

## **APPENDIX MATERIAL**

**for**

### **ACRP Legal Research Digest 30: Contract Risk Management for Airport Agreements**

#### **A. Professional Services Agreements**

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**RISK: STANDARD OF CARE/FAULTY WORK**

Talking Points:	<ul style="list-style-type: none"> <li>• Define with specific reference to the services performed, especially specialty projects.</li> <li>• Include an industry-specific standard applicable to that professional.</li> <li>• Define a geographic market.</li> </ul>
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Source:

AIA (B101-2007)	Orlando International Airport	Salt Lake City International Airport	Miami International Airport
<p>§2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.</p>	<p>The Consultant shall use professional standards of care and performance to perform all Services in such quality and sequence, and in accordance with such reasonable time requirements and reasonable written instructions, as may be requested or provided by the Owner and as required by the project. The Services must be provided in a manner that is consistent with the level of reasonable care, skill, judgment and ability provided by professionals performing similar Services in the same geographic area.</p>	<p>Standard of Care: In addition to its duties and obligations under this Agreement, the Consultant and the Consultant's selected staff shall exercise the degree of skill, competence, quality, and professional care rendered by the leading and most reputable companies performing the same or similar type services in the United States, and shall cooperate with City and other parties in furthering the interests of the City in connection with the Project. Reasonable Compliance with and Identification of Applicable Service Standards: Listing of certain standards in this section does not relieve the Consultant from complying with all applicable standards whether or not listed here. The Consultant's work on the Project shall comply with the following: 1) Any special design standards specified in Exhibit C; 2) The Americans with Disabilities Act; 3) All other applicable building codes, laws, or regulations; 4) All applicable City standards.</p>	<p>The Architect/Engineer is responsible for the professional quality, technical accuracy, completeness, performance and coordination of all work required under the Agreement (including the work performed by Subconsultants), within the specified time period and specified cost. The Architect/Engineer shall perform the work utilizing the skill, knowledge, and judgment ordinarily possessed and used by a proficient consulting Architect/Engineer with respect to the disciplines required for the performance of the work in the State of Florida. The Architect/Engineer is responsible for, and represents that the work conforms to, the Owner's requirements as set forth in the Agreement. The Architect/Engineer shall be and remain liable to the Owner for all damages in accordance with applicable law caused by any failure of the Architect/Engineer or its Subconsultants to comply with the terms and conditions of the Agreement or by the Architect/Engineer's or Subconsultants' misconduct, unlawful acts, negligent acts, errors, or omissions in the performance of the Agreement. The A/E is responsible for the performance of work by Subconsultants and in approving and accepting such work, ensure the professional quality, completeness, and coordination of Subconsultant's work. In addition to all other rights and remedies that the Owner may have, the Architect/Engineer shall, at its expense, re-perform the services to correct any deficiencies that result from the Architect/Engineer's failure to perform in accordance with the above standards. The Architect/Engineer shall also be liable for the cost of replacement or repair of any defective materials and equipment and re-performance of any non-conforming construction services resulting from such deficient Architect/Engineer services for a period from the commencement of this Agreement until twelve (12) months following final acceptance of the Work or for the period of design liability required by applicable law. Upon Owner's notification of deficient or defective work stemming from the Architect/Engineer's services, the Architect/Engineer shall have fourteen (14) days to respond to the Owner's claim. The Owner shall implement its procedure for administrative review of the claim with notification to the Architect/Engineer of the findings from that review. Upon notification, the Architect/Engineer shall have fourteen (14) days to request reconsideration of the findings.</p>

**RISK: LIABILITY & DAMAGES**

Talking Points:	<ul style="list-style-type: none"> <li>• Limit or avoid the capping of liability.</li> <li>• Minimize or avoid waivers of consequential damage.</li> <li>• If damages are limited or capped, a clear understanding of worst-case scenarios, which become self-insured, is critical.</li> </ul>
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Source:

AIA (B101-2007)	Orlando International Airport	Miami International Airport	Salt Lake City International Airport
<p>§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.</p>	<p>The Consultant shall be and remain liable in accordance with applicable law for all damages to the Owner and the Owner's property caused by the improper acts, errors or omissions of the Consultant or by any Subconsultants in performing any Services. The term "improper acts, errors or omissions" shall include, but not be limited to, negligent, reckless, wanton, intentional, or willful failure to perform the Services in accordance with the professional standard of care and performance for each Service set forth in this Agreement.</p>	<p>The Architect/Engineer shall promptly review and approve shop drawings, samples, and other submissions of the Contractor(s) for conformance with the design concept of the Project Element(s) and for compliance with the information given in the Contract Documents. The Architect/Engineer shall render decisions, issue interpretations, and issue correction orders within the times specified in the Contract Documents or, absent such specification, on such timely basis so as not to delay the progress of Work as depicted in the approved construction schedule. Should the Architect/Engineer fail to perform these services within the time frames specified in the Contract Documents or, if no time frames are specified, in a timely manner so that such failure causes a delay in the progress of the Work, the Architect/Engineer shall be liable for any damages to the Owner resulting from such delay including, but not limited to, damages related to delays and inefficiencies incurred by the Contractor for which the Owner may be responsible. Should the Architect/Engineer fail to perform these Work-Site Services in a timely manner and cause a delay in the progress of the Work, the Architect/Engineer shall be responsible for any resulting damages to the Owner. Should the Architect/Engineer fail to perform its services within the time frames outlined and such failure causes a delay in the progress of the Work, the Architect/Engineer shall be liable for any damages to the Owner resulting from such delay.</p>	<p>Consultant Delays in Design. If any negligent, intentional or reckless actions by the Consultant in completing the design of the Project cause City to incur costs, the Consultant shall be liable to City for all of City's actual costs and/or damages of every kind caused by the Consultant's conduct. Consultant Delays of Project. If any negligent, intentional or reckless action by the Consultant causes construction of the Project to be delayed or causes City to incur acceleration costs or other costs necessary to recover the Project construction schedule, the Consultant shall be liable to City for all City's actual costs and/or damages caused by the Consultant's conduct. Consultant is liable for and shall immediately pay the amount of any and all fines, penalties and fees any lawfully empowered entity imposes on City or any of its departments, employees, officers or agents, or on Consultant or any of Consultant's selected staff, officers, employees, agents, subconsultants, or subcontractors, to the extent caused by any act or failure to act by Consultant or Consultant's selected staff, officers, employees, agents, subconsultants, or subcontractors. Such fines shall include, but not be limited to, any fine, fee or penalty imposed by the FAA or TSA in connection with a violation of any security requirement. Any such payment by Consultant shall not be reimbursable by City. Consultant may contest the imposition of any such fine, fee or penalty solely at Consultant's expense, and the cost thereof shall not be reimbursable by City. In the event Consultant's contests any matter, Consultant shall take all reasonable steps necessary to prevent the imposition of any fines or adverse consequences on City or any of City's departments, officers, employees or agents, including, without limitation, paying any sum under protest and contesting the matter after such time.</p>

**RISK: DISPUTE RESOLUTION**

Talking Points:	<ul style="list-style-type: none"> <li>• Specify governing law.</li> <li>• Specify exclusive venue.</li> <li>• Require pre-suit dispute resolution options.</li> <li>• Specify arbitration or litigation for final mode of resolution.</li> <li>• Specify right to reimbursement of attorneys’ fees and costs.</li> <li>• If allowed by state law, contractually limit statutes of limitation and repose to a commercially reasonable duration.</li> </ul>
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Source:

AIA (B101-2007)	Orlando International Airport	Denver International Airport	Salt Lake City International Airport
<p>§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.</p> <p>§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.</p> <p>§ 8.2.2 The Owner and Architect shall</p>	<p>Governing Law. The Agreement shall be governed by the laws of Florida.</p> <p>Mandatory Mediation. Any claim, dispute or other matter in question arising out of or relating to this Agreement or the breach thereof shall, as an express condition precedent to the filing of a lawsuit, first be subject to mandatory mediation under the auspices of a mediator to be selected by the parties to be set at a mutually agreeable time, but in no event greater than thirty (30) days after the claim or dispute arises. Discovery prior to the scheduled mediation shall be limited to one (1) request for production of documents and two (2) depositions per party not exceeding 8 hours total time per deposition. Each party shall equally bear the costs of mediation and shall be solely responsible for its own attorneys’ fees and other legal costs prior to</p>	<p>Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in the Denver Revised Municipal Code §5-17. The parties hereto agree that the Manager’s determination resulting from said administrative hearing shall be final, subject only to the Consultant’s right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.</p> <p>This Agreement shall be deemed to have been made in, and construed in accordance with the laws of, the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to the Airport’s General Bond Ordinance any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any action hereunder shall</p>	<p>A. <u>Process Required.</u> Before Consultant may commence a legal action against City, Consultant must first comply with the provisions of this Article, which compliance shall be a condition precedent to commencing a legal action under this Agreement.</p> <p>B. <u>Process.</u> Any dispute or claim that Consultant may have which is not disposed of by a written amendment or agreement between the parties shall be decided pursuant to the procedure set forth below. Each notice of claim, dispute, request, submission, appeal, notification, or decision under this Article shall be made by delivery of notice of such action as set forth in Article 18 of this Agreement, in compliance with the requirements set forth below.</p> <p>C. <u>Consultant’s Disputes and Claims.</u></p> <p>1. Consultant shall submit written notice of any dispute or claim arising under this Agreement to City's Dispute Resolution Administrator ["DRA"] within fifteen (15) days after Consultant knows or reasonably should know of the facts giving rise to the dispute or claim.</p> <p>2. Within thirty (30) days after giving the written notice described above, Consultant shall submit the dispute or claim to City's [DRA] for review by delivering the following to City's [DRA]:</p> <p>(a) A detailed statement of all the relevant facts and law applicable to such dispute or claim, with citations and references to all relevant evidence,</p>

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<p>endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.</p> <p>§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.</p> <p>§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following: <i>(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding</i></p>	<p>and during the mediation process. In the event the case does not settle at mediation, the parties may re-depose either or both witnesses on non-repetitive matters.</p> <p>Jurisdiction and Venue. Action on any unresolved claim or dispute shall be brought only in the Circuit Court of the Ninth Judicial District in and for Orange County, Florida, or in the sole discretion of the Authority, binding arbitration under the auspices of the American Arbitration Association. The parties hereby agree that process may be served on the Consultant and the Owner by Certified United States Mail, postage prepaid addressed to the Owner's Representative or the Consultant's Representative as defined in <b>Exhibit "A."</b> The parties hereby consent to the exclusive jurisdiction and venue of the Circuit Court of the Ninth Judicial District in and for Orange County, Florida.</p> <p>Attorneys' Fees and Costs. In the event one party shall prevail in any action (including appellate proceedings), at law or in equity arising hereunder, the losing party will pay all costs, expenses, reasonable attorneys' fees and all other actual and reasonable expenses incurred in the defense and/or prosecution of any legal proceeding, including, but not limited to, those for paralegal,</p>	<p>be in the City and County of Denver, State of Colorado.</p>	<p>contract provisions and authorities;</p> <p>(b) Copies of all relevant evidence, contract provisions and authorities;</p> <p>(c) The identification, title, address and phone numbers of each person who may have relevant knowledge concerning the dispute or claim, together with a summary of the relevant knowledge believed to be held by each such person;</p> <p>(d) A concise statement of the relief sought by Consultant; and,</p> <p>(e) A summary of all amounts, if any, Consultant is seeking as monetary relief or damages as part of the claim or dispute, together with all detailed cost records, receipts, invoices and documents that support the claimed amount.</p> <p>3. Upon receiving Consultant's submission, City's [DRA] shall be entitled, at his or her sole discretion, to:</p> <p>(a) Direct Consultant to provide additional or supplemental information and documentation to City's [DRA] that is relevant to the dispute or claim or may lead to the discovery of relevant information;</p> <p>(b) Meet with and interview persons who may have relevant knowledge concerning the matter;</p> <p>(c) Direct submission of the dispute or claim to an independent expert or experts, or an independent third party or panel of third parties, for review and recommendations, on terms directed by City's [DRA];</p> <p>(d) Direct any other form of dispute resolution or claim evaluation, as determined by City's [DRA], for purposes of providing guidance or recommendations to City's [DRA] concerning all or any aspect of the dispute or claim;</p> <p>(e) Direct meetings between the parties or their agents (including, without limitation, senior decision makers, project personnel, attorneys, agents, and subconsultants) to, among other things, vet the issues, gather information, assure full disclosure, evaluate facts, obtain statements, or encourage settlement;</p> <p>(f) Direct legal counsel for the parties to provide</p>
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<p><i>dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)</i>  D Arbitration pursuant to Section 8.3 of this Agreement  D Litigation in a court of competent jurisdiction  D Other: (Specify)</p> <p><b>§ 8.3 Arbitration</b>  § 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.  § 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.  § 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly</p>	<p>investigative and legal support services and actual fees charged by expert witnesses for testimony, analysis and reporting, incurred by the prevailing party referable thereto.</p>		<p>legal authorities, citations, opinions or attend meetings to address legal issues;  (g) Direct such other acts as City's [DRA] deems reasonable to vet the issues, gather information, assure full disclosure, evaluate facts, obtain statements, encourage settlement and fully and fairly evaluate the relevant facts and law.</p> <p>4. Subject to sections 10.C.5, 10.D and 10E below, within sixty (60) days after the events directed by City's DRA have concluded and all information and documentation requested by City's [DRA] has been provided, City's [DRA] shall issue a written decision concerning the dispute or claim and such decision by City's [DRA] shall be final and binding unless it is appealed in writing as set forth in Article 10.C.5. City's [DRA] shall have the right, in its sole discretion, to adopt, follow or agree with, in whole or in part, any formal or informal guidance, recommendations, or decisions given by any experts, third parties, DRB, or other person. City's [DRA] shall further have the authority (among other things) to direct whether or not such formal or informal guidance, recommendations or decisions by any such experts, third parties, DRB, or other persons may be introduced, admitted or used as evidence in any subsequent proceedings. Unless otherwise agreed in writing, failure of the City's [DRA] to issue a written decision within sixty (60) calendar days shall be deemed a denial of Consultant's Claim.</p> <p>5. If Consultant disputes City's [DRA]'s decision and wishes to appeal, Consultant shall file an appeal with SLCDA's Executive Director in writing within twenty calendar days after the date the City's [DRA]'s decision is issued. If an appeal is not timely filed, then the decision of the City's [DRA] shall be final and binding upon all parties with respect to its subject matter and the disputes or claims that were at issue. Consultant's appeal to SLCDA's Executive Director shall specify all factual and legal grounds that Consultant is relying upon for the appeal, and shall certify that the appeal is ready for decision. The</p>
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<p>consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.</p> <p>§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.</p> <p>§ 8.3.4 Consolidation or Joinder</p> <p>§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).</p> <p>§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.</p> <p>§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.</p>			<p>appeal shall be limited to the facts, documents, evidence and legal arguments previously submitted to the City's [DRA], although SLCDA's Executive Director may, in his/her discretion, direct Consultant to provide additional information and documentation deemed necessary to review the issues on appeal. Within twenty (20) business days after SLCDA's Executive Director receives the appeal and all documents requested from Consultant in connection with the appeal, then SLCDA's Executive Director shall issue a written decision. A decision by SLCDA's Executive Director shall be final and binding. Unless otherwise agreed in writing, failure by SLCDA's Executive Director to issue a written decision within twenty (20) calendar days shall be deemed a denial of Consultant's appeal.</p> <p>6. Notwithstanding the foregoing, City's [DRA] shall have the right in his or her sole discretion to waive in writing all or any portion the foregoing procedures with respect to any particular claim or dispute, or portion thereof, and to implement other reasonable procedures to handle such disputes or claims on a more accelerated basis if City's [DRA] deems it necessary or desirable to consider or resolve the dispute or claim on an accelerated basis. In such event, City's [DRA] shall notify Consultant in writing of the change in procedures applicable to the particular claim or dispute, or portion thereof, and Consultant shall follow City's [DRA]'s directives with respect to submitting such claim or dispute, or portion thereof.</p> <p>D. Third Party Disputes and Claims. Notwithstanding the foregoing, if SLCDA's Executive Director or City's [DRA] in good faith anticipates or becomes aware of a potential claim or dispute that might be made by third parties against the City by reason of Consultant's alleged acts or omissions, including without limitation, potential claims for defects or deficiencies, then SLCDA's Executive Director or City's [DRA] may, in his or her sole discretion, stay the process set forth above</p>
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			<p>with respect to Consultant's disputes or claims pertaining to the same subject matter until City is reasonably able to determine the outcome of the potential claim or dispute.</p> <p>E. Effect of Process. Notwithstanding the pendency of any dispute or any appeal, Consultant/Consultant's selected staff shall, if so ordered by City, comply with all orders and directions of City concerning the performance of this Agreement and City shall continue to fulfill its obligations hereunder. Consultant agrees that should Consultant discontinue services due to a dispute, City may terminate this Agreement for cause and City may withhold any sums in dispute until after a final resolution of such dispute. Consultant's time and expenses incurred in the pursuit of Consultant's claims shall not be subject to payment or reimbursement under this Agreement. Consultant shall not be entitled to recover any claim preparation costs, mediation or facilitation fees or costs, attorney fees or costs, or any other expense incurred during the pendency of any claim preparation, dispute, appeal, alternative dispute resolution process or litigation.</p>
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**RISK: INDEMNITY & DUTY TO DEFEND**

