire will perform their respective obligations in an expeditious manner, excluding any delay beyond the control of either party. The State will attempt to but does not guarantee that it will be able to, designate a location that is equal to or better than the one the State requires the Concessionaire to vacate. However, the State is not responsible for any financial loss the Concessionaire may incur because of relocation under this Article unless the loss is the result of an intentional breach by the State of its obligations under this Article.

## ARTICLE XV PERSONNEL

The Concessionaire will maintain adequate staff and use the utmost skill and diligence in the operation of its business at the Airport.

### A. Manager

1. The Concessionaire will at all times during the term of this Agreement retain a qualified, competent and experienced supervising manager who shall serve as the primary spokesperson for the Concessionaire and point of contact for the State for the Electronic/Static Display Advertising Concession, including the appearance, conduct, and demeanor of the Concessionaire's agents, servants, and employees.
2. The Concessionaire will at all times during the term of this Agreement retain a qualified, competent and experienced local manager who shall be responsible for the general day-to-day operations under this Agreement and who shall serve as the local point of contact for the State, clientele, and the Concessionaire.
3. The Concessionaire's local manager must remain available during regular business hours.
4. The Concessionaire must have the ability to respond to any issues at the Airport within a twenty-four (24) hour period from first notice.
5. The Concessionaire shall provide the State with written notice within ten (10) days of the Effective Date indicating by name, business, home, pager and cellular telephone numbers, and business address of the local manager.
6. If the State is not satisfied with the Concessionaire's selected supervising or local manager (or replacement manager), or at anytime the State is not satisfied

with the Concessionaire's managers' (or replacement managers') performance during the term of this Agreement, the State shall notify the Concessionaire in writing setting forth the State's complaints. Within twenty (20) days of receipt of any such notice, the Concessionaire shall respond in writing detailing the corrective action taken to resolve the State's concerns. If the State is still not satisfied, the State and the Concessionaire shall negotiate in good faith to achieve a mutually acceptable resolution to the issue.

7. If during the term of this Agreement, the Concessionaire desires to change local managers, it may do so only after having notified the State in writing and received the State's prior written approval. The notice shall include the name, business, home, pager and cellular telephone numbers, and business address of the new local manager and the effective date of the appointment.

B. Other Personnel

1. The Concessionaire shall provide an adequate number of trained employees, supervisors and local managers necessary to perform the duties and meet the customer service standards required herein. It is the intent of the parties hereto that the Concessionaire's employees, subcontractors and joint venture partners maintain a high degree of professionalism.

2. All of the Concessionaire's employees shall be neat in appearance and courteous in manner. The Concessionaire agrees that it will be responsible for ensuring that these employees abide by all laws, rules, and regulations applicable to the Airport. The Concessionaire will not permit personnel on or about the Terminals to use offensive or otherwise inappropriate language, to act in a loud, boisterous, or otherwise improper way, or to solicit business in an inappropriate manner, as determined by the State. Upon request of the State, the Concessionaire shall remove from the Airport, to the extent allowed by law, any of its employees and employees of subcontractors and joint venture partners who, in the State's sole opinion, are determined to be unsuitable or incapable of working at the Airport.

C. Employee Identification: The Concessionaire shall be responsible for any requirements of the FAA, the TSA, the State, or other regulating agencies regarding employee background checks and badging. While on duty, the Concessionaire's employees shall display identification badges at all times.

D. Periodic Meetings: The Concessionaire shall attend all meetings reasonably requested by the State throughout the term of this Agreement. The State may request which officers and employees of the Concessionaire shall attend each meeting and those officers and employees shall make a good faith effort to attend. The State recognizes that many of the Concessionaire's officers and employees who are actively involved with this concession at this Airport will not reside in the State and, as such, the

State shall exercise reasonable discretion when mandating attendance at meetings requested by the State.

E. Deliveries: The Concessionaire shall monitor the movement of deliveries to avoid conflict with other Airport functions and shall coordinate its use of the curbside loading areas at the Terminals, if necessary, with the use by other tenants or licensees of the State, and with the State. The Concessionaire shall be responsible for the return of all pallets, storage containers and other equipment belonging to its suppliers and shall ensure that all trash and recyclables are properly disposed. Concessionaire shall be responsible for adherence to all TSA rules and regulations regarding deliveries and the screening of merchandise for delivery on the secure side of the Airport.

## ARTICLE XVI STATE'S RIGHTS OF ACCESS AND INSPECTION

### A. Inspection

1. The State, by its officers, employees, agents, representatives, and contractors, may at all reasonable times enter and inspect the Assigned Areas or observe the Concessionaire's performance of its obligations under this Agreement, or take any action that the State is obligated to take under this Agreement.
2. The Concessionaire shall not claim nor will the State provide any fee abatement if the State exercises this right. The State will take reasonable steps to minimize interference with the Concessionaire's activity on the Assigned Areas except for an emergency.

### B. Access

1. The Concessionaire will provide emergency telephone numbers where the State may reach the Concessionaire or the Concessionaire's agent on a twenty-four (24) hour basis.
2. The State reserves the right to enter the Assigned Areas to repair, replace, alter, install, or maintain any mechanical, electrical, plumbing, heating, cooling, ventilation, fire protection, telecommunication, or other system necessary to the proper functioning of the Terminal without liability to the Concessionaire for any damage to the Assigned Areas.
3. As a result of any entry under this Section, the State is only liable for its own negligence and for returning the Assigned Areas to their former condition using standard materials. To the extent practicable, any State repair, replacement, alteration, installation, or maintenance will not unreasonably interfere with the Concessionaire's use of the Assigned Areas. Nothing in this Section in any way

relieves the Concessionaire of any obligation to maintain its lease space and improvements.

4. At any time during this Agreement, the State, by its agents and employees, whether or not accompanied by prospective concessionaires, occupiers, or users of the Assigned Areas, may enter the Assigned Areas to exhibit, view, or photograph any part of the Assigned Areas. A State official, after advance coordination with the Concessionaire, will accompany any prospective concessionaire that requests to measure or photograph the Assigned Areas. The Concessionaire may decline to allow a prospective concessionaire to measure or photograph the Assigned Areas if there is more than twelve (12) months remaining in this Agreement.

## **ARTICLE XVII** **STATE SERVICES**

A. The State will maintain the electrical, public address, plumbing, and heating systems in the Terminals in good condition and repair. However, the State may refuse to maintain any system installed by the Concessionaire and may charge the Concessionaire for any repair resulting from the Concessionaire's negligence. The Concessionaire will pay the State within thirty (30) days of the billing date for any such repair charge.

B. The State shall throughout the term of this Agreement, subject to temporary shutdown for maintenance and repair, maintain all elevators and escalators in the Airport and shall maintain access to the Assigned Areas. However, the State may, at any time, temporarily or permanently close, consent to or request the closing of any roadway or other right-of-way for such access, ingress or egress, whether inside or outside the Assigned Areas, so long as a means of access, ingress or egress reasonably equivalent to that formerly provided, and not adverse to the Concessionaire's continued use and enjoyment of the Assigned Areas, is substituted and is concurrently made available.

C. The Concessionaire understands and agrees that there shall be inconvenience caused by construction or renovations of the Terminal, Assigned Areas and corridors, and the Concessionaire hereby releases and discharges the State from any and all claims, demands or causes of action which the Concessionaire now or at any time hereafter may have against the State arising or alleged to arise out of the closing of any right-of-way or other area used as such, whether within or without the Assigned Areas, so long as the State makes available a means of free access, ingress or egress reasonably equivalent if available to that existing prior to each such modification.

D. Hold Harmless: The Concessionaire waives any claim and holds the State harmless for damages that may arise out of or result from any failure or interruption of utility services furnished by or through the State that includes, but not limited to,

stoppage in electrical energy, space heating, or the failure or interruption of any public or passenger convenience.

## **ARTICLE XVIII** **LAWS AND TAXES**

This Agreement is subject to all State of Alaska laws and regulations, including those relating to leasing facilities and granting privileges at State of Alaska Airports.

### **A. Laws**

1. At no expense to the State, the Concessionaire will comply with all federal, state, and local laws, ordinances, regulations, as well as with any Airport rules of conduct (17 AAC 42.020), that are either now, or in the future, in force that may apply to the business authorized under this Agreement, or to the use, care, operation, maintenance, and protection of the Airport, including matters of health, safety, sanitation, and pollution. This requirement includes, but is not limited to, compliance and agreement to be bound by the terms and conditions of 17 AAC 42. The Concessionaire shall comply with applicable requirements imposed on the Airport by federal laws to ensure that eligibility for federal money or for participation in a federal aviation program by the Airport is not jeopardized, and with all applicable orders issued by the Airport. Compliance with the Airport Sponsors Grant Assurances is an explicit requirement of this Agreement.
2. The State is neither liable to the Concessionaire for any reduction or deprivation of the Concessionaire's rights due to the exercise of any authority, nor is the Concessionaire entitled to terminate the whole or any portion of this Agreement by reason of the State's exercise of any authority.
3. The Concessionaire will comply with any state and federal regulation governing hazardous substances, including hazardous wastes, and with any State instructions regarding environmental concerns, regardless of whether based on specific law, regulation, or order of any governmental authority. The Concessionaire will properly handle spills of hazardous substances and assumes responsibility for any spill of oil, oil-based substance, or hazardous substance attributable to its operation under this Agreement. The Concessionaire will immediately notify the State of any spill that occurs as well as the action taken. With respect to any such occurrence, the Concessionaire will indemnify, defend, save, and hold the State and its employees harmless from any loss, claim, suit, or judgment. The Concessionaire will provide the State copies of any written spill or other reports regarding action taken as soon as the reports are available.

### **B. Taxes:** The Concessionaire will obtain all necessary licenses and permits, pay all taxes (including any possessory interest tax, assessment, or similar charge) lawfully imposed on its business, and pay any other fee or charge assessed, levied or liened against the Concessionaire, against the Concessionaire's right of occupancy of Airport

facilities under any applicable public statute, regulation, or ordinance. The Concessionaire will pay such taxes, assessments, and charges directly to the taxing or assessing authority.

1. The Concessionaire will indemnify and defend the State from all costs that result directly or indirectly from any tax or assessment for which the Concessionaire is liable, including taxes, penalties, expenses, and reasonable attorneys' fees incurred by the State.
2. At its own expense, the Concessionaire may contest the amount or validity of any tax or assessment or similar charge, or contest the inclusion of the space leased under this Agreement as taxable or assessable property, directly with the taxing or assessing authority. The Concessionaire will indemnify the State for all taxes, penalties, costs, expenses, and reasonable attorneys' fees incurred by the State resulting directly or indirectly from any such tax contest.
3. Upon termination or expiration of this Agreement, the Concessionaire will promptly pay in full all due and payable taxes and obtain release of all liens.