Talking Points:

- Broad-form indemnity, hold harmless, and duty to defend to fullest extent allowed by state law.
- Cover negligence and improper intentional conduct.
- Generally avoid mutual indemnity obligations; all indemnity should flow to the airport only.

Source:

AIA (B101-2007)	Orlando International Airport	Salt Lake City International Airport	Denver International Airport
<p>§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.</p>	<p>The Consultant shall indemnify and hold harmless the Owner, its officers, directors and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, intentionally wrongful conduct, or improper acts, errors or omissions of the Consultant, any Subconsultant, or any persons employed or utilized by the Consultant in the performance of this Agreement. If the indemnification provisions recited in Article 15.1.1 are deemed to be void under Florida law, then the Consultant shall indemnify Owner, its officers and employees in accordance with, and to the fullest extent permitted by, the obligations and limitations set forth in Florida Statute 725.08.</p>	<p>A. Consultant shall, at its sole cost and expense, indemnify and hold City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns harmless from and against all losses, claims, demands, suits, actions, legal or administrative proceedings, damages, Consultant shall, at its sole cost and expense, indemnify and hold City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns harmless from and against all losses, claims, demands, suits, actions, legal or administrative proceedings, damages, B. Consultant shall, at its sole cost and expense, defend City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns from and against all Claims that are directly or indirectly based, in whole or in part, upon the allegation or assertions, express or implied, that Consultant, or its officers, directors, agents, subcontractors or suppliers of any tier, or any of their employees, agents or persons under their direction or control, committed any Acts or Omissions, regardless of whether such allegations or assertions are true and whether or not City, Consultant, or its officers, directors, agents, subcontractors or suppliers of any tier, or any of their employees, agents or persons under their direction or control, are ultimately found liable for such Acts or Omissions. C. Consultant's duty to defend shall arise only upon City's tender of defense to Consultant in writing. Upon receipt of City's tender of defense, if Consultant does not promptly accept the defense and thereafter duly and diligently defend City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns as provided herein, then Consultant shall pay and be liable for the reasonable costs, expenses and attorneys' fees incurred after the tender of defense by City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees,</p>	<p>A. Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents, and employees against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Consultant or its subcontractors. B. Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant has not been named as a Defendant. C. Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court</p>

		<p>affiliates, successors and assigns in defending against the Claims and enforcing this provision.</p> <p>D. Nothing herein shall be construed to require Consultant to indemnify or defend City from City's fault, which shall be apportioned as required by UCA §13-8-1.</p> <p>E. The parties intend that the indemnity and defense provisions in this Article 5 shall be interpreted so as to be enforceable to the fullest extent permitted by law, but nothing herein shall be interpreted in any manner to violate public policy.</p> <p>F. Consultant's agreements with its subcontractors shall provide in writing (in a form acceptable to City) that each subcontractor shall, jointly and severally with Consultant, indemnify and defend City, and City's officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns from any alleged Acts and Omissions of the subcontractor, and its officers, directors, agents, subcontractors or suppliers of any tier, and their employees, agents, or persons under their direction or control, to at least the same degree as Consultant is bound to indemnify, defend and hold City harmless from and against such alleged Acts and Omissions under the provisions of this Agreement. Nothing in this Agreement shall prevent Consultant from making a claim against its subcontractors for contribution at law or pursuing contribution or indemnification from its subcontractors pursuant to the terms and conditions of the subcontracts between Consultant and its subcontractors.</p> <p>G. The Consultant hereby acknowledges receipt of good and valuable consideration for the indemnification obligations of this Agreement.</p> <p>H. The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant, a subconsultant or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.</p> <p>I. If the above indemnity provisions in this Agreement are deemed void in whole or in part under Utah law, then the following indemnification obligations shall apply except to the extent such provisions are deemed void: Consultant shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the acts or inaction, negligence, recklessness, or intentional wrongful misconduct of the Consultant and persons employed or utilized by the Consultant in the performance of the Agreement.</p> <p>J. Environmental Indemnity. Consultants Acts and Omissions, for purposes of this Agreement, shall include, without limitation, any</p>	<p>costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.</p> <p><b>D.</b> Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.</p> <p><b>E.</b> This defense and indemnification obligation shall survive the expiration or termination of this Agreement.</p>
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		<p>violation of federal, State or local environmental laws or requirements by Consultant or Consultant's officers, directors, agents, subcontractors or suppliers of any tier, and Consultant's indemnification obligation shall include (but not be limited to) all cleanup and remedial costs, diminution in the value of City's property, and reasonable legal fees and costs incurred by City in connection with any such violation or the enforcement of this provision.</p> <p>K. The provisions of this Article 5 shall survive the termination of this Agreement and the completion of the work and shall apply to all Claims regardless of whether they arise before or after completion of the work under the Agreement.</p>	
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**RISK: TERMINATION**

Talking Points:	<ul style="list-style-type: none"> <li>• Maintain the unequivocal right to terminate for cause and for convenience.</li> <li>• Distinguish between termination of all or part of project.</li> <li>• Address how compensation will be determined in event of termination for cause and termination for convenience.</li> <li>• Under neither termination scenario should the airport allow for lost profits or anticipated profits on uncompleted work. An express disclaimer of this damage component should be written into the termination provisions.</li> </ul>
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Source:

AIA (B101-2007)	Orlando International Airport	Salt Lake City International Airport	Denver International Airport
<p>§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.</p> <p>§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules</p>	<p>Default. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement, or under any Addendum hereto, through no fault of the terminating party; provided, however, that no such termination may be effected unless the other party is given (1) not less than thirty (30) calendar days written notice of intent to terminate and an opportunity within the timeframe to cure the alleged substantial failure; and (2) an opportunity for consultation with the terminating party prior to termination. The termination shall be effective on the 31st day following the notice unless the substantial failure is cured to the satisfaction of the terminating party. The Owner may terminate this Agreement for cause and without the opportunity to cure if the Consultant is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. The Consultant's obligations to the Owner arising from the Consultant's improper acts</p>	<p>A. City Termination. City may terminate this Agreement at any time for any reason or no reason upon seven (7) calendar days written notice.</p> <p>B. Termination for Cause by City. City may terminate this Agreement for cause if the Consultant fails to cure any defect in the Consultant's performance of the work under this Agreement within seven calendar days after receiving written notice to cure.</p> <p>C. Work Project Termination. City may terminate the Consultant's work on a specific work project initiated under this Agreement pursuant to this Article. If City designates any termination as a "work project termination," only the Consultant's work on the specific project shall be terminated and such notice shall not constitute a termination of this Agreement.</p> <p>D. Termination by Consultant. If City materially fails to meet its responsibilities and obligations under this Agreement, the Consultant shall notify City of such failure. If City fails to cure its material breach, the Consultant may, after thirty (30) days</p>	<p>A. The City has the right to terminate this Agreement without cause on thirty (30) days written notice to the Consultant and with cause on ten (10) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.</p> <p>B. If this Agreement is terminated by the Consultant, or if this Agreement is terminated by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City, (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment, and (3) the cost of any work which the Manager approves in writing which she determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant</p>

**Professional Services Agreements**

<p>shall be equitably adjusted.</p> <p>§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.</p> <p>§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.</p> <p>§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.</p> <p>§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.</p> <p>§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.</p> <p>§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.</p>	<p>or omissions, including but not limited to indemnity and insurance obligations under Article 15, shall survive the termination of this Agreement. Upon the effective date of termination, the Owner may take over the work and prosecute the same to completion by contract or otherwise pursuant to Paragraph 7.6 below. In such case, the Consultant shall be liable to the Owner for any additional cost occasioned to the Owner thereby.</p> <p>Agreement Termination – Convenience. This Agreement may be terminated in whole or in part in writing by the Owner for its convenience and an equitable adjustment in the Consultant's compensation shall be made; provided, however, that the Consultant shall be given (1) not less than thirty (30) calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the Owner (in the manner determined by the Owner in its sole discretion) prior to termination.</p>	<p>written notice, terminate its performance under this Agreement.</p> <p>E. Payment for Termination. In the event of termination, City shall pay the Consultant a percentage of the fee specified in Exhibit D based upon the ratio of work satisfactorily completed and reasonable costs incurred to the total work required as determined by City, less any appropriate damages as City may determine.</p>	<p>shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination.</p> <p>C. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and the Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City. This paragraph specifically excludes any software licenses, and the rights granted to the City thereunder, shall, upon termination, cease and the software programs shall be uninstalled and returned to Consultant or destroyed.</p> <p>D. Upon termination of this Agreement by the City, the Consultant shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.</p> <p>E. The Consultant has the right to terminate this contract with or without cause by giving not less than thirty (30) days prior written notice to the City.</p>
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**RISK: STANDARD OF CARE/QUALITY OF WORK**

Talking Points:	<ul style="list-style-type: none"> <li>• Work must be done in conformity with plans and specifications.</li> <li>• What will be the system for inspection to ensure that work conforms to plans and specifications.</li> <li>• Contractor is responsible for supervision and direction of the work, including subcontractors.</li> <li>• In what circumstances the contractor will pay for uncovering work, correction of work, and removal of unacceptable work.</li> <li>• When and how the owner may suspend the work.</li> </ul>
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Source:

AIA (A102-2007)	Orlando International Airport	Dallas/Fort Worth International Airport
<p>§ 2.2 It is not the intent of the Drawings and Specifications to set forth in detail or to otherwise direct every item properly necessary to the completion of the Work. It is Contractor's sole responsibility to be fully qualified to complete the Work, and it must, without direction, accomplish everything necessary to provide a workmanlike product within industry standards for good construction, complete in every detail and condition, so as to be ready for use without any additional work being required, other than that explicitly stated elsewhere in this Agreement.</p> <p>§ 15.6.16 Contractor's Miscellaneous Obligations. Contractor shall:</p> <p>(I) Use materials that are new, and be:</p> <p>(a) Corresponding in quality to related materials in the absence of a complete specification.</p> <p>(b) Of good appearance where exposed to view.</p> <p>(c) Plainly marked and delivered to the site in their original unopened containers when the nature of the materials is suitable for containers.</p>	<p>3.1 REVIEW OF CONTRACT. DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR</p> <p>3.1.1 The Contractor acknowledges and declares that the Contract Documents are sufficient to enable the Contractor to complete the Work as shown in the Contract Documents or, if not specifically shown, to perform the activities which may be reasonably inferred as necessary for completion of the Work in accordance with the requisite time frame, applicable laws, statutes, building codes, regulations, or as otherwise required by the Contract Documents.</p> <p>3.1.2 The Contractor shall take field measurements, verify field conditions and carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be immediately reported in writing to the OAR. If the Contractor performs any construction activity which the Contractor knows or should have known contains an error, inconsistency or omission, the Contractor shall be responsible for such performance and shall bear the cost for correction.</p> <p>3.1.3 The Contractor represents that it is familiar with the Project site and has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the location and condition thereof, including, without limitation, the location and condition of all structures, utilities, and surface and subsurface conditions. At no additional cost to the Owner, the Contractor shall undertake all further investigations and studies as may be necessary or useful to determine the location and condition of structures, utilities, surface and subsurface conditions. The Contractor shall exercise</p>	<p>20-1 INTENT OF SUPPLEMENTAL AGREEMENT. The intent of the Supplemental Agreement is to provide for construction and completion, in every detail, of the Work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the Work in accordance with the plans, specifications, and terms of the Supplemental Agreement. This Supplemental Agreement and related technical specifications contain detailed instructions and descriptions covering the major items of construction and workmanship necessary for building and completing the various units or elements of the Work. The specifications are intended to be so written that only first class material, workmanship, and finish of the best grade and quality will result. The fact that these specifications may fail to be so complete as to cover all details will not relieve the Contractor of full responsibility for providing a completed Work of high quality, first class finish and appearance, and satisfactory for operation.</p> <p>30-12 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK. All work which does not conform to the requirements of the Supplemental Agreement, plans, and specifications will be considered unacceptable, unless otherwise determined acceptable by the OWNER as provided in the subsection titled CONFORMITY WITH PLANS AND SPECIFICATIONS of this section. Unacceptable Work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the Final Acceptance of the Work, shall be removed immediately and replaced, at the Contractor's expense, in an acceptable manner in accordance with the provisions of the subsection titled CONTRACTOR'S RESPONSIBILITY FOR WORK of these</p>