C. Policies: The Concessionaire will comply with all applicable provisions of the Airport Certification Manual and the Airport Security Program and with all airport directives as set forth by the Airport Manager.

D. Non-Discrimination

1. Concessionaire agrees that discrimination on the grounds of race, color, religion, national origin, sex, age, mental/physical disability, marital status or change in marital status, pregnancy, or parenthood will not be permitted against any patron, employee, applicant for employment, other person or groups of persons in any manner prohibited by federal or state law. DOT&PF may take any action necessary to enforce this provision, including actions required by any federal or state law or FAA grant agreement.
2. Concessionaire will undertake any affirmative action program as required by 14 CFR Part 152, subpart E, or any superseding or substitute regulation, to ensure that no person is excluded from participating in any employment, contracting, or leasing activity on the grounds of race, color, religion, national origin, sex, age, or disability. Concessionaire agrees that no person may be excluded on those grounds from participating in or receiving the services or benefits of any program or activity covered by the regulation. Concessionaire will require its covered sub-organizations to provide assurance that they will also undertake affirmative action programs and require assurances from their sub-organizations, as required by 14 CFR Part 152.

E. Disputes: The laws of the State of Alaska, including the protest and appeal procedures of 17 AAC 42.910 and .920, will govern in any dispute between the parties. Court actions, if any, must be brought in the State of Alaska, Third Judicial District.

F. Claims: The Concessionaire will notify the State of any claim, demand, or lawsuit arising out of the Concessionaire's rights granted or the operations authorized under this Agreement. At the State's request, the Concessionaire will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit relating to this Agreement.

## **ARTICLE XIX** **ADDITIONAL FEES AND CHARGES**

A. The Concessionaire shall pay the State any additional fees and charges, within thirty (30) days of receipt of an invoice for such fees and charges, where the State has paid any sum or sums, or has incurred any obligations or expenses for which the Concessionaire has agreed, either expressly or by implication, to pay or reimburse the State herein or if the State incurs any obligations or expenses because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of its obligations under this Agreement. Such payments may include all interest, costs, damages, and expenses reasonably related to such sums so paid or expenses so incurred.

B. The Concessionaire shall also pay to the State within ten (10) days after receipt of billing from the State, all other fees, charges and sums as a result of any utility and service charges, and any other expenses incurred by the State on account of the Concessionaire for which the State is entitled to reimbursement whether express or implied herein, and such other fees, charges, levies as are prescribed or contemplated hereunder.

C. The State shall have a lien upon all removable fixtures and other trade fixtures of the Concessionaire placed at the Airport, to the extent permitted by law, for the purpose of securing the payment of all sums of money which may be due to the State from the Concessionaire under this Agreement.

## **ARTICLE XX** **INDEMNIFICATION AND INSURANCE**

A. Indemnification

1. Concessionaire shall defend, hold harmless, and indemnify the State and its agents and employees against any and all losses or obligations that arise from Concessionaire's operations or activities on the Airport (or elsewhere, if such operations or activities are undertaken in Concessionaire's performance of services under this Agreement).

2. Concessionaire shall give the State prompt notice of any suit, claim, action, or other matter affecting the State to which any portion of this Section may apply, together with a copy of any letter by an attorney on behalf of a complainant, any complaint filed in court, or any notice or complaint by any regulatory agency. In the event Concessionaire undertakes legal action to defend, hold harmless, and indemnify State and its agents and employees in accordance with paragraph 1, above, Concessionaire shall secure counsel acceptable to the State and to Concessionaire's insurance and the Alaska Department of Law to carry out Concessionaire's defense, indemnity, and hold harmless obligations. The State shall have the right, at its option and own cost to secure additional counsel to participate in the Concessionaire's defense of the State, including in settlement negotiations. However such participation shall not relieve Concessionaire of any of its defense, hold harmless, and indemnity obligations. Concessionaire's defense, hold harmless, and indemnity, obligations are in addition to, and not limited by, Concessionaire's obligation to provide insurance, described above. Moreover Concessionaire's defense, hold harmless, and indemnity, obligations shall survive the expiration or termination of this Permit to the extent that claims for loss or obligation are asserted subsequent to the Agreement's expiration or termination.

B. Insurance

1. Notwithstanding and without limitation to Concessionaire's defense, hold harmless and indemnity obligations, it is agreed that Concessionaire shall purchase at its own expense, and shall maintain in force at all times during the performance of activities under this Agreement, insurance coverage for property damage, bodily injury and death, and with contractual liability endorsements, insuring all of Concessionaire's operations under this Agreement, equally protecting both State and Concessionaire. The policy or policies must afford coverages in dollar amounts not less than those set forth below. Where specific limits are set forth below, it is understood that they shall be the minimum acceptable limits. If the Concessionaire's policy or policies contain higher limits, the State shall be entitled to coverage to the extent of such higher limits, just as the State shall be entitled to coverage to the extent of the minimum acceptable limits. The policies and minimum dollar amounts of coverage will be consistent with prudent airport industry practices and this Agreement. The following shall be the minimum dollar amounts of coverage for liability insurance or equivalent insurance:

- a. Commercial General Liability insurance that includes product and completed operations coverage, contractual liability coverage, and pollution coverage endorsement(s), with coverage limits of not less than \$1,000,000 bodily injury and property damage per accident or occurrence, \$2,000,000 per year aggregate;
- b. Comprehensive Automobile Liability insurance covering all owned, hired, and non-owned vehicles used in connection with this Agreement, with

coverage of not less than \$1,000,000 bodily injury and property damage per accident or occurrence, \$2,000,000 per year aggregate.

- c. All-risk property insurance for the Concessionaire's furnishings, fixtures, improvements, and equipment equal to the full replacement cost.
2. It is further agreed that Concessionaire shall purchase at its own expense, and shall maintain in force at all times during performance of the Agreement, Workers Compensation insurance with coverage for all employees engaged in work under this Permit in conformity with AS 23.30. Where applicable, such Workers Compensation insurance coverage shall conform to other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The Workers Compensation insurance described in this paragraph shall afford coverage for any subcontractor who directly or indirectly provides services under the Agreement. The Concessionaire's policy or any subcontractor's policy secured in order to ensure Concessionaire's compliance with this paragraph must, to the extent permissible under the law, waive the insurer's right of subrogation as to claims against the State, its agents, and employees.
3. Certificates of Insurance must be furnished to the State prior to beginning operations at the Airport and must contain notice provisions in the event of cancellation, non-renewal, or material change of condition. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this Agreement and shall be grounds for termination of this Agreement. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21. Each policy, except for Workers' Compensation, must state that it is primary, without any right to contribution from any other insurance, including self-insurance that may be carried by the State. Where any such policy has a normal expiration during the term of this Agreement, Concessionaire will provide, prior to such expiration, a certificate or other satisfactory written evidence of continued coverage.
4. A certificate on forms prescribed by the State or on forms approved by the State certifying coverage of required insurance, and a declarations page or other evidence of the types, limits, deductibles, exclusions and endorsements must be delivered to the State within thirty (30) days of the effective date of this Agreement. The certificate must identify State's reference number for this Agreement.
5. The failure by either party at any time to enforce the provisions in this Section will not be construed as a waiver of these provisions and will not reduce either party's obligations under this Agreement.
6. The State reserves the right to modify the requirements of this Section provided that such modifications are reasonable and appropriate.

C. Additional Insured

Concessionaire agrees that every insurance policy, except for Workers' Compensation, required under Section B (Insurance), paragraph 2, above, will include an endorsement identifying the State as additional insured. Each policy must provide protection for State in the same manner as though a separate policy had been issued to the State. Each policy must contain, to the extent available, a waiver of the insurer's subrogation as to the rights of the State and its employees and agents. Additionally, each policy must provide liability coverage for claims between the State and Concessionaire alleging set-off, fault allocation, or counterclaim, or asserting any defense to which Concessionaire or State, its employees, or agents may be entitled. Further, each policy must specify that coverage as to State may not be invalidated by any action or inaction of Concessionaire, including any breach by Concessionaire of any representation, declaration, condition, or warranty contained in the policy.

**ARTICLE XXI**  
**CANCELLATION BY STATE**

A. Breach of Agreement

1. The State may cancel this Agreement and recover possession of the Assigned Areas by giving the Concessionaire thirty (30) days advance written notice if any of the following events occur, unless the breach is cured within the thirty (30) days:
  - a. The Concessionaire does not pay any rent, fee, penalty, or other charge when due under this Agreement.
  - b. A check for any payment is returned for insufficient funds.
  - c. The Concessionaire uses the Assigned Areas for purposes not authorized under this Agreement.
  - d. A petition in bankruptcy is filed by or against the Concessionaire.
  - e. A court enters a judgment of insolvency against the Concessionaire.
  - f. A trustee or receiver is appointed for the Concessionaire's assets in a proceeding brought by or against the Concessionaire.
  - g. A lien is filed against the Assigned Areas because of any act or omission of the Concessionaire and the lien is not removed, enjoined, or a bond of satisfaction of the lien is not posted within sixty (60) days.

- h. The Concessionaire fails, without the State's advance written approval, to operate the business authorized under this Agreement on a continuous basis.
- i. The Concessionaire does not make good faith efforts to meet any ACDBE requirement imposed by amendment as required by the FAA, without adequately documenting to the State's satisfaction its good faith efforts to do so.
- j. The cessation or deterioration of any service that, in the State's determination, materially and adversely affects the service the Concessionaire is required to perform under this Agreement.
- k. The Concessionaire does not perform or comply with any material provision or covenant under this Agreement and such nonperformance or noncompliance is a material failure of the performance to which the State is entitled under this Agreement.

2. A cancellation notice issued by the State under this Article is stayed if, within the thirty (30) day notice period, the Concessionaire begins and continues expeditious action to cure the breach in the case of a breach that is not reasonably curable within thirty (30) days. The determination of "expeditious action" and "not reasonably curable" is at the State's sole discretion.
3. The Concessionaire will not construe any waiver by the State of any default on the part of the Concessionaire in the performance of any provision, covenant, or condition to be performed, kept, or observed by the Concessionaire as a waiver by the State at any time thereafter of any other default or subsequent default in performance of any provision, covenant, or condition of this Agreement. After a State waiver of default in one or more instances, the State is not required to provide notice to the Concessionaire to restore or revive time as of the essence under this Agreement. The waiver of any right or obligation under this Agreement is not effective nor binding on the Concessionaire unless it is in writing and signed on behalf of the State.