<p>(2) Follow supplier's instructions when they conflict with the Contract Documents and notify Architect for clarification before proceeding. Keep a copy of the manufacturer's instructions on the job and make available to Architect.</p> <p>(3) Report discovered errors or inconsistencies to Owner before commencing work. Confirm the placement of the building on the site with Owner after all lines are staked out.</p> <p>(4) Be responsible for damages to the building contents, under the one (1) year warranty described above, when damages result from Contractor's use of non-conforming materials or negligent workmanship, but only if not covered by Owner's or a tenant's insurance (provided that Owner and/or its tenants insure the building contents for its full insurable value, subject to a reasonable deductible).</p> <p>§ 3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor</p>	<p>special care in executing Work in proximity of known utilities, improvements, and easements. The Contractor shall be solely responsible for the location of any existing utilities. Based upon the foregoing inspections, understandings, agreements and acknowledgments, the Contractor agrees and acknowledges: (i) that the Total Contract Price is just and reasonable compensation for all the Work, including all reasonably foreseen and foreseeable risks, hazards, and difficulties in connection therewith; (ii) that the Contract Time is adequate for the performance of the Work; and (iii) that the Work shall not result in any unintended lateral or vertical movement of any existing structure. The Contractor shall have no claims for concealed or unknown conditions except as described in Paragraph 4.3.5.</p> <p><b>3.2 SUPERVISION AND CONSTRUCTION PROCEDURES</b></p> <p>3.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract including coordination of the duties of all Subcontractors and Suppliers, unless the Contract Documents give other specific instructions concerning these matters.</p> <p>3.2.2 The Contractor shall control its operations and those of its Subcontractors and Suppliers to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.</p> <p>3.2.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing portions of the Work for which the Contractor is responsible.</p> <p>3.2.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the OAR in the OAR's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.</p> <p>3.2.5 The Contractor shall be responsible for inspection or examination of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Contractor shall keep full detailed written records of all inspection or examination efforts. These written records shall include dates, subject matter, persons</p>	<p>General Provisions. Work done contrary to the instructions of the OWNER, Work done beyond the lines shown on the plans or as given, except as herein specified, or any Extra Work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the Supplemental Agreement. Work so done may be ordered removed or replaced at the Contractor's expense.</p> <p><b>30-2 CONFORMITY WITH PLANS AND SPECIFICATIONS.</b> All Work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the Supplemental Agreement, plans or specifications. If the OWNER finds the materials furnished, Work performed, or the finished product not within reasonably close conformity with the plans and specifications but that the portion of the Work affected will, in OWNER's opinion, result in a finished product having an acceptable level of safety, economy, durability, and workmanship, the affected Work may be accepted and remain in place. Acceptance under this paragraph may be at a reduced payment for the Work. If the OWNER finds the materials furnished, Work performed, or the finished product are not in reasonably close conformity with the plans and specifications and have resulted in an unacceptable finished product, the affected Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.</p> <p>For the purpose of this subsection, the term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the Work in accordance with the Supplemental Agreement, plans, and specifications. The terms shall not be construed as waiving the OWNER's right to insist on strict compliance with the requirements of the Supplemental Agreement, plans, and specifications during the Contractor's prosecution of the Work, when, in the OWNER's opinion, such compliance is essential to provide an acceptable finished portion of the Work. For the purpose of this subsection, the term "reasonably close conformity" is also intended to provide the OWNER with the authority to use good judgment in determinations as to acceptance of Work that is not in strict conformity but will provide a finished product equal to or better than that intended by the requirements of the Supplemental Agreement, plans and specifications.</p>
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<p>§ 15.6.7 Extent of Responsibility The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. Although the Contractor shall exercise the Standard of Care in connection with its services and the Work, it is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws. Notwithstanding the foregoing, however, if the Contractor recognizes, discovers or learns that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing. If the Contractor fails to notify the Architect and Owner as required in the preceding sentence, the Contractor shall be liable for any damages, costs or liability resulting therefrom, including, without limitation, any fines, Architect's fees, consulting fees and costs of correction of the Work.</p>	<p>present, results of inspections or examinations and shall be made available to the Owner, if requested. 3.2.6 If any of the Work is required to be inspected or approved by the Contract Documents or by any laws, ordinances, rules, regulations or orders of public authorities, the Contractor shall cause such inspection or approval to be performed. No test, inspection or examination performed or failed to be performed by the Owner, shall be a waiver of the enforcement of any of the Contractor's obligations. 3.2.7 The Contractor is fully responsible to provide a sufficient number of skilled workers, supervision, and project management personnel, to prosecute the Work and insure that the Work is completed within the Contract Time. Failure to fully staff the Project with skilled workers, supervision, or project management personnel shall be cause for termination of the Contract in accordance with Article 14 or such other remedies as set forth in the Contract Documents. The Contractor assumes all risks of delays or extra costs which may be associated with labor disputes involving the Contractor, its Subcontractors or Suppliers and in no event shall the Contractor be entitled to additional compensation or an extension of Contract Time due to any such labor disputes.  3.3 LABOR, SERVICES AND MATERIALS 3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, services, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall not be entitled, under any circumstances, to any increased cost of doing business, including but not limited to, increased costs of materials, trucking, and fuel. 3.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees, Subcontractors, and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. 3.3.3 The Contractor shall give preference to the employment of Florida residents, if Florida residents apply for a project specific job and have substantially equal qualifications to those of nonresidents.</p>	<p>30-4 DIFFERING SITE CONDITIONS. The Contractor shall promptly upon discovery, give written notice to the OWNER of (1) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Supplemental Agreement, or (2) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Supplemental Agreement. ("Materially" is defined as conditions causing additional costs in excess of \$10,000.00) . The OWNER or authorized representative shall investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Supplemental Agreement, an equitable adjustment shall be made under this Section and the Supplemental Agreement modified in writing accordingly. No request by the Contractor for an equitable adjustment to the contract under this Section shall be allowed unless the Contractor has given the written notice required. The requirement for giving written notice may be waived or extended by the OWNER at the sole discretion of the OWNER. No request by the Contractor for an equitable adjustment to the Supplemental Agreement for differing site conditions shall be allowed if made after final payment under this Supplemental Agreement.  30-10 INSPECTION OF THE WORK. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work conforms to Supplemental Agreement requirements. The Contractor shall maintain complete inspection records and make them available to the OWNER. The OWNER shall have the right to witness all tests performed by the Contractor. Tests performed by the Contractor are all tests to ensure compliance with the Supplemental Agreement document over and above the testing performed by the OWNER. The OWNER shall have the right to approve all tests including approval of test procedures and test conditions to assure compliance with the Supplemental Agreement Documents. The Work shall be conducted under the general observation of the OWNER and is subject to inspection and test by the OWNER at all places and at all reasonable times before Final Acceptance to monitor strict compliance with the Supplemental Agreement Documents. The OWNER shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor</p>
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	<p>3.4 WARRANTY                  3.4.1 - The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly authorized by the Owner, may be considered defective. If required by the OAR or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided in the Work. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless otherwise provided in the Contract Documents. The Contractor shall deliver all required warranty documents before submitting the final application for payment. When the specifications require that a warranty shall be for longer than one year, the Contractor shall ensure that the warranty is issued directly to the Owner as the original purchaser warrantee. Any breach of the warranties will be a breach of this Contract.</p> <p>ARTICLE 12 UNCOVERING AND CORRECTION OF WORK                  12.1 UNCOVERING WORK                  12.1.1 If any portion of the Work is covered contrary to the OAR's or Designer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the OAR, Designer, Owner or any governmental authority, be uncovered for their observation and be recovered or be corrected at the Contractor's expense without change in the Contract Time.                  12.1.2 If a portion of the Work has been covered which the OAR, Designer, Owner or any applicable governmental authority has not specifically requested to observe prior to its being covered, the OAR or Designer may request to see such Work and it shall be uncovered by the Contractor. If such work is in accordance with the Contract Documents, the Owner will approve a Contract Modification in accordance with Article 7 for the direct costs of uncovering and restoring the Work. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.</p>	<p>as is required to make a complete and detailed inspection. Inspections and tests by the OWNER are for the sole benefit of the OWNER and do not:</p> <ul style="list-style-type: none"> <li>a. relieve the Contractor of responsibility for providing adequate quality control measures;</li> <li>b. relieve the Contractor of responsibility for damage to or loss of the material before acceptance;</li> <li>c. constitute or imply acceptance; or</li> <li>d. affect the continuing rights of the OWNER after acceptance of the completed work under paragraph (I) below.</li> </ul> <p>The presence or absence of an Authorized Representative of the OWNER does not relieve the Contractor from any Supplemental Agreement requirement, nor may any Supplemental Agreement requirements be changed without the OWNER's written authorization. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the OWNER. The OWNER's authorized Materials Testing and Inspection Laboratory will charge to the Contractor, and Contractor agrees to pay, any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The OWNER will perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Specifications. The OWNER will perform all tests described and identified in the Specifications except those specifically identified to be performed by the Contractor.</p> <p>The Contractor shall, without charge, replace or correct work found by the OWNER not to conform to the Supplemental Agreement requirements unless the OWNER consents to accept the nonconforming work with an appropriate adjustment in the Supplemental Agreement Amount. The Contractor shall promptly segregate and remove rejected material from the premises. In the event of a material disagreement between the results of any tests performed by or on behalf of the OWNER and any tests performed by or on behalf of Contractor, Contractor shall promptly notify OWNER's Authorized Representative. If the Contractor does not promptly replace or correct rejected Work, the OWNER may (1) by contract or otherwise, replace or correct the Work, charge the cost to the Contractor, and Contractor shall promptly pay same, or (2) terminate for default the Contractor's right to proceed.</p>
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	<p>12.2 CORRECTION OF WORK</p> <p>12.2.1 The Contractor shall promptly correct Work rejected by the OAR, Designer, Owner or any governmental authority that fails to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the OAR's and Designers services and expenses incurred by the Owner.</p> <p>12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties or by terms of an applicable special warranty required by the Contract Documents, any of the work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall, at its cost, correct it promptly after receipt of written notice from the Owner or OAR to do so unless the Owner has previously given the Contractor a written acceptance of that specific condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the Final Completion of the Work. The obligations under this paragraph shall survive acceptance of the Work under the Contract and termination of the Contract. Even after the expiration of the one-year period, the Contractor shall cooperate with the Owner to resolve any issues that may arise with product warranties provided under this Contract.</p> <p>12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.</p> <p>12.2.4 If the Contractor does not correct such nonconforming Work within the reasonable time set forth in the written notice, the Owner may correct or remove such nonconforming work and all costs for such corrections or removals shall be assessed against the Contractor.</p> <p>12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or separate contractors caused by the Contractors performing correction or removal of Work which is not in accordance with the requirements of the Contract Documents.</p> <p>12.2.6 Nothing contained in Paragraph 12.2 shall be construed to</p>	<p>If, before Final Acceptance, the OWNER decides to examine already completed Work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Supplemental Agreement requirements, the OWNER shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.</p> <p>Unless otherwise specified in the Supplemental Agreement, the OWNER shall accept, as promptly as practicable after completion and inspection, all Work required by the Supplemental Agreement to be separately accepted or that portion of the work the OWNER determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the OWNER's rights under any warranty or guarantee. Should the Supplemental Agreement Work include relocation, adjustment, or any other modification to existing facilities, not the property of the OWNER, authorized representatives of the Owners of such facilities shall have the right to inspect such work. Such inspection shall not make any facility owner a party to the Supplemental Agreement, and shall in no way interfere with the rights of the parties to this Supplemental Agreement.</p> <p>40-3 MATERIAL AND WORKMANSHIP. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, propose any equipment, article or process that, in the judgement of the OWNER, is equal to that named in the specifications, unless otherwise specifically prohibited in this Supplemental Agreement.</p> <p>60-10 CHARACTER OF WORKERS, METHODS, AND EQUIPMENT. The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time required by the Supplemental Agreement, plans, and specifications. All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers</p>
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	<p>establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability and damages with respect to the Contractor's obligations other than specifically to correct the Work. Nor shall anything contained in this subsection be construed to limit any other remedies available to the Owner under the Contract or Florida law.</p> <p>12.3 ACCEPTANCE OF NONCONFORMING WORK          12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal or correction. If the Owner accepts the Work under such circumstances, the Total Contract Price will be reduced in an equitable manner through a Contract Modification, whether or not final payment has been made.</p> <p>2.2 OWNER'S RIGHT TO STOP OR SUSPEND THE WORK          2.2.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents within seven (7) days from the date of the OAR's written notice to the Contractor describing such failure, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the Owner to stop the Work shall not, give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's other rights arising from the Contract Documents or law.          2.2.2 The Owner may suspend the Work, in whole or in part, for such period of time as it may deem necessary, due to abnormal inclement weather, or any other circumstances which, in the Owner's discretion, requires a suspension of the Work. An order by the Owner to suspend the Work shall be in writing except in cases of bona fide emergencies. In the event the Work is suspended under this paragraph, for reasons beyond the</p>	<p>engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily. All equipment which is proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed Work, adjacent property, or existing Airport facilities will result from its use. When the methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the Supplemental Agreement, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the Supplemental Agreement, plans, and specifications.</p> <p>When the Supplemental Agreement specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized in writing by the OWNER. If the Contractor desires to use a method or type of equipment other than as specified in the Supplemental Agreement, the Contractor may request authority from the OWNER to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing Work in conformity with Supplemental Agreement requirements. If, after trial use of the substituted methods or equipment, the OWNER determines that the work produced does not meet Supplemental Agreement requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining Work with the specified methods and equipment. The Contractor shall remove any deficient Work and replace it with Work of specified quality, or take such other corrective action as the OWNER may direct. No change will be made in basis of payment for the Supplemental Agreement items involved nor in Supplemental Agreement time as a result of authorizing a change in methods or equipment under this subsection.</p> <p>60-11 TEMPORARY SUSPENSION OF THE WORK. The OWNER shall have the authority to suspend the Work wholly, or in part, for such period or periods as he may deem necessary. due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the Work, or for such time as is necessary due to the failure on the part of the Contractor to carry out</p>
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	<p>Contractors control or for unforeseen circumstances not otherwise provided for in the Contract Documents which could not have reasonably been anticipated or avoided by the Contractor, the Contractor shall be granted an appropriate extension of Contract Time for the period of suspension, which shall not exceed the day-for-day period of suspension, and an equitable adjustment to the Total Contract Price for the increased direct costs of maintaining and securing the Project during the suspension period, subject to the limitations of Article 7.</p> <p>2.2.3 The Contractor shall not be entitled to receive any increase in the Contract Time or the Total Contract Price for work stopped or suspended by the Owner under Paragraph 2.2.1 or for suspensions under Paragraph 2.2.2 which are either: (1) made at the request of the Contractor for its own convenience; (2) attributable to circumstances caused by the Contractor or those for which the Contractor is responsible; (3) attributable to circumstances which reasonably could have been anticipated or avoided by the Contractor; (4) attributable to inclement weather conditions usually experienced at the project site during the relevant time period (as defined in Article 7); or (5) attributable to circumstances otherwise anticipated in the Contract Documents.</p>	<p>orders given or perform any or all provisions of the Supplemental Agreement. In the event that the Contractor is ordered by the OWNER, in writing, to suspend Work for some unforeseen cause not otherwise provided for in the Supplemental Agreement and over which the Contractor has no control, the Contractor shall be reimbursed for actual money expended on the Work during the period of shutdown where reasonable and necessary. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the OWNER's order to suspend Work to the effective date of the OWNER's order to resume the Work. Claims for such compensation shall be filed with the OWNER within the time period stated in the OWNER's order to resume Work. The Contractor shall submit with his/her claim information substantiating the amount shown on the claim. The OWNER will review the claim for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the Contractor, or for any other delay provided for in the Supplemental Agreement, plans, or specifications. If it should become necessary to suspend Work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. He shall take every precaution to prevent damage or deterioration of the Work performed and provide for normal drainage of the Work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the airport.</p> <p>SECTION 80 -CONTRACTOR QUALITY CONTROL PROGRAM At the beginning of the Supplemental Agreement, the OWNER will inform the Contractor in writing specifically what will be required under the Contractor's Quality Control Program for this Supplemental Agreement. This Section 80 outlines the ultimate Contractor Quality Control Program that may be required.</p> <p>80-1 GENERAL. The Contractor shall establish, provide, and maintain an effective Quality Control Program that details the methods and procedures that will be taken to assure that all materials and completed construction required by this Supplemental Agreement conform to Supplemental Agreement plans, technical specifications and other requirements, whether manufactured by the Contractor, or procured from subcontractors or vendors. Although guidelines are established and certain minimum requirements are specified herein and elsewhere in the Supplemental Agreement</p>
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		<p>technical specifications, the Contractor shall assume full responsibility for accomplishing the stated purpose. The intent of this section is to enable the Contractor to establish a necessary level of control that will:</p> <ol style="list-style-type: none"> <li>a. Adequately provide for the production of acceptable quality materials.</li> <li>b. Provide sufficient information to assure both the Contractor and the OWNER that the specification requirements can be met.</li> <li>c. Allow the Contractor as much latitude as possible to develop his or her own standard of control.</li> <li>d. The Contractor shall not (without approval from the OWNER) begin any construction or production of materials to be incorporated into the completed Work until the Quality Control Program has been submitted to and reviewed by the OWNER.</li> </ol> <p>The quality control requirements contained in this section and elsewhere in the Supplemental Agreement technical specifications are in addition to and separate from the acceptance testing requirements. Acceptance testing requirements are the responsibility of the OWNER. Notwithstanding the foregoing, in the event the Contractor becomes aware of a material discrepancy between its own tests and any tests performed by or on behalf of OWNER for purposes of acceptance and/or payment, Contractor shall promptly notify OWNER'S Authorized Representative.</p> <p>80-7 CORRECTIVE ACTION REQUIREMENTS. The Quality Control Program shall indicate the appropriate action to be taken when a process is deemed, or believed, to be out of control (out of tolerance) and detail what action will be taken to bring the process into control. The requirements for corrective action shall include both general requirements for operation of the Quality Control Program as a whole, and for individual items of Work contained in the technical specifications. The Quality Control Program shall detail how the results of quality control inspections and tests will be used for determining the need for corrective action and shall contain clear sets of rules to gauge when a process is out of control and the type of correction to be taken to regain process control. When applicable or required by the technical specifications, the Contractor shall establish and utilize statistical quality control charts for individual quality control tests. The requirements for corrective action shall be linked to the control charts.</p> <p>80-9 NONCOMPLIANCE.</p> <ol style="list-style-type: none"> <li>a. The OWNER will notify the Contractor of any noncompliance</li> </ol>
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		<p>with any of the foregoing requirements. The Contractor shall, after receipt of such notice, immediately take corrective action. Any notice, when delivered by the OWNER or his/her authorized representative to the Contractor or his/her authorized representative at the site of the work, shall be considered sufficient notice.</p> <p>b. In cases where quality control activities do not comply with either the Contractor's Quality Control Program or the contract provisions, or where the Contractor fails to properly operate and maintain an effective Quality Control Program, as determined by the OWNER, the OWNER may:</p> <ol style="list-style-type: none"><li>1. Order the Contractor to replace ineffective or unqualified quality control personnel or subcontractors.</li><li>2. Order the Contractor to stop operations until appropriate corrective actions is taken.</li></ol>
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**RISK: SCHEDULE CONTROL AND IMPACTS**