B. State's Right of Reentry: As an additional remedy, on giving written notice of cancellation, the State has the right to reenter any part of the Assigned Areas on the effective date of cancellation without further notice of any kind, remove any persons, and regain and resume possession with or without the institution of summary or legal proceedings or otherwise. Any reentry, however, will not in any manner affect, alter, or diminish any obligation of the Concessionaire under this Agreement.

C. Additional Rights of the State

1. On or after termination or cancellation of this Agreement or on reentry, the State may regain or resume possession of the Assigned Areas, may occupy the

Assigned Areas, and may permit any person, firm, or corporation to enter on and use the Assigned Areas. Others may occupy any part of the Assigned Areas or the entire Assigned Areas or a part of the Assigned Areas together with other space for a period of time the same as or different from the balance of the time remaining under this Agreement, and on terms and conditions the same as or different from those set forth under this Agreement.

2. The State may also repair or make any structural or other change in the Assigned Areas that are necessary, in the State's sole determination, to maintain the suitability of the Assigned Areas for uses similar to those granted under this Agreement without affecting, altering, or diminishing the obligations of the Concessionaire under this Agreement. The State will charge the Concessionaire the cost of these repairs and the Concessionaire will pay these charges within thirty (30) days of the billing date.

D. Ownership of Equipment and Improvements: If the State cancels this Agreement due to a Breach of Agreement as specified in Section A, above, all of the Concessionaire's title and interest in furnishings, fixtures, equipment, and improvements installed in the terminal under this Agreement vest in the State. The State may dispose of these items as it sees fit. However, in the event the State directs in writing that the Concessionaire remove all or specifically identified portions of the Concessionaire's installed furnishings, fixtures, equipment, and improvements, the Concessionaire shall do so at the Concessionaire's sole expense, and title to such property removed at the State's direction will not vest in the State. All equipment approved by the State in writing prior to installation as being proprietary will be removed from the Assigned Areas at Concessionaire's sole expense.

E. Survival of Concessionaire's Obligations: If the State cancels this Agreement for cause due to a Breach of Agreement as specified in Section A, above, all of the Concessionaire's Annual Guarantee and Percentage Fee payment obligations under this Agreement will thereby immediately be accelerated and due without reducing any and all other damages to which the State may be entitled by law for the entire balance of the term, subject only to any obligation of the State to mitigate damages. The State may issue invoices for amounts due, reviewable only under the protest and appeal procedures of 17 AAC 42.910 and .920, and may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

The amount of damages for the time subsequent to cancellation is the sum of the following:

1. The cumulative total of the Concessionaire's minimum annual guarantee obligation through the end of the Agreement, less the amount paid before the effective date of cancellation.

2. Title to all furnishings, fixtures, equipment, and improvements as provided in Section D of this Article.
3. The amount by which the percentage fee under this Agreement, applied to the projected Gross Revenues that it is reasonably probable that the Concessionaire would have received during the balance of this Agreement if no cancellation had occurred, exceeds the annual guarantee obligation under paragraph 1 of this Section. However, the State will offset this amount by any fees the State receives from a succeeding Concessionaire. At the discretion of the State, the State may calculate the amount of projected Gross Revenues by dividing the Concessionaire's total Gross Revenues before cancellation by the total number of days the Concessionaire operated the business under this Agreement to determine average daily Gross Revenues. However, if the State determines that the Concessionaire has not been operating long enough in sufficient compliance with this Agreement to establish reasonable average daily Gross Revenues from compliant year-round operation, the State may use any other reasonable method to determine the same. In either case, the State will then multiply this average daily Gross Revenue amount by the number of days remaining through the end of the Agreement.
4. Liquidated damages for any time of unapproved closure before the effective date of cancellation.
5. Liquidated damages for failure to open for business to the public by the applicable Effective Date.

The Concessionaire acknowledges that the damage calculation specified in paragraph 3 of this Section does not impair the State's right to damages if cancellation occurs before the Concessionaire receives any Gross Revenues under this Agreement.

**F. Waiver of Redemption and Damages:** The Concessionaire waives any right of redemption granted by or under any present or future law or statute if the Concessionaire is dispossessed for any cause, or if the State obtains or retains possession of the Assigned Areas in any lawful manner. The Concessionaire acknowledges that if the manner or method employed by the State to gain possession of the Assigned Areas gives rise to a cause of action in the Concessionaire for forcible entry and retainer under the laws of the State of Alaska, the total maximum amount of damages to which the Concessionaire may be entitled is the sum of one dollar (\$1). The Concessionaire also acknowledges that this provision may be filed in any action as its stipulation fixing the amount of damages to which it is entitled.

**G. Surrender of Possession on Cancellation:** The Concessionaire will yield possession of the Assigned Areas to the State on the cancellation date of this Agreement promptly, peaceably, quietly, and in as good order and condition as the same now or later improved by the Concessionaire or the State, reasonable use and

wear-and-tear excepted. The Concessionaire will cooperate with the State and any replacement Concessionaire to facilitate an efficient transfer.

## **ARTICLE XXII** **CANCELLATION BY CONCESSIONAIRE**

**A. Basis for Cancellation by Concessionaire:** The Concessionaire may cancel this Agreement by giving the State sixty (60) days' advance written notice if any of the following events occur:

1. The permanent abandonment of the Airport by all passenger airlines or the removal of all airline passenger service from the Airport for a period of at least ninety (90) consecutive days.
2. The lawful assumption by the United States government or its authorized agent, of the operation, control, or use of the Airport, or any substantial part of the Airport, that restricts the Concessionaire from operating its business under this Agreement for a period of at least ninety (90) consecutive days.
3. A court of competent jurisdiction issues an injunction that prevents or restrains the use of the Airport by all airlines, provided the injunction remains in force for at least ninety (90) consecutive days.
4. A material default of the State for failure to perform any material obligations as required by this Agreement and that remains uncured ninety (90) days after written notice by the Concessionaire.

**B.** The Concessionaire must, within a maximum of five (5) calendar days after the end of the Concessionaire's sixty (60) day advance written notice period, remove all of its personal property, equipment, furniture, and fixtures from the Assigned Areas. The Concessionaire acknowledges that as part of the consideration for this Agreement, all property remaining on the Assigned Areas after these five (5) calendar days becomes the sole property of the State, with full title vested in the State, unless the property is contaminated with any hazardous substance or is rejected by the State by written notice to the Concessionaire, or the property's automatic vesting would violate any applicable law or regulation. The State may remove, modify, sell, or destroy the property as it sees fit. The Concessionaire will pay the State for any cost the State incurs in property removal and disposal within thirty (30) days of the billing date. There will be no buy-out of any portion of Concessionaire's investment by the State in the event that this Agreement is cancelled by the Concessionaire pursuant to this Article.

**C.** Unless cancellation by the Concessionaire is validly supported by Section A (Basis for Cancellation by Concessionaire), paragraph 4, above, the Concessionaire will pay the State for any cost the State incurs in property removal and disposal within thirty (30) days of the billing date. If cancellation by the Concessionaire is validly supported by Section A (Basis for Cancellation by Concessionaire), paragraph 4, above, the State

will, subject to appropriation for this purpose, pay (or have the replacement concessionaire pay) the Concessionaire the remaining unamortized book value of the Concessionaire improvements as amortized according to Article XI (Construction, Remodeling, and Refurbishment), Section B (Investment Requirements), paragraph 4.

## **ARTICLE XXIII** **SUBSEQUENT CONTRACT**

A. Subsequent Contract Award: The Concessionaire acknowledges that on the expiration or cancellation of this Agreement, the State may award any subsequent electronic/static display advertising contract by any legal means then available to the State.

B. Transition Schedule at Expiration or Concessionaire Cancellation

1. The Concessionaire understands that it is neither practical nor possible for the State to predict the exact transition schedule and procedure to best serve the needs of the advertisers, traveling public and the State at the expiration or Concessionaire cancellation of this Agreement.
2. The Concessionaire shall meet with the subsequent concessionaire to ensure a smooth concession transition. The Concessionaire and the subsequent concessionaire shall submit a written transition plan at a date to be decided by the State based on future scheduling needs, which transition plan becomes effective if approved in writing by the State. If the Concessionaire and incumbent concessionaire are unable jointly to determine a plan, or the State does not approve the plan, the State will provide the Concessionaire a written notice of the transition plan determined by the State to best serve the needs of the advertisers, traveling public and the State at least sixty (60) days before turning the business over to the subsequent concessionaire.
3. The Concessionaire will diligently execute the approved transition plan, abide by its time schedule, and cooperate with the State and the subsequent concessionaire in carrying out the transition plan. In any dispute between the Concessionaire and the subsequent concessionaire during the transition period, the Concessionaire will abide by any reasonable decision of the State.
4. At the expiration of this Agreement, the State may, in any combination, assume title to, direct the Concessionaire to remove, or allow the Concessionaire to sell to the succeeding concessionaire, all or specified furnishings, fixtures, and equipment located in or on the Assigned Areas. The sale price shall be equal to any unamortized balances of the furnishings, fixtures, and equipment to be sold. For reimbursement and purchase issues covered by this Agreement, the Concessionaire shall amortize all furnishings, fixtures, and equipment over not more than a five (5)-year period using the straight-line method.

C. At the expiration of this Agreement, all fully amortized furnishings, fixtures, and equipment shall vest in the State except for any furnishings, fixtures and equipment the State directs the Concessionaire to remove or that is contaminated with a hazardous substance. If the Concessionaire does not remove any furniture, fixtures and equipment within five (5) calendar days after expiration if directed to do so by the State, the State may remove, sell, modify, or destroy these items as it sees fit. The Concessionaire will, within thirty (30) days after the State invoices the Concessionaire, reimburse the State for any costs the State incurs in removal and disposal of any furniture, fixtures and equipment that were removed by the State after Concessionaire's failure to do so. All equipment approved by the State in writing prior to installation as being proprietary shall be removed by the Concessionaire.

D. Dispute Resolution: The Concessionaire shall abide by the State's decision in arbitrating any dispute during the transition period between the Concessionaire and the affected incumbent concessionaire(s).

#### **ARTICLE XXIV** **ASSIGNMENT OR SUBCONTRACT**

A. Prohibition: The Concessionaire will not mortgage, hypothecate, nor otherwise encumber or assign the concession rights created under this Agreement, in whole or in part, without the advance written consent of the State under 17 AAC 42.260 - .275, as applicable. Any attempt to assign, mortgage, hypothecate, or encumber the concession rights in violation of this Article is void and will confer no right, title, or interest in nor to this Agreement, on any assignee, mortgagee, encumbrancer, pledgee, lienholder, subtenant, successor, or purchaser.

B. Approval by State: The Concessionaire will submit three (3) copies of any proposed assignment or subcontract to the State for advance written approval. Each copy must bear the original notarized signature of all parties. All covenants and provisions of this Agreement extend to and bind the legal representatives, successors, and assignees of the parties.