Talking Points:	<ul style="list-style-type: none"> <li>• How the schedule will be set, updated, and managed, including specified completion dates and milestones.</li> <li>• Liquidated damages for each day of delay.</li> <li>• Weather impacts.</li> <li>• Unforeseen conditions.</li> <li>• Force Majeure.</li> <li>• Limitations of remedy (i.e., “No Damages for Delay Clause”).</li> </ul>
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Source:

AIA (A102-2007)	Orlando International Airport	Dallas/Fort Worth International Airport
<p>§ 4.2.2 As time is of the essence for the performance of this Agreement, Contractor is obligated to meet or exceed the Schedule (Exhibit B) and as set forth in Section 4.3 for the Substantial Completion and Final Completion of the Project.</p> <p>(a) The Contractor, Architect and/or Owner will meet weekly or more often if required by the Owner, at the Project, to review the progress of the Work and determine if the Work is on schedule.</p> <p>(b) If the Owner, in good faith, determines that the Contractor is behind the Project Schedule, the Owner shall give the Contractor thirty (30) days to bring the Work back on schedule. After such thirty (30) day period, if the Owner determines that the Work is still behind the Project Schedule, and the Work has not been impacted by events beyond the Contractor's control and without its fault, the Owner shall give the Contractor another three (3) days to take whatever action is necessary to return the Work to adherence to the Schedule. After such three (3) day period, if the Owner determines that the Work is still behind schedule, the Owner may terminate the Contract as provided in General Conditions 14.2 or correct the deficiency at the Contractor's expense as provided in General Conditions 2.4.1. (c) Notwithstanding the foregoing, if the Work is behind the Project Schedule due to unusual severe weather conditions, as defined elsewhere in the Contract</p>	<p>3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES</p> <p>3.9.1 Preliminary Schedule. The Contractor shall submit to the OAR a Preliminary Schedule within fourteen (14) days after the date of the Notice of Intent to Award the Contract. The Preliminary Schedule shall be in a bar chart format covering all major items of the Work including construction activities, milestone dates, and procurement of materials and equipment. The Preliminary Schedule shall identify approximate start and finish dates and the sequence in which the Contractor proposes to carry out the Work. The Preliminary Schedule shall be based upon the Contract Time specified in the Contract Documents. Upon receipt by the Contractor of the Notice to Proceed and until the Baseline Schedule is accepted by the OAR, the Contractor shall proceed with the Work in accordance with the Preliminary Schedule.</p> <p>3.9.2 Baseline Schedule. Within thirty (30) days of the issuance of the Notice to Proceed, the Contractor shall submit to the OAR a proposed Baseline Schedule which shall be in the format as required by the Specifications and Drawings. The OAR will review the proposed Baseline Schedule and present the Contractor with any comments. The Contractor shall resubmit the proposed Baseline Schedule for review within fourteen (14) days after receipt of comments. Upon the OAR's acceptance of the Baseline Schedule, the Contractor shall proceed with the work in accordance with the accepted Baseline Schedule. The OAR's acceptance of the Baseline Schedule shall not impose on the Owner any responsibility to the Contractor for the accuracy or reasonableness of the Baseline Schedule nor shall the review and acceptance relieve the Contractor from full responsibility. Upon acceptance by the OAR, the Baseline Schedule shall be the basis for evaluation of all time related issues, unless and until a Progress Schedule is accepted which supersedes the Baseline Schedule logic. The Owner shall have no obligation to process or issue payment for an Application for Payment until the Contractor's baseline schedule has been accepted by the OAR.</p> <p>3.9.3 Progress Schedules. Each month the Contractor shall submit a Progress Schedule to update the progress of the Work. Progress Schedules must be submitted</p>	<p>60-3 PROJECT PROGRESS SCHEDULE. The Contractor shall submit a coordinated construction schedule for all Work activities. The schedule shall be prepared as a network diagram in Critical Path Method (CPM), Primavera, or other format, or as otherwise specified in the Supplemental Agreement. As a minimum, it shall provide information on the sequence of work activities, milestone dates, and activity duration. The Contractor shall maintain the Work schedule and provide a major progress update and analysis of the schedule on a monthly basis, or sooner if any major change in construction sequencing occurs. A detailed three week rolling schedule shall be submitted weekly. Submission of the Work schedule shall not relieve the Contractor of overall responsibility for scheduling, sequencing, and coordinating all Work to comply with the requirements of the Supplemental Agreement.</p> <p>60-5 PROSECUTION AND</p>

## Construction Agreements

## Appendix B-2

<p>Documents, the Contractor will make every reasonable effort to return the Project to adherence with the Schedule but may not be terminated. (d) It is understood that modifications to the Project Schedule may be required occasionally. Any such modifications to the Contract Time must be agreed to by the Contractor and Owner and contained in a Change Order to the Contract signed by both parties.</p>	<p>with each Contractor's Application for Payment and the data contained in the Progress Schedule must accurately correspond to the progress of the work information contained in the Contractor's Application for Payment. The Contractor's Progress Schedule must accurately reflect the actual progress of the Work as well as any revisions to the logic, sequence, durations of work activities, or level of detail of the number, description, or division of the work activities. The Owner may refuse to process or issue payment for an Application for Payment without the Contractor's submission of a current, accurate, and updated Progress Schedule that is satisfactory to the OAR. The Contractor's failure to submit such updated Progress Schedule with an Application for Payment shall result in a waiver by Contractor of all claims for the time extensions for the time period covered by the Application for Payment.</p>	<p>PROGRESS. Unless otherwise specified, the Contractor shall submit his/her progress schedule for the OWNER's approval within 30 days after the date of the Notice to Proceed unless otherwise agreed by both parties. The Contractor's progress schedule, when approved by the OWNER, may be used to establish major construction operations and to check on the progress of the Work. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the Project in accordance with the plans and specifications within the time set forth in the Contract. If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the OWNER's request, submit a revised schedule for completion of the Work within the Supplemental Agreement time and modify the Contractor's operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the work be discontinued for any reason, the Contractor shall notify the OWNER at least 24 hours in advance of resuming operations.</p>
<p>§ 4.3.1 LIQUIDATED DAMAGES</p>	<p>3.9.4 If the Contractor's Progress Schedule reflects that the completion of the contract or a contract milestone date is not within the Contract Time, then the Contractor must submit with the Progress Schedule the Contractor's proposed recovery plan for completing the Work within the Contract Time. In the event the Contractor claims entitlement to a time extension which is disputed by the Owner, the Contractor's recovery plan shall not be based upon receiving disputed time extensions.</p>	<p>The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the Project in accordance with the plans and specifications within the time set forth in the Contract. If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the OWNER's request, submit a revised schedule for completion of the Work within the Supplemental Agreement time and modify the Contractor's operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the work be discontinued for any reason, the Contractor shall notify the OWNER at least 24 hours in advance of resuming operations.</p>
<p>A. The parties acknowledge and agree to the following:</p>	<p>3.9.5 The Contractor shall fully comply with all time and other requirements of the Contract Documents. The Owner's approval and payment of an Application for Payment, without the submission of a current, accurate Baseline or Progress Schedule, shall not constitute a waiver of either the requirement for such updates or the Owner's right to withhold payment, and the Contractor shall not be relieved from the obligation to complete the Work within the Contract Time.</p>	<p>60-12 DETERMINATION AND EXTENSION OF SUPPLEMENTAL AGREEMENT TIME. The number of calendar or working days allowed for completion of the work shall be stated in the Supplemental Agreement and shall be known as the SUPPLEMENTAL</p>
<p>1. The Owner shall be entitled to damages attributable to delays that are caused by any act or omission of Contractor or any entity under contract with Contractor (whether directly or indirectly) or for whom Contractor is otherwise responsible ("Delays").</p>	<p>ARTICLE 8 TIME</p>	<p>60-12 DETERMINATION AND EXTENSION OF SUPPLEMENTAL AGREEMENT TIME.</p>
<p>2. At the time of execution of the Agreement, it is extremely difficult, if not impossible, to ascertain with precise accuracy the amount of actual damages that the Owner would incur as a result of any Delays.</p>	<p>8.1 PROGRESS AND COMPLETION</p>	<p>The number of calendar or working days allowed for completion of the work shall be stated in the Supplemental Agreement and shall be known as the SUPPLEMENTAL</p>
<p>3. The Liquidated Damages sums specified in Section 4.3.1 C below ("Stipulated Sum"), however, bear a substantial relationship to and approximate the actual damages the Owner is expected to incur from Delays, represent reasonable compensation to the Owner from damages anticipated from such Delays, and are not a penalty. The Stipulated Sum is based on a fair and methodically reasonable attempt to predict damages resulting from Delays, including, but not limited to, (a) the Owner's loss of revenues from lost rents; (b) the Owner's increased costs of financing and other costs of carry; and (c) the Owner's increased costs of taxes and insurance. Accordingly, neither party may change the Stipulated Sum, or the basis therefor, in any future setting.</p>	<p>8.1.1 The date of commencement of the Work is the effective date of the Notice To Proceed. The date shall not be postponed by the Contractor's failure to act or by such failures of persons or entities for which the Contractor is responsible. Time limits stated in the Contract Documents are of the essence of the Contract. The Contractor, by executing the Agreement, confirms that the Contract Time is a reasonable period for performing the Work.</p>	<p>The number of calendar or working days allowed for completion of the work shall be stated in the Supplemental Agreement and shall be known as the SUPPLEMENTAL</p>
<p>4. A material part of the consideration for which the Owner has bargained is the Contractor's</p>	<p>8.1.2 The Contractor shall not commence operations for the Work on the Owner's property prior to the effective date of a Notice to Proceed and prior to the effective date of the Contractor's compliance with Article 11.</p>	<p>The number of calendar or working days allowed for completion of the work shall be stated in the Supplemental Agreement and shall be known as the SUPPLEMENTAL</p>
	<p>8.1.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial and Final Completion within the time frames established by the Contract Documents.</p>	
	<p>8.2 DELAYS AND EXTENSIONS OF TIME</p>	
	<p>8.2.1 The Contract Time shall be adjusted only by CO, CCD or FCO in accordance with the limitations of the Owner's Policies.</p>	
	<p>8.2.2 RCOs and Claims relating to Contract Time shall be made in accordance with</p>	

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<p>willingness to assume the risk of pre-determined damages for Delays. The Contractor has attempted to bargain for additional consideration (e.g. an increased fee) in return for this risk and in fact is free to decline the Agreement altogether.</p> <p>5. Liquidated Damages shall constitute the Owner's sole remedy for unexcused delay.</p> <p>B. The Contractor hereby warrants and represents that it is familiar with liquidated damages provisions generally, and has received advice of counsel with respect to this Section 4.3.1.</p> <p>C. Liquidated Damages. In the event the Contractor does not achieve Substantial Completion within the Contract Time, as defined in Section 4.3, including approved extensions, the Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$) per calendar day until such time that the Contractor has achieved Substantial Completion in accordance with A201, Section 9.8 hereto (as modified). The Liquidated Damages shall begin to accrue on the first day after the Substantial Completion date as set forth in Section 2.3.1.2 hereto. In addition, Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$) per calendar day for each day that the time from Substantial Completion to Final Completion exceeds __ days. In the event of early Substantial Completion by Contractor, Contractor shall be awarded ___ Dollars (\$) per calendar day for each day it achieves Substantial Completion ahead of the Substantial Completion date as measured from the original Substantial Completion Date plus extensions of the Substantial Completion date as a result of Owner directed changes, not weather delays, subject to a maximum of _____ Dollars (\$). There is no incentive payment for early Final Completion. The Owner shall be entitled to set off from monies due to the Contractor during the course of the Project amounts sufficient to reimburse the Owner for these agreed upon .</p>	<p>applicable provisions of Paragraph 4.3 and Article 7.</p> <p>8.2.3 If any portion of the Work remains uncompleted after the expiration of the Contract Time, as adjusted by Contract Modifications, if any, the Owner will incur substantial injury, including loss of use or facilities and inconvenience to the public. Damages arising from such injuries cannot be calculated with any degree of certainty. It is agreed that if Substantial or Final Completion is not achieved within the established Contract Time as adjusted by Contract Modifications, if any, the Contractor and the Contractors Surety shall be liable to the Owner for Liquidated Damages as identified in the Instructions to Bidders. Allowing the Contractor to finish the Work after the expiration of the Contract Time established by the Contract Documents shall in no way operate as a waiver by the Owner of any of its rights under this Contract or allowed by law.</p> <p>8.2.4 The Work under this Contract is only a part of the Owner's construction program. As a result, Work under this Contract may be required to be completed by certain milestone dates set forth in the Contract Documents ("milestone dates") in order to interface with the work on other components of the Owner's construction program. The schedule for the Owner's construction program or the specification of milestone dates is not intended to take the place of complete Work scheduling by the Contractor, but is provided to show certain critical milestone dates for various phases of the Work on which the Contractor's Baseline Schedule or Progress Schedules must be based. There shall be no changes in the milestone dates, except by CO, FCO or CCD. In the event that the Contractor fails to complete any required portions of the Work by the milestone dates, the Contractor and its Surety shall be liable to the Owner for the Liquidated Damages identified in the Instructions to Bidders. In the event that the Contractor completes any required portions of the Work ahead of the milestone dates or is precluded from doing so by acts of the Owner or third parties, the Contractor shall not be entitled to damages against the Owner for completing or failing to complete the Work earlier.</p> <p>8.2.5 The Contractor shall cooperate with the OAR in order to maintain the progress of the Work in accordance with the Contractors current accepted schedule and Contract Time requirements. In addition to the requirements of Paragraph 3.9.3 regarding. Progress Schedule updates, if the Owner or OAR determines that the Contractor is failing to maintain the progress of the Work, through no fault of the Owner, the Contractor must, within seventy-two (72) hours of written request of the OAR, submit a written response detailing the Contractors plan of action to recover lost time in order to maintain the progress of the Work in accordance with the Contractors current accepted schedule or Contract Time requirements. In such event, the Contractor shall comply with the OAR's written orders to take whatever steps are necessary to recover lost time and maintain the progress of the Work. These steps may include, but are not limited to, re-sequencing the Work activities, increasing the number of Contractor's shifts, workforce, supervision, work days, overtime operations, equipment resources, or expediting delivery of materials or equipment. Regardless of the manner in which the schedule is recovered, the Contractor shall</p>	<p>AGREEMENT TIME.</p> <p>a. SUPPLEMENTAL AGREEMENT TIME based on CALENDAR DAYS shall consist of the number of calendar days stated in the Supplemental Agreement counting from the date of the notice to proceed and including all Saturdays, Sundays, holidays, and nonwork days. All calendar days elapsing between the effective dates of the OWNER's orders to suspend and resume all work, due to causes not the fault of the Contractor, shall be excluded.</p> <p>b. Any claim for extension of time shall be made as soon as possible in writing to the OWNER but not more than ten days after the commencement of the delay. In case of continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.</p> <p>c. Seasonal weather conditions shall be considered and included in the planning and scheduling of all Work influenced by high or low ambient temperatures, precipitation and/or saturated soil to ensure completion of all Work within the Supplemental Agreement time. Average historical climatic conditions for the preceding ten (10) years are published by the National Oceanographic and Atmospheric Administration (NOAA) and entitled "Local Climatological Data-Dallas/Fort Worth , Texas".</p> <p>d. For planning purposes, the following shall be considered</p>
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**Construction Agreements**

**Appendix B-2**

Liquidated Damages.  
 § 2.3 The Project is being constructed on a "fast track" basis. Contractor has not been provided the complete design for all of the Drawings and Specifications. Owner will provide Contractor on a rolling basis completed Drawings and Specifications and such other information to enable Contractor to prepare bid packages ("Bid Packages") for Subcontractors. Attached as Exhibit A is the current schedule of anticipated starts and durations of each major group of activities. Contractor shall advise Owner how far in advance it needs a completed design for a particular segment of the Work, including Drawings and Specifications, related to each contemplated Bid Package in order to maintain the schedule. Contractor understands that the engineering on the Project will be done on a "Just-In-Time" basis and Contractor will be required to adjust its procurement and scheduling activities to meet this approach. Due to the fast track process, Owner acknowledges that it has been advised by Contractor that the Project will be affected by such process. Some of the effects of an accelerated project delivery process, like fast track construction, include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding, and construction purposes in order to maintain a fast track or accelerated schedule, or the actual progress of the Work of the Contractor. The Owner acknowledges that it has been advised that the Project, if developed on an accelerated Project delivery basis, may require associated coordination, design, and redesign of parts of the Project after construction documents are issued and this Contract is executed, and may require removal of work in place, all of which events may cause an increase in the Contract Sum and/or an extension of the Project construction schedule. Therefore, the Owner acknowledges and understands that Change Orders arising from the

not be entitled to additional compensation for actions that relate to the recovery of the schedule.  
 8.2.6 In addition to other remedies available to the Owner, if the Contractor fails to maintain the progress of the Work in accordance with the Contractor's current accepted schedule or Contract Time requirements, the Owner may, upon seven (7) days written notice to the Contractor and its Surety, order the Contractor to suspend or cease all or a portion of the Work and the Owner may demand that the Contractor's Surety prosecute all or a portion of the Work in accordance with the Contract Documents. Failure of the Surety to so perform within seven (7) days of receipt of such notice shall be grounds for the Owner to prosecute the Work at Surety's and Contractor's expense.  
 7.1.10 RCOs that include a proposed adjustment of Contract Time shall comply with the following:  
 .17 The Contractor's RCO for an adjustment of Contract Time must be substantiated by an analysis of the critical path method schedules in use on the Project. For the delay event, the Contractor must utilize the accepted progress schedule with a data date immediately prior to the date that the alleged delay event occurred (or utilize the schedule update with a data date immediately prior to the date that the alleged delay event occurred), and compare the project critical path to the critical path of the accepted project schedule with a data date immediately after the date the alleged delay event ended (or the schedule update with a progress schedule data date immediately after the date the alleged delay event ended). The comparison of these two accepted project schedules, or schedule updates, must show that the project completion date was delayed by the delay event and the number of days of delay caused by the delay event.  
 a. If the analysis shows that a delay has occurred to the project completion date due to the delay event, the Contractor must identify from this analysis the specific critical activities that have been delayed and the magnitude in calendar days of each delay.  
 b. For all delays identified as described above, the Contractor must identify the activities that the Contractor believes were delayed by the Owner and the reasons why it believes the Owner should be considered responsible for the delay. All other delays identified in the analysis will be considered the responsibility of the Contractor. The Contractor must also identify any delays that the Contractor believes are concurrent and describe how the Owner and the Contractor concurrently caused the delay.  
 c. In addition to the requirements set forth above, if abnormal inclement weather conditions are the basis for a request for an adjustment of Contract Time, such Claim shall be documented by National Weather Service data for Orlando International Airport (OIA) substantiating that weather conditions were abnormal for the period of time as compared to the average weather conditions for OIA over the preceding ten (10) years and could not have been reasonably anticipated. For

average workdays lost per month due to weather conditions:

Month	Lost Time in Workdays
January	5
February	4
March	5
April	6
May	6
June	4
July	4
August	4
September	5
October	4
November	4
December	4

## Construction Agreements

<p>accelerated Project delivery process should be expected as a part of and related to this process; and the Owner understands the necessity of including sufficient contingencies in the budget for the Contract Sum to account for additional costs and construction schedule extensions arising from this process and agrees to include such contingencies in the Project construction budget commensurate with industry standards for Projects of similar scope and quality of this Project. However, the Contractor agrees to promptly advise Owner in writing whenever Contractor believes that specific aspect of the fast track process could adversely affect the Work in place or current design of portions of the Project to minimize the need to make changes or re-execute portions of the Work, and in the absence of such notification when Contractor has such belief and/or actual knowledge of such fact, Contractor shall be responsible for any additional costs arising therefrom.</p>	<p>rainfall, fog or temperature conditions the calendar month will be used as the period of time over which these effects are evaluated. Adjustments of Contract Time will not be allowed for recorded rainfall, fog or temperature conditions less than or equal to the monthly ten (10) year historical mean conditions. Significant rainfall accumulations, for or temperature conditions recorded above the historical monthly mean may be considered as a basis for a day for day adjustment of time due to abnormal inclement weather. No compensation will be allowed for delays resulting from abnormal inclement weather. All Claims for adjustments of time based on weather must be substantiated by showing the adverse effect on critical path construction activities.</p> <p>.18 If the Contractor is delayed in performance of the Work by any act or omission of the Owner, OAR or by any member, officer, employee, agent, servant, or representative of the Owner or OAR, or by any separate contractor or consultant engaged by the Owner or OAR, or by changes in the Work ordered by the Owner (as reflected in COs, CCDs, or FCOs), or by fire, or any unforeseen cause which the Contractor lacked any ability to control or manage, all of which occurred without any responsibility, fault or negligence on the part of the Contractor and, in the opinion of the Owner, neither could have been anticipated nor avoided by the Contractor, then the Contract Time shall be extended for an appropriate period of time to compensate the Contractor for the delay, which in no event shall exceed a day-for-day extension for the period of proven actual delay to the critical path as described above; provided that the Contractor has complied with the notice requirements of Paragraph 4.3 and submitted full documentation supporting the request. Neither labor disputes involving the Contractor, its Subcontractors or any other laborers or materialmen performing the Work, nor abnormal inclement weather conditions, shall be considered to be unforeseeable, unavoidable or unanticipated. An extension of the Contract Time shall be the Contractor's sole and exclusive remedy for any delay of any kind or nature, except to the extent the delays were solely caused by (1) material acts or material omissions by the Owner or parties for whom the Owner bears responsibility constituting active interference or (2) concealed or unknown conditions as set forth in Article 4.3.5. For these delays, the Contractor is only entitled to the reasonable actual costs that are caused directly and solely by the delay and allowed for Contract Modifications as set forth in Paragraph 7.1.9.9. The Owner's exercise of any of its rights or remedies, including, without limitation, ordering changes in the Work, or suspending, rescheduling or ordering correction of the Work, regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference.</p> <p>.19 In no event, including circumstances in which it is alleged or proven that Owner intentionally interfered with the Contractor's performance of the Work, shall the Contractor be entitled to recover from the Owner, for itself or its Subcontractors, suppliers or other parties claiming a right or damage by or through Contractor, any of the following items or damages arising out of or related to this Contract or the breach thereof:</p>	
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<p>a. loss of profits or anticipated profits                  b. inefficiency or loss of productivity                  c. acceleration costs not specifically agreed to in advance, in writing, by the Owner                  d. home office overhead                  e. any cost that is not specifically allowed by Article 7.1.9 and 7.1.10. If indirect, incidental, consequential or special damages, including but not limited to, loss of bonding capacity, loss of bidding or loss of business or contracting opportunities or other impact costs.</p> <p>4.3.5 Claims for Concealed, Unforeseen or Unknown Conditions. If conditions are encountered at the site that are (1) concealed physical conditions which differ materially from those indicated in the Contract or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract, then the Contractor shall give written notice to the OAR promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. This notice shall include a written description of the concealed or unknown condition and the Contractors proposed method to resolve the concealed or unknown condition. If the OAR determines that the conditions at the site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the OAR shall so notify the Owner and Contractor in writing. The Contractor shall notify the OAR of any opposition to the OAR's determination within seven (7) days after the OAR has given notice of its determination. Substantiation and quantification of any Claims related to concealed or unknown conditions must be provided within thirty (30) days of the date that the Contractors Claim notice is received by the OAR. If such concealed or unknown site conditions are encountered, and if the critical path is directly impacted as a result, the Contractor shall be entitled to an adjustment in the Total Contract Time for the delay caused by the correction of concealed or unknown conditions, subject to the requirements of Articles 7 and 8. If such concealed or unknown site conditions are encountered, requests for compensation for the reasonable direct costs that are caused solely by the delay are subject to the requirements of Article 7. If the concealed or unknown condition causes a decrease in the cost of performing the Work, the Owner shall be entitled to deduct the decreased cost from the Total Contract Price.</p>
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**RISK: SCOPE AND CHANGE**

Talking Points:	<ul style="list-style-type: none"> <li>• Scope identification covered by the change.</li> <li>• Basis for change/contract modification, covering owner change, contractor change, and errors and omission.</li> <li>• Remedy/limitations of remedy/pricing of change.</li> <li>• The change order should be a complete “mini-contract” covering all elements of scope, cost, and time.</li> </ul>
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Source:

AIA (A102-2007)	Orlando International Airport	Miami International Airport
<p>ARTICLE 2 THE WORK OF THIS CONTRACT The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Contractor further acknowledges and warrants that it has closely examined all the Contract Documents, that they contain sufficient information to enable the Contractor to complete the portion of the Work then designed (pursuant to the fast track delivery process) in a timely manner for the Contract Sum. § 2.1 Except as expressly provided for in the Contract Documents to the contrary, the Contractor at its sole cost, risk, and expense shall construct, equip, provide, purchase, pay for, and furnish all of the Work in accordance with the Contract Documents, governmental codes and regulations as they apply to performance of the Work. § 2.2 It is not the intent of the Drawings and Specifications to set forth in detail or to otherwise direct every item properly necessary to the completion of the Work. It is Contractor's sole responsibility to be fully qualified to complete the Work, and it must, without direction, accomplish everything necessary to provide a workmanlike product within industry standards for good construction, complete in every detail and condition, so as to be ready for use without any additional work being required, other than that explicitly stated elsewhere in this Agreement. § 2.3 The Project is being constructed on a "fast track" basis. Contractor has not been provided the complete design for all of the Drawings and</p>	<p>3.1.1 The Contractor acknowledges and declares that the Contract Documents are sufficient to enable the Contractor to complete the Work as shown in the Contract Documents or, if not specifically shown, to perform the activities which may be reasonably inferred as necessary for completion of the Work in accordance with the requisite time frame, applicable laws, statutes, building codes, regulations, or as otherwise required by the Contract Documents. 3.1.2 The Contractor shall take field measurements, verify field conditions and carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be immediately reported in writing to the OAR. If the Contractor performs any construction activity which the Contractor knows or should have known contains an error, inconsistency or omission, the Contractor shall be responsible for such performance and shall bear the cost for correction. 3.1.3 The Contractor represents that it is familiar with the Project site and has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the location and condition thereof, including, without limitation, the location and condition of all structures, utilities, and surface and subsurface conditions. At no additional cost to the Owner, the Contractor shall undertake all further investigations and studies as may be necessary or useful to determine the location and condition of structures, utilities, surface and subsurface conditions. The Contractor shall exercise special care in executing Work in proximity of known utilities, improvements, and easements. The Contractor shall be solely responsible for the location of any existing utilities. Based upon the foregoing inspections, understandings, agreements and</p>	<p>7.1 CHANGES IN THE WORK 7.1.01 The Owner reserves the right to delete work from this Contract, to add work to this Contract, and to change work to be accomplished under this Contract without invalidating the Contract. 7.1.02 In the event the Owner exercises its right to change, delete or add work under the Contract, such work will be ordered and paid for as provided for in the Contract Documents. 7.1.03 Changes in the work may be initiated by the issuance of a Bulletin by the Architect/Engineer. The Contractor shall submit a price quote to the Architect/Engineer and the Owner for their review, within twenty-one (21) calendar days of receipt of a Bulletin. The Contractor shall maintain this price, for acceptance by the Owner, for a minimum of 90 calendar days after submittal. The cost or credit to the Owner for any change in the work shall be determined in accordance with the provisions of the Contract Documents. The Contractor shall not be compensated for effort expended in preparing and submitting price quotes. 7.1.04 Changes in the work covered by Unit Prices, as stated in the Contract Documents shall be all inclusive. These prices will include all Direct and Indirect Costs, remobilization and demobilization associated with the change, means and methods of execution, engineering and any associated work necessary. To be compensable, units must be measured daily by the Contractor and approved in writing by the Architect/Engineer.  8.1 CLAIMS AND DAMAGES 8.1.01 Should the Contractor suffer injury or damage to</p>

<p>Specifications. Owner will provide Contractor on a rolling basis completed Drawings and Specifications and such other information to enable Contractor to prepare bid packages ("Bid Packages") for Subcontractors. Attached as Exhibit A is the current schedule of anticipated starts and durations of each major group of activities. Contractor shall advise Owner how far in advance it needs a completed design for a particular segment of the Work, including Drawings and Specifications, related to each contemplated Bid Package in order to maintain the schedule. Contractor understands that the engineering on the Project will be done on a "Just-In-Time" basis and Contractor will be required to adjust its procurement and scheduling activities to meet this approach. Due to the fast track process, Owner acknowledges that it has been advised by Contractor that the Project will be affected by such process. Some of the effects of an accelerated project delivery process, like fast track construction, include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding, and construction purposes in order to maintain a fast track or accelerated schedule, or the actual progress of the Work of the Contractor. The Owner acknowledges that it has been advised that the Project, if developed on an accelerated Project delivery basis, may require associated coordination, design, and redesign of parts of the Project after construction documents are issued and this Contract is executed, and may require removal of work in place, all of which events may cause an increase in the Contract Sum and/or an extension of the Project construction schedule. Therefore, the Owner acknowledges and understands that Change Orders arising from the accelerated Project delivery process should be expected as a part of and related to this process; and the Owner understands the necessity of including sufficient contingencies in the budget for the Contract Sum</p>	<p>acknowledgments, the Contractor agrees and acknowledges: (i) that the Total Contract Price is just and reasonable compensation for all the Work, including all reasonably foreseen and foreseeable risks, hazards, and difficulties in connection therewith; (ii) that the Contract Time is adequate for the performance of the Work; and (iii) that the Work shall not result in any unintended lateral or vertical movement of any existing structure. The Contractor shall have no claims for concealed or unknown conditions except as described in Paragraph 4.3.5.</p> <p>7.1.10 RCOs that include a proposed adjustment of Contract Time shall comply with the following:          .17 The Contractor's RCO for an adjustment of Contract Time must be substantiated by an analysis of the critical path method schedules in use on the Project. For the delay event, the Contractor must utilize the accepted progress schedule with a data date immediately prior to the date that the alleged delay event occurred (or utilize the schedule update with a data date immediately prior to the date that the alleged delay event occurred), and compare the project critical path to the critical path of the accepted project schedule with a data date immediately after the date the alleged delay event ended (or the schedule update with a progress schedule data date immediately after the date the alleged delay event ended). The comparison of these two accepted project schedules, or schedule updates, must show that the project completion date was delayed by the delay event and the number of days of delay caused by the delay event.</p> <p>a. If the analysis shows that a delay has occurred to the project completion date due to the delay event, the Contractor must identify from this analysis the specific critical activities that have been delayed and the magnitude in calendar days of each delay.</p> <p>b. For all delays identified as described above, the Contractor must identify the activities that the Contractor believes were delayed by the Owner and the reasons why it believes the Owner should be considered responsible for the delay. All other delays identified in the analysis will be considered the responsibility of the Contractor. The Contractor must also identify any delays that the Contractor believes are concurrent and describe how the Owner and the Contractor concurrently caused the delay.</p>	<p>person or property because of any act or omission of Owner or of any of its employees, agents or others for whose acts the Owner is legally liable, a claim shall be made in writing to the Owner within ten (10) days after the first observance of such injury or damage.</p> <p>8.1.02 Each claim must be certified by the Contractor as required by the Miami-Dade Code, False Claims Act (see Code Section 21-255, et seq.), and accompanied by a certified final bid tabulation in accordance with Miami-Dade County Code Section 21-257. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:</p> <ul style="list-style-type: none"> <li>A. The claim is made in good faith;</li> <li>B. The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;</li> <li>C. The amount of the claim accurately reflects the amount that the claimant believes is due from the County; and</li> <li>D. The certifying person is duly authorized by the claimant to certify the claim.</li> </ul> <p>8.1.03 No claims for additional compensation, time extension or for any other relief under the Contract shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.</p> <p>8.1.04 Each and every claim shall be made in writing and delivered to the Field Representative as soon as reasonably practicable after the event, occurrence or non-occurrence which gives rise to such claim, however, in no event later than ten (10) days after the event or occurrence, or in the case of non-occurrence, within ten (10) days after the time when performance should have occurred. Verbal, telephone or facsimile notice shall be given in those instances where delay in presenting the</p>
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<p>to account for additional costs and construction schedule extensions arising from this process and agrees to include such contingencies in the Project construction budget commensurate with industry standards for Projects of similar scope and quality of this Project. However, the Contractor agrees to promptly advise Owner in writing whenever Contractor believes that specific aspect of the fast track process could adversely affect the Work in place or current design of portions of the Project to minimize the need to make changes or re-execute portions of the Work, and in the absence of such notification when Contractor has such belief and/or actual knowledge of such fact, Contractor shall be responsible for any additional costs arising therefrom.</p>	<p>c. In addition to the requirements set forth above, if abnormal inclement weather conditions are the basis for a request for an adjustment of Contract Time, such Claim shall be documented by National Weather Service data for Orlando International Airport (OIA) substantiating that weather conditions were abnormal for the period of time as compared to the average weather conditions for OIA over the preceding ten (10) years and could not have been reasonably anticipated. For rainfall, fog or temperature conditions the calendar month will be used as the period of time over which these effects are evaluated. Adjustments of Contract Time will not be allowed for recorded rainfall, fog or temperature conditions less than or equal to the monthly ten (10) year historical mean conditions. Significant rainfall accumulations, for or temperature conditions recorded above the historical monthly mean may be considered as a basis for a day for day adjustment of time due to abnormal inclement weather. No compensation will be allowed for delays resulting from abnormal inclement weather. All Claims for adjustments of time based on weather must be substantiated by showing the adverse effect on critical path construction activities.</p>	<p>claim would result in the conditions causing the claim to change, thereby requiring an immediate need to examine the job site or other conditions to ascertain the nature of the claim before the condition(s) disappear or become unobservable. Any such oral or facsimile notice shall be followed, at the earliest practicable time, but in no event more than ten (10) days after the event causing the claim, by written confirmation of the claim information.</p>
<p>ARTICLE 6 CHANGES IN THE WORK</p>	<p>.18 If the Contractor is delayed in performance of the Work by any act or omission of the Owner, OAR or by any member, officer, employee, agent, servant, or representative of the Owner or OAR, or by any separate contractor or consultant engaged by the Owner or OAR, or by changes in the Work ordered by the Owner (as reflected in COs, CCDs, or FCOs), or by fire, or any unforeseen cause which the Contractor lacked any ability to control or manage, all of which occurred without any responsibility, fault or negligence on the part of the Contractor and, in the opinion of the Owner, neither could have been anticipated nor avoided by the Contractor, then the Contract Time shall be extended for an appropriate period of time to compensate the Contractor for the delay, which in no event shall exceed a day-for-day extension for the period of proven actual delay to the critical path as described above; provided that the Contractor has complied with the notice requirements of Paragraph 4.3 and submitted full documentation supporting the request. Neither labor disputes involving the Contractor, its Subcontractors or any other laborers or materialmen performing the Work, nor abnormal inclement weather conditions, shall be considered to be unforeseeable, unavoidable or unanticipated. An extension of the Contract Time shall be the Contractors sole</p>	<p>8.1.05 Each and every claim shall state:                  A. The date of the event or occurrence giving rise to the claim. In the case of a claim arising from a claimed nonperformance, the date when it is claimed that performance should have occurred shall be stated.                  B. The exact nature of the claim, including sufficient detail to identify the basis for the claim, including by way of example only, such detail as drawing numbers, specification sections, job site location, affected trades, Contract clauses relied upon, schedule references, correspondence or any other details reasonably necessary to state the claim.                  C. The claim shall clearly state whether additional monies are part of the claim. If known, the dollar value associated with the claim shall be stated. If unknown, the notice shall indicate the types of expenses, costs or other monetary items that are reasonably expected to be part of the claim amount.                  D. The dollar value associated with the claim, along with all supporting documentation, shall be delivered within thirty (30) days after completion of the work that is subject of the claim. It shall be broken down into Direct and Indirect Costs. The Direct Costs shall be calculated as Changes in the Work. Indirect Costs shall be as stipulated in the Bid Form.                  E. Any claim for additional monies that also involve a request for a Contract time extension shall be submitted together with the amount of time being requested and the supporting data including applicable scheduling references supporting the claim. Scheduling references shall include a month-by-month time impact analysis (TIA) using the approved monthly progress schedules and demonstrating the effect of the delay or change on the Contract completion date for each monthly update period that the change or delay affects.</p>

<p>Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.</p> <p>§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.</p>	<p>and exclusive remedy for any delay of any kind or nature, except to the extent the delays were solely caused by (1) material acts or material omissions by the Owner or parties for whom the Owner bears responsibility constituting active interference or (2) concealed or unknown conditions as set forth in Article 4.3.5. For these delays, the Contractor is only entitled to the reasonable actual costs that are caused directly and solely by the delay and allowed for Contract Modifications as set forth in Paragraph 7.1.9.9. The Owner's exercise of any of its rights or remedies, including, without limitation, ordering changes in the Work, or suspending, rescheduling or ordering correction of the Work, regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference.</p> <p>.19 In no event, including circumstances in which it is alleged or proven that Owner intentionally interfered with the Contractor's performance of the Work, shall the Contractor be entitled to recover from the Owner, for itself or its Subcontractors, suppliers or other parties claiming a right or damage by or through Contractor, any of the following items or damages arising out of or related to this Contract or the breach thereof:</p> <ul style="list-style-type: none"> <li>a. loss of profits or anticipated profits</li> <li>b. inefficiency or loss of productivity</li> <li>c. acceleration costs not specifically agreed to in advance, in writing, by the Owner</li> <li>d. home office overhead</li> <li>e. any cost that is not specifically allowed by Article 7.1.9 and 7.1.10.</li> <li>f. indirect, incidental, consequential or special damages, including but not limited to, loss of bonding capacity, loss of bidding or loss of business or contracting opportunities or other impact costs.</li> </ul> <p>4.3.5 Claims for Concealed, Unforeseen or Unknown Conditions. If conditions are encountered at the site that are (1) concealed physical conditions which differ materially from those indicated in the Contract or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract, then the Contractor shall give written notice to the OAR promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the</p>	<p>8.1.06 The currently approved overall project schedule(s) shall be the basis for interpreting any and all time-associated provisions of the Contract including proposed time extensions. Proposed time extensions must include a time impact analysis (TIA), clearly showing the impact on the current schedule, and conclusively proving the validity of the proposed extension. In order to request additional time or compensation associated with changes or delays, the Contractor shall submit a written request for time extension with its request for Change Order and a time impact analysis (TIA). The TIA shall demonstrate the time impact of each change or delay based on the date of the change or start of delay on the Contractor's current construction schedule. Each TIA shall include how the Contractor proposes to incorporate the changes or delays into its construction schedule. Contractor's failure to submit the TIA in accordance with this paragraph shall constitute a waiver and abandonment by Contractor of any claims for time related issues.</p> <ul style="list-style-type: none"> <li>A. The Contractor shall submit the time impact proposal used in the TIA within ten (10) days after a delay commences.</li> <li>B. Where the Contractor does not submit a TIA for a specific change or delay within the period of time specified herein, then it is expressly understood that the particular change or delay has no time impact on the Contract completion date and no time extension is required or shall be subsequently granted.</li> <li>C. Payment for delays shall be in accordance with the General Conditions.</li> </ul> <p>Proposed Contract time extensions shall not be approved unless the time extension will cause the Contract completion date to be extended.</p> <p>8.1.07 The Architect/Engineer and the Field Representative shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within sixty (60) days after a claim has been received, the claim shall either be recognized or if the claim is not recognized within sixty (60) days it shall be deemed denied. If the claim is recognized, the parties shall attempt to negotiate a satisfactory settlement of the</p>
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conditions. This notice shall include a written description of the concealed or unknown condition and the Contractors proposed method to resolve the concealed or unknown condition. If the OAR determines that the conditions at the site are not materially different from those indicated in the Contract and that no change in the terms of the Contract is justified, the OAR shall so notify the Owner and Contractor in writing. The Contractor shall notify the OAR of any opposition to the OAR's determination within seven (7) days after the OAR has given notice of its determination. Substantiation and quantification of any Claims related to concealed or unknown conditions must be provided within thirty (30) days of the date that the Contractors Claim notice is received by the OAR. If such concealed or unknown site conditions are encountered, and if the critical path is directly impacted as a result, the Contractor shall be entitled to an adjustment in the Total Contract Time for the delay caused by the correction of concealed or unknown conditions, subject to the requirements of Articles 7 and 8. If such concealed or unknown site conditions are encountered, requests for compensation for the reasonable direct costs that are caused solely by the delay are subject to the requirements of Article 7. If the concealed or unknown condition causes a decrease in the cost of performing the Work, the Owner shall be entitled to deduct the decreased cost from the Total Contract Price.

2. CHANGE ORDERS (CO)

.1 A CO is a written contract modification signed by the Owner and Contractor stating their agreement upon all of the following:

a. a change in the Work or the Contract Documents; and

b. the amount of the adjustment in the Total Contract Price, if any; and

c. the extent of the adjustment in the Contract Time, if any.

.2 Provided the Contractor executes the CO, the Owner may issue a CO Notice to Proceed in accordance with the Owner's Policies. The CO Notice to Proceed authorizes the CO work pending the Owner's execution of the CO.

3. CONSTRUCTION CHANGE DIRECTIVES (CCD)

.1 A CCD is a written order prepared and signed by the Owner directing a change in the Work or stating a proposed basis for adjustment, if any, in the Total

claim, which settlement shall be included in a subsequent Work Order or Change Order. If the parties fail to reach an agreement on a recognized claim, the Owner shall pay to the Contractor the amount of money it deems reasonable, less any appropriate retention, to compensate the Contractor for the recognized claim. Failure of the Contractor to make a specific reservation of rights regarding any such disputed amounts in the body of the change order which contains the payment shall be construed as a waiver, abandonment, or relinquishment of all claims for additional monies resulting from the claims embodied in said change order, however, once the Contractor has properly reserved rights to any claim, no further reservations of rights shall be required until the final payment under the Contract. at such time the Contractor shall specify all claims which have been denied and all claims for which rights have been reserved in accordance with this section. Failure to so specify any particular claim shall be construed as a waiver, abandonment, or relinquishment of such claim.

8.1.08 No reservation of rights will be effective to preserve any claims that are not fully documented and submitted in accordance with requirements of these Contract Documents. Failure of the Contractor to make a specific reservation of rights regarding any such disputed amounts on the Contractor's Affidavit and Release of Claim for each pay application and on the Contractor's Affidavit and Release of All Claims, within the Request for Final Payment, shall be construed as a waiver, abandonment and relinquishment of all claims for additional monies resulting from the claim.

8.1.09 The Contractor shall not cease work on account of any denied claim or any recognized claim upon which an agreement cannot be reached.

8.1.10 With regard to any and all claims for additional compensation resulting from delays to the Work, it is expressly understood and agreed as follows:

A. The claimed delay shall not result from a cause specified in the Contract Documents as a Non-excusable Delay.

B. Notice of the claim shall have been provided in accordance with and within the time specified in this

	<p>Contract Price or Contract Time, or both. The Owner may, by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract which the Contractor is required to complete, consisting of additions, deletions or other revisions, the Total Contract Price or Contract Time being adjusted accordingly.</p> <p>.2 A CCD shall be used in the absence of total agreement on the terms of a CO.</p> <p>.3 If the CCD provides for an adjustment of the Total Contract Price, the amount of the adjustment shall be based upon the Force Account provisions set forth below or the Owner's best estimate of the actual cost of the Work.</p> <p>.4 Upon receipt of an Owner-executed CCD, the Contractor shall promptly proceed with the change involved and advise the OAR in writing of the Contractor's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Total Contract Price or Contract Time.</p> <p>.5 The Owner shall pay the Contractor for reasonable costs of the actual work performed by the Contractor on the basis of the CCD, pending final resolution of the changes in Total Contract Price and Contract Time. Any payments or adjustment hereunder, made in the Owner's discretion, shall not constitute an admission by the Owner of liability for those payments or adjustment and shall not constitute a waiver of any of the Owner's or Contractor's rights under the Contract Documents.</p> <p>4. FIELD CHANGE ORDERS (FCO)</p> <p>.1 A FCO may be issued in accordance with the Owner's Policies, and is a written contract modification signed by the Owner and Contractor stating their agreement upon all of the following:</p> <p>a. A change in the Work or the Contract Documents; and</p> <p>b. The method intended for and the estimated amount of the adjustment in the Total Contract Price and Contract Time, if any.</p> <p>.2 A fully executed FCO authorizes the Contractor to immediately proceed with the changed Work. FCOs shall be incorporated into the Contract by appropriate</p>	<p>Article.</p> <p>C. The Contractor assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated for except as they may have been included in the compensation for indirect costs.</p> <p>(1) Home office expenses or any direct costs incurred allocated from the headquarters of the Contractor.</p> <p>(2) Loss of anticipated profits on this or any other project.</p> <p>(3) Loss of bonding capacity or capability.</p> <p>(4) Losses due to other projects not bid upon.</p> <p>(5) Loss of business opportunities.</p> <p>(6) Loss of productivity on this or any other project.</p> <p>(7) Loss of interest income on funds not paid.</p> <p>(8) Costs to prepare, negotiate or prosecute claims.</p> <p>(9) Costs spent to achieve compliance with applicable laws and ordinances (excepting only sales taxes paid shall be reimbursable expense subject to the provisions of the Contract Documents).</p> <p>D. All claimed items of additional compensation shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.</p> <p>E. No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.</p>
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	<p>CO or CCD. The Owner and Contractor shall cooperate together to ensure that FCOs are incorporated into the Contract by appropriate CO within thirty (30) days from the completion of the FCO work.</p> <p>5. FORCE ACCOUNT WORK</p> <p>.1 Force Account Work shall only include the same costs as those allowed by GP-40 and shall be documented and verified jointly by the Contractor and the OAR. The Contractor bears the responsibility for obtaining daily approval of all allowable Force Account charges described below. The Contractor shall not be paid for claims arising from unapproved charges. The Contractor shall provide documentation requested by the OAR including but not limited to:</p> <ul style="list-style-type: none"> <li>a. Time sheets which shall be approved daily by the OAR (or authorized site representative, designated for this purpose) for the actual hours spent for manpower and equipment listed.</li> <li>b. Labor cost accounting records that evidence the net direct cost of the Contractor's labor and foremen while directly performing the Force Account Work activity, but excluding any costs associated with any of the Contractor's superintendents, project engineers, or project managers</li> <li>c. Equipment cost accounting records that evidence the cost of rented equipment or the Contractor's equipment.</li> <li>d. Material cost accounting records that evidence the net costs of materials for the Force Account Work activity.</li> </ul> <p>.2 Within seven (7) days of the completion of the Force Account Work, the Contractor shall compile and submit to the OAR a Force Account Claim that contains the backup documentation for each element of the Force Account Work. The Contractor's final mark-up for overhead and profit shall be determined according to the cumulative cost of the Force Account Work in accordance with GP-40.</p> <p>.3 The Contractor specifically agrees that no other Claims shall be asserted against the Owner for such Force Account Work. If the Project includes multiple changes that are to be paid by Force Account, each Force Account Claim shall be documented and processed separately.</p> <p>.4 Upon verification of the Force Account Claim, the OAR will prepare a CO for the Force Account Work.</p> <p>6. MINOR CHANGES IN THE WORK</p>	
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	<p>.1 A minor change in the Work may be issued by the OAR when there is no cost for the change and when no adjustment to the Contract Time will be made. A minor change may be issued as an Designer's Supplemental Instruction, as a written response to a Request for Information or in any other manner that the OAR deems appropriate.</p>	
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**RISK: REMEDIES**

Talking Points:	<ul style="list-style-type: none"> <li>• Provide clearly defined warranty and corrective work provisions.</li> <li>• Outline that owner is entitled to recover all actual and consequential damages.</li> <li>• Clearly specify all rights and remedies of each party upon termination.</li> <li>• Provide for broad-form indemnity.</li> </ul>
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Source:

AIA (A102-2007)	Orlando International Airport	Miami International Airport
<p>ARTICLE 14 TERMINATION OR SUSPENSION</p> <p>§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007 as modified.</p> <p>§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2007 as modified, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-2007as modified shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:</p> <p>.1 Take the Cost of the Work incurred by the Contractor to the date of termination;</p> <p>.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and</p> <p>.3 Subtract the aggregate of previous payments made by the Owner.</p> <p>§ 14.3 The Owner shall also pay the</p>	<p><b>70-11 INDEMNIFICATION.</b></p> <p>To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, OAR, Designer, and agents, subconsultants, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, (and other legal costs such as those for paralegal, investigative, legal support and the actual costs incurred for expert witness testimony), to the extent caused in whole or in part by negligent acts or omissions, recklessness or intentional wrongful misconduct of the Contractor, one of its Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. This indemnification obligation includes any penalties or fines assessed by the FAA or TSA as well as any other costs to the Owner, such as investigation and security training, incurred as a result of any violation of federal regulations, including the Airport Security Plan, by the Contractor, its Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. The Contractor shall also indemnify and hold harmless the Owner and its members, officers, agents and employees against any assertion of claims for failure of payment, or failure to provide appropriate bonds, made by Subcontractors or material Suppliers, and against any assertions of security interests by Suppliers of goods, services or materials. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist. The indemnification obligations of this Contract shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, a Subconsultant or Subcontractor under workers' compensation acts, disability benefits acts or other employee benefit acts.</p> <p>The indemnification obligations of this Contract shall not be</p>	<p>12.1 INDEMNIFICATION AND HOLD HARMLESS</p> <p>12.1.01 In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the County, their elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work.</p> <p>12.1.02 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.</p> <p>12.1.03 In the event that any claims are brought or actions are filed against the County with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the County may select the attorneys to appear and defend such claims or actions on behalf of the County. The Contractor further agrees to pay at the Contractor 's expense the attorneys' fees and costs incurred by those attorneys selected by the County to appear and defend such claims or actions on behalf of the County. The County, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement, of any claims or actions against the County.</p> <p>12.1.04 To the extent this indemnification clause or any other</p>

<p>Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.</p> <p>§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007 as modified; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007 as modified, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.</p> <p>§ 15.6.1 WARRANTIES. The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:</p>	<p>limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, a Subconsultant or Subcontractor under workers' compensation acts, disability benefits acts or other employee benefit acts. If the above indemnity provisions are deemed void in whole or in part under Florida law, then the following indemnification obligations shall apply to the extent such provisions are deemed void: Contractor shall indemnify and hold harmless the Owner, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract. The indemnification provisions shall survive the expiration or termination of this Contract.</p> <p><b>80-09 DEFAULT AND TERMINATION OF CONTRACT.</b> The Contractor shall be considered in default of its contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons if the Contractor:</p> <ul style="list-style-type: none"> <li>a. Fails to begin the work under the contract within the time specified in the "Notice to Proceed," or</li> <li>b. Fails to perform the Work, <u>or fails to maintain adequate progress towards completion of the Work</u>, or fails to provide sufficient workers, equipment or materials to assure completion of Work in accordance with the terms of the Contract, or</li> <li>c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or</li> <li>d. Discontinues the prosecution of the work, or</li> <li>e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or</li> <li>f. Becomes insolvent or is declared bankrupt, or commits any act of</li> </ul>	<p>indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.</p> <p>12.1.05 This Section shall survive expiration or termination of this Agreement.</p> <p>13.1 CANCELLATION BY THE OWNER</p> <p>13.1.01 The Owner may at its option and discretion cancel the Contract at any time without any default on the part of the Contractor by giving a written Notice of Cancellation to the Contractor and its Surety at least ten (10) days prior to the effective date of such cancellation.</p> <p>13.1.02 In the event of cancellation by the Owner, the Owner shall pay the Contractor for all labor performed, all materials and equipment furnished by the Contractor and its Subcontractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the Field Representative and approved by the Architect/Engineer and the Consulting Engineers. The Contractor will be paid for:</p> <ul style="list-style-type: none"> <li>A. The final value of all work completed under the Contract, based upon the approved Schedule of Values and/or Unit Prices,</li> <li>B. The final value of all materials and equipment delivered to but not incorporated into the work and properly stored on the site,</li> <li>C. The final value of all bonafide irrevocable orders for materials and equipment not delivered to the construction site as of the date of cancellation. Such materials and equipment must be delivered to the Owner to a site or location designated by the Owner prior to release of payment for such materials and equipment.</li> <li>D. No claims for loss of anticipated profits or for any other reason in connection with the cancellation of the Contract shall be considered.</li> </ul> <p>13.1.03 In the event of cancellation under this Article, the Contractor shall not be entitled to any anticipated profits for any work not performed due to such cancellation.</p> <p>13.1.04 In the event of cancellation under this Article, the Owner does not waive or void any credits otherwise due Owner at the time of cancellation, including Liquidated Damages, and back charges for defective or deficient work.</p>
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<p>. 1 That it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder .</p> <p>. 2 That it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder.</p> <p>. 3 That it is authorized to do business in the State in which the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project.</p> <p>. 4 That its execution of this Agreement and its performance thereof is within its duly authorized powers.</p> <p>. 5 That its duly authorized representative has visited the site of the Project, familiarized himself, or herself, with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.</p> <p>. 6 That it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, locale, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor. The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for</p>	<p>bankruptcy or insolvency, or</p> <p>g. Allows any final judgment to stand against him unsatisfied for a period of 10 days, or</p> <p>h. Makes an assignment for the benefit of creditors, or</p> <p>i. <u>Fails to carry out the requirements of the Owner's DBE Participation Program, or</u></p> <p>j. <u>If at any time the Surety executing the bond is determined by the Owner to be unacceptable and the Contractor fails to furnish an acceptable substitute Surety within ten (10) days after notice from the Owner. This ten (10) day notice and cure period is in lieu of the seven (7) day period set forth below, or</u></p> <p>k. For contracts that exceed One Million Dollars (\$1,000,000.00), Owner may terminate this Agreement if the Contractor is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or</p> <p>l. For any other cause whatsoever, fails to carry on the work in an acceptable manner.</p> <p>Should the OAR consider the Contractor in default of the Contract for any reason hereinbefore, he shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the Contract. <u>If the Owner terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the Work is completed.</u></p> <p>If the Contractor or Surety, within a period of 7 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the OAR of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without</p>	<p>13.1.05 Upon cancellation as above, the Field Representative shall prepare a certificate for Final Payment to the Contractor.</p> <p>13.2 TERMINATION BY DEFAULT OF CONTRACTOR</p> <p>13.2.01 The Contract may be terminated by the Owner for failure of the Contractor to comply with any requirements of the Contract Documents including but not limited to:</p> <p>A. Failure to begin the work under the Contract within the time specified in the "Notice to Proceed", or</p> <p>B. Failure to perform the work or failure to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the Contract, and the approved Progress Schedule, or C. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, after written directions from the Field Representative, or</p> <p>D. Discontinues the prosecution of the work, or</p> <p>E. Failure to resume work which has been discontinued within a reasonable time after notice to do so, or</p> <p>F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or failure to maintain a qualifier, or</p> <p>G. Allows any final judgment to stand against him unsatisfied for a period of 10 days, or</p> <p>H. Makes an assignment for the benefit of creditors, or</p> <p>I. For any other cause whatsoever, fails to carry on the work in an acceptable manner.</p> <p>J. The Owner may terminate this Contract if the Contractor is found to have submitted a false certification or to have been, or is subsequently during the term of this Contract, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.</p> <p>13.2.02 Before the Contract is terminated, the Contractor and its Surety will be notified in writing by the Architect/Engineer of the conditions which make termination of the Contract imminent. The Contract will be terminated by the Owner ten (10) days after said notice has been given to the Contractor and its Surety. Unless a satisfactory effort acceptable to the Owner has been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Contract breached and send a written Notice of Termination to the Contractor and its Surety.</p> <p>13.2.03 The Owner reserves the right, in lieu of termination as set</p>
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<p>hereunder.</p> <p>7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others, provided the absence of collectable insurance is not due to the Contractor's breach of a contract for insurance or this Agreement.</p> <p>§ 4.3.1 LIQUIDATED DAMAGES</p> <p>A. The parties acknowledge and agree to the following:</p> <p>1. The Owner shall be entitled to damages attributable to delays that are caused by any act or omission of Contractor or any entity under contract with Contractor (whether directly or indirectly) or for whom Contractor is otherwise responsible ("Delays").</p> <p>2. At the time of execution of the Agreement, it is extremely difficult, if not impossible, to ascertain with precise accuracy the amount of actual damages that the Owner would incur as a result of any Delays.</p> <p>3. The Liquidated Damages sums specified in Section 4.3.1 C below ("Stipulated Sum"), however, bear a substantial relationship to and approximate the actual damages the Owner is expected to incur from Delays, represent reasonable compensation to the Owner from damages anticipated from such Delays, and are not a penalty. The</p>	<p>violating the Contract, to take the prosecution of the Work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the Work and are acceptable and may enter into an agreement for the completion of the Contract according to the terms and provisions thereof, or use such other methods as in the opinion of the OAR will be required for the completion of the Contract in an acceptable <u>manner, including, but not limited to accepting assignment of any or all Subcontracts and finishing the Work by whatever reasonable method the Owner may deem necessary.</u></p> <p>All costs and charges incurred by the owner, together with the cost of completing the Work under the Contract, <u>including compensation for the Designer's or OAR's services and all other expenses made necessary thereby, will be deducted from any monies due or which may become due the Contractor.</u> If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the Owner the amount of such excess. <u>The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the OAR and this obligation for payment shall survive termination of the Contract. Termination of the Contract, or a portion thereof, shall neither relieve the Contractor of its responsibility for the completed Work nor shall it relieve its Surety of its obligation for and concerning any claim arising out of the Work performed.</u></p> <p><b><u>80-09.1 TERMINATION FOR CONVENIENCE.</u></b></p> <p>a. The Owner may, by written notice, terminate this contract in whole or in part at any time, either for the Owner's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Owner.</p> <p>b. If the termination is for the convenience of the Owner, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.</p> <p>c. If the termination is due to failure to fulfill the contractor's obligations, the Owner may take over the work and prosecute the same to completion by contract or otherwise. In such case,</p>	<p>forth in this Article, to withhold any payments of money which may be due or become due to the Contractor until the said default(s) have been remedied.</p> <p>13.2.04 In the event the Owner exercises its right to terminate the Contract for default of the Contractor as set forth herein, the Surety shall complete the Contract in accordance with its terms and conditions. If the Surety takes over, the time or delay between Notice of Default and start of work by the Surety is a Non-Excusable Delay. If the Surety fails to act promptly, but no longer than thirty (30) calendar days, or after such takeover fails to prosecute the Work in an expeditious manner, the Owner may exercise any of its other options including completing the Work by whatever means and method it deems advisable. No claims for loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.</p> <p>13.2.05 The Contractor shall immediately upon receipt communicate any Notice of Termination for Default issued by the Owner to the affected Subcontractors and suppliers at any tier.</p> <p>13.4 IMPLEMENTATION OF CANCELLATION OR TERMINATION</p> <p>13.4.01 If the Owner cancels or terminates the Contract, the Contractor shall stop all work on the date specified in the Notice of Cancellation or Termination and shall:</p> <p>A. Cancel all orders and Subcontracts which may be terminated without costs;</p> <p>B. Cancel and settle other orders and Subcontracts where the cost of settlement will be less than costs which would be incurred were such orders and subcontracts to be completed, subject to prior approval of the Field Representative,</p> <p>C. Transfer to the Owner, in accordance with directions of the Field Representative, all materials, supplies, work in progress, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance of the work and for which the Contractor has been or is to be paid;</p> <p>D. Deliver to the Field Representative As-Built Documents, complete as of the date of cancellation or termination, Plans, Shop Drawings, Sketches, Permits, Certificates, Warranties, Guarantees, Specifications, three (3) complete sets of maintenance manuals, pamphlets, charts, parts lists, spare parts (if any), operating instructions required for all installed or finished equipment or machinery, and all other data accumulated</p>
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<p>Stipulated Sum is based on a fair and methodically reasonable attempt to predict damages resulting from Delays, including, but not limited to, (a) the Owner's loss of revenues from lost rents; (b) the Owner's increased costs of financing and other costs of carry; and (c) the Owner's increased costs of taxes and insurance. Accordingly, neither party may change the Stipulated Sum, or the basis therefor, in any future setting.</p> <p>4. A material part of the consideration for which the Owner has bargained is the Contractor's willingness to assume the risk of pre-determined damages for Delays. The Contractor has attempted to bargain for additional consideration (e.g. an increased fee) in return for this risk and in fact is free to decline the Agreement altogether.</p> <p>5. Liquidated Damages shall constitute the Owner's sole remedy for unexcused delay.</p> <p>B. The Contractor hereby warrants and represents that it is familiar with liquidated damages provisions generally, and has received advice of counsel with respect to this Section 4.3.1.</p> <p>B. Liquidated Damages. In the event the Contractor does not achieve Substantial Completion within the Contract Time, as defined in Section 4.3, including approved extensions, the Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$) per calendar day until such time that the Contractor has achieved Substantial Completion in accordance with A201, Section 9.8 hereto (as modified). The Liquidated Damages shall begin to accrue on the first day after the Substantial Completion date as set forth in Section 2.3.1.2 hereto. In</p>	<p>the contractor is liable to the Owner for any additional cost occasioned to the Owner thereby.</p> <p>d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Owner. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.</p> <p>e. The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this contract. The Contractor shall proceed to complete any part of the Work, as directed by the Owner, and shall attempt to settle all Subcontractor/Supplier claims and obligations under the Contract with the Owner. Subject to the limitations in GP-40, the Contractor shall be compensated by the Owner for the Contractor's reasonable costs actually expended and profit earned on Work that has been fully completed and accepted by the Owner. There is no entitlement to anticipatory profits, unless agreed to by the Owner as part of a final Contract Modification that fully resolves all outstanding issues on the Project. The Contractor shall substantiate its request for payment as requested by the Owner.</p> <p><b>80-10 TERMINATION FOR NATIONAL EMERGENCIES.</b></p> <p>The Owner shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President.</p> <p>When the Contract, or any portion thereof, is terminated before completion of all items of Work in the Contract, payment will be made <u>(subject to the limitations of Section 40.02.2)</u> for the actual number of units or items of work completed at the Contract Price or as mutually agreed for items of Work partially completed or not started. No claims <u>for</u> loss of anticipated profits shall be <u>permitted</u>.</p> <p>Reimbursement for organization of the work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.</p> <p>Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the</p>	<p>by the Contractor for use in the performance of the work.</p> <p>E. The Contractor shall perform all work as may be necessary to preserve the work then in progress and to protect materials, plant and equipment on the site or in transit thereto.</p> <p>F. Cancellation or termination of the Contract or a portion thereof shall neither relieve the Contractor of its responsibilities for the completed work nor shall it relieve its Surety of its obligation for and concerning any just claim arising out of the work performed.</p> <p>G. In arriving at the amount due the Contractor under this Article, there will be deducted, (1) any claim which the Owner may have against the Contractor in connection with this Contract and (2) the agreed price for, or the proceeds of sale of materials, supplies or other items acquired by the Contractor or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the Owner.</p> <p><b>7.6 LIQUIDATED DAMAGES AND LIQUIDATED INDIRECT COSTS</b></p> <p>7.6.01 The parties to the Contract agree that time, in the completion of the Work, is of the essence. The Owner and the Contractor recognize and agree that the precise amount of actual damages for delay in the performance and Completion of the Work is impossible to determine as of the date of execution of the Contract and that proof of the precise amount will be difficult. Therefore, the Contractor shall be assessed Liquidated Damages on a daily basis for each Day the Contract Time is exceeded due to a Non-Excusable Delay. These Liquidated Damages shall be assessed, not as a penalty, but as compensation to the Owner for expenses which are difficult to quantify with any certainty and which were incurred by the Owner due to the delay. The amount of liquidated damages assessed shall be an amount, as stipulated in the Bid Form, per day for each calendar day which the Project is delayed due to a Non-Excusable Delay.</p> <p>7.6.02 The Owner and the Contractor recognize and agree that the precise amount of the Contractor's Indirect Costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract, and that proof of the precise amount will be difficult. Therefore, Liquidated Indirect Costs recoverable by the Contractor shall be assessed on a daily basis for each Day the Contract Time is delayed due to Compensable Delay. These Liquidated Indirect Costs shall be paid to compensate the Contractor for all indirect</p>
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<p>addition, Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$) per calendar day for each day that the time from Substantial Completion to Final Completion exceeds __ days. In the event of early Substantial Completion by Contractor, Contractor shall be awarded _____ Dollars (\$) per calendar day for each day it achieves Substantial Completion ahead of the Substantial Completion date as measured from the original Substantial Completion Date plus extensions of the Substantial Completion date as a result of Owner directed changes, not weather delays, subject to a maximum of _____ Dollars (\$). There is no incentive payment for early Final Completion. The Owner shall be entitled to set off from monies due to the Contractor during the course of the Project amounts sufficient to reimburse the Owner for these agreed upon Liquidated Damages.</p> <p>§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others, provided the absence of collectable insurance is not due to the Contractor's breach of a contract for insurance or this Agreement.</p>	<p>option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the OAR. Termination of the contract or a portion thereof shall neither relieve the Contractor of his/her responsibilities for the completed work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the work performed.</p> <p>8.2 DELAYS AND EXTENSIONS OF TIME</p> <p>8.2.1 The Contract Time shall be adjusted only by CO, CCD or FCO in accordance with the limitations of the Owner's Policies.</p> <p>8.2.2 RCOs and Claims relating to Contract Time shall be made in accordance with applicable provisions of Paragraph 4.3 and Article 7.</p> <p>8.2.3 If any portion of the Work remains uncompleted after the expiration of the Contract Time, as adjusted by Contract Modifications, if any, the Owner will incur substantial injury, including loss of use or facilities and inconvenience to the public. Damages arising from such injuries cannot be calculated with any degree of certainty. It is agreed that if Substantial or Final Completion is not achieved within the established Contract Time as adjusted by Contract Modifications, if any, the Contractor and the Contractors Surety shall be liable to the Owner for Liquidated Damages as identified in the Instructions to Bidders. Allowing the Contractor to finish the Work after the expiration of the Contract Time established by the Contract Documents shall in no way operate as a waiver by the Owner of any of its rights under this Contract or allowed by law.</p> <p>8.2.4 The Work under this Contract is only a part of the Owner's construction program. As a result, Work under this Contract may be required to be completed by certain milestone dates set forth in the Contract Documents ("milestone dates") in order to interface with the work on other components of the Owner's construction program. The schedule for the Owner's construction program or the specification of milestone dates is not intended to take the place of complete Work scheduling by the Contractor, but is provided to show certain critical milestone dates for various phases of the Work on which the Contractor's Baseline Schedule or Progress Schedules must be based. There shall be no changes in the milestone dates, except by CO, FCO or CCD. In the event that the Contractor fails to complete any required portions of the Work by the milestone dates, the</p>	<p>expenses caused by the Compensable Excusable Delay and shall include, but not be limited to, all profit, interest, home office overhead, field office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor or its Subcontractors, materialmen, suppliers and vendors. The amount of liquidated Indirect Costs recoverable shall be an amount, as stipulated in the Bid Form, per day for each day the Contract is delayed due to Compensable Excusable Delay.</p> <p>7.6.03 In the event the Contractor fails to perform any other covenant or condition of this Contract relating to the Work, the Contractor shall become liable to the Owner for any actual damages which the Owner may sustain as a result of such failure on the part of the Contractor.</p> <p>7.6.04 Nothing in this Article shall be construed as limiting the right of the Owner to terminate the Contract, to require the Surety to complete said Project, and to claim damages for the failure of the Contractor to abide by each and every one of the terms of this Contract as set forth and provided for in the Contract Documents.</p> <p>9.2 REMOVAL OF DEFECTIVE OR UNAUTHORIZED WORK</p> <p>9.2.01 All work which has been rejected by either the Architect/Engineer or the Field Representative shall be satisfactorily repaired or if it cannot be satisfactorily repaired, it shall be removed and replaced all at no additional cost to the Owner. Materials not conforming to the requirements of the Contract