C. Merger, Consolidation, or Reorganization: The State will not generally withhold its consent to an assignment of this Agreement by the Concessionaire to a corporation that results from a merger, consolidation, or reorganization of the Concessionaire to a corporation that purchases all or substantially all of the assets of the Concessionaire or to any corporation that controls or is controlled by or is under common control with the Concessionaire, unless the State, in its sole reasonable judgment, determines the level of service under this Agreement will be diminished due to such assignment.

D. Transfer of Interest: For purposes of this Article, any single or cumulative transfer of more than fifty percent (50%) interest in a partnership, limited liability company or

corporation is an assignment of an interest subject to approval by the State under this Article.

E. Potential assignees or potential sublessees have no protest rights under 17 AAC 42.275 or 17 AAC 42.910, and any protests or legal appeals resulting from a denial of request for assignment or sublease must be filed and prosecuted solely by the "applicant," i.e., the Concessionaire.

## **ARTICLE XXV** **GENERAL COVENANTS**

A. Execution by State: This Agreement is effective only when signed by the Commissioner, Department of Transportation and Public Facilities, or a designated representative.

B. Approval by State: The State will not unreasonably withhold any approval required under this Agreement.

C. Notices: Either party will deliver any notice required under this Agreement either by hand, email, registered mail, certified mail, or by a reliable overnight delivery service to the appropriate party at the address listed below or to any other address that the parties subsequently designate in writing. All notice periods that begin by notice given by the State begin on the date the notice is mailed.

1. State:	<u>Ted Stevens Anchorage International Airport</u>
Address:	<u>Leasing &amp; Property Management</u>
	<u>P.O. Box 196960</u>
	<u>Anchorage, Alaska 99519-6960</u>
Email Address:	<u>javier.robinson@alaska.gov</u>
Phone:	<u>907-266-2688</u>
Facsimile number:	<u>907-266-2458</u>
2. Concessionaire:	<u>Alaska Channel</u>
Address:	<u>P.O. Box 100519</u>
	<u>Anchorage, Alaska 99510</u>
Email Address:	<u>bob@alaska.org</u>
Phone:	<u>907-777-7700</u>
Facsimile number:	<u>907-777-7720</u>

D. Modification: The Concessionaire acknowledges that the State may modify this Agreement to meet the revised requirements of federal or state grants, to operate the Airport, or to conform to the requirements of any revenue bond covenant to which the State of Alaska is a party. The State may make these modifications without formal amendment. However, a modification may not reduce the rights or privileges granted the Concessionaire under this Agreement or cause the Concessionaire financial loss.

The parties may jointly modify the terms of this Agreement, but may only do so based on a document signed by authorized representatives of both parties.

E. Interrelationship of Provisions: All provisions of this Agreement, including its exhibits, and the associated proposal documents, are essential parts of this Agreement and are intended to be cooperative, to provide for the use of the Airport, and to describe the respective rights and obligations of the parties to this Agreement.

F. Validity of Parts: The remaining parts of this Agreement continue in full force if any part is declared invalid by a court of competent jurisdiction.

G. Holding Over: If the Concessionaire holds over after this Agreement expires, in addition to any continued operation required by the State under Article III (Term), Section D, the holding over does not operate as a renewal or extension of the rights granted under this Agreement, but, to the extent the State consents, creates a month-to-month tenancy, regardless of any payment accepted by the State. The Concessionaire's obligations to perform under this Agreement will continue until the State terminates the month-to-month tenancy. The State may terminate the tenancy at any time by giving the Concessionaire at least ten (10) calendar days written notice. Unless otherwise mutually agreed by both parties, payment for any holdover period shall be the same fee structure described in Article VI (Fees and Payments) of this Agreement.

H. Radio Interference: At the State's request, the Concessionaire will discontinue the use of any machine or device that interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated. The Concessionaire may not install or use wireless technology without the written consent of the State and the receipt of an approved Airport Building Permit.

I. Airport Access: The Municipality of Anchorage Traffic Codes prohibit commercial vehicle traffic on West Northern Lights Boulevard for commercial vehicles with a gross weight of 11,000 pounds or more. The Concessionaire and all the Concessionaire's contractors and subcontractors shall comply with these codes and limit access to the Airport via International Airport Road for all commercial vehicles that exceed 11,000 pounds. Violation of this provision shall constitute a violation of this Agreement and may subject the Concessionaire to fines.

J. National Emergency: The State is not liable for the inability to perform any part of this Agreement that results from national emergency declared by the federal government.

K. Surrender of Possession: The Concessionaire will yield possession of the Assigned Areas to the State on the date of expiration or earlier cancellation of this Agreement promptly, peaceably, quietly, and in as good order and condition as the same now or later improved by the Concessionaire or the State, reasonable use and wear-and-tear excepted.

L. No Waiver: If the State does not insist in any one or more instances on the strict performance by the Concessionaire of any provision or Article under this Agreement, it is not a waiver or relinquishment for the future, but the provision or Article will continue in full force. The State's failure to enforce any provision or Article in this Agreement is neither an enforceable waiver nor subject to reasonable reliance by the Concessionaire unless it is expressly stated as a waiver in writing signed on behalf of the State.

M. Disasters: If, in the determination of the State, fire, flood, earthquake or other casualty damages the Airport so extensively as to render it untenantable, either party may elect to terminate this Agreement on thirty (30) days written notice to the other party. If this Agreement is terminated because of a disaster, the State will prorate the fees payable under this Agreement up to the time the Airport becomes untenantable.

N. Condemnation: This Agreement ends on the date the Concessionaire is required to leave the Airport if any proper authority condemns the Airport. The State is entitled to all condemnation proceeds. However, the State will pay the Concessionaire the portion of proceeds attributable to the fair market value of any unamortized improvements placed on the Airport by the Concessionaire, according to the provisions of the then-current Alaska Administrative Code.

O. Quiet Enjoyment: The State covenants that it has full, unencumbered title to the Airport; that it has the right and lawful authority to execute this Agreement; and that the Concessionaire will have, hold, and enjoy peaceful and uninterrupted use of the Assigned Areas subject to any and all rights reserved or granted to the State under this Agreement.

P. Captions: The captions of the Articles and Sections of this Agreement are for convenience only and do not necessarily define, limit, describe, or construe the contents of any Article or Section. The use of the singular or plural form of words is intended to include the singular and plural, as appropriate.

Q. Entire Agreement: This Agreement, including any amendment, constitutes the entire Agreement between the parties. No modification or amendment of this Agreement is effective unless in writing and signed by both parties, except as stipulated in Section D (Modification) of this Article.

R. Time: Time is of the essence in the performance of all rights and obligations of the parties to this Agreement.

S. Proposal Documents: The Notice Inviting Proposals, Terms of Request, Instructions to Proposers, Acknowledgement of Addenda, Proposer's Infrastructure, Refurbishment, Annual Guarantee, and Percentage Fees Commitment Form, Proposer's Affidavit, Proposer's Questionnaire, and Proposer's responses to the Specific Evaluation Criteria, any addenda and all other documentation required in the

RFP, and all information submitted by the Concessionaire with its proposal are part of this Agreement and each party will fully perform all provisions of these documents.

T. Interpretation: Both parties have had an opportunity to review and comment on the terms and conditions of this Agreement. Both parties have had the opportunity to consult with legal counsel. This Agreement shall not be interpreted for or against either party.

## **ARTICLE XXVI** **TRANSITION PLAN**

The Concessionaire acknowledges that the needs of the traveling public using the Airport are best served by an efficient transition between the incumbent concessionaire and the Concessionaire. To accomplish an efficient transition, the Concessionaire will do the following:

A. Transition Plan: Throughout the transition period leading up to April 1, 2014, the Concessionaire will meet with the incumbent concessionaire to ensure a smooth concession transition. The plan must also provide that the incumbent concessionaire will completely vacate the Terminals by no later than the end of the day on March 31, 2014. The plan shall require the Concessionaire to have all new displays for the Assigned Areas indicated on Exhibit B in place no later than October 31, 2014, except for those displays where the Concessionaire has obtained the written approval of the State to be installed at a later date. Once the State approves the plan, the Concessionaire will diligently execute the transition plan, abide by the time schedule, and cooperate with the State and the incumbent concessionaire to carry out the transition plan. If there is a delay in the permitting process by the State that ultimately delays the installation of new equipment beyond the Concessionaire's control, the Concessionaire's sole remedy will be a corresponding extension of the transition period completion date.

B. Dispute Resolution: The Concessionaire will abide by the State's decision in arbitrating any dispute during the transition period between the Concessionaire and the incumbent concessionaire.

IN WITNESS WHEREOF, the parties have set their hands the day and year stated in the acknowledgment below.

(If the Concessionaire is a partnership or joint venture, all general partners or venturers of the joint venture must sign. If the Concessionaire is a corporation, provide the signature of one or more authorized representatives as required to obligate the corporation together with proof of authorization. If the Concessionaire is a limited liability company, provide the signature of the manager or, if there is no manager, provide the signature of a member of the company authorized to bind the company.)

(Corporate Seal if  
a Corporation)

Alaska Channel

Robert S. Kaufner  
Signature  
President  
Title

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title

## ACKNOWLEDGMENT

STATE OF Alaska )  
3rd Judicial District )ss.  
(Judicial District or County)

THIS IS TO CERTIFY that on this 25th day of April, 2014,  
personally appeared Robert Kaufman, known to me to be  
the person named in and who executed the foregoing instrument, and who  
acknowledged before me that the foregoing instrument was freely and voluntarily  
executed with full authority for the uses and purposes set forth.

Barry S. Adler  
Notary Public in and for Alaska

Notary Public in and for: Alaska  
My Commission Expires: 4/29/2014

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 )ss.  
 \_\_\_\_\_ )  
(Judicial District or County)

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014,  
personally appeared \_\_\_\_\_, known to me to be  
the person named in and who executed the foregoing instrument, and who  
acknowledged before me that the foregoing instrument was freely and voluntarily  
executed with full authority for the uses and purposes set forth.

Notary Public in and for: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Entered into on behalf of the State of Alaska, Department of Transportation and Public Facilities, Ted Stevens Anchorage International Airport.

STATE OF ALASKA

Third Judicial District

)  
ss.  
)

*Javier O. Robinson*  
Javier O. Robinson  
Concessions Manager

THIS IS TO CERTIFY that on this 23 day of MAY, 2014, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Javier O. Robinson, known to me and to me known to be the Concessions Manager, Department of Transportation and Public Facilities, and who acknowledged before me that the foregoing instrument was freely and voluntarily executed on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes set forth and with full authority the State of Alaska to do so.



*Peggy L. Baker*  
Notary Public in and for Alaska

My Commission Expires: with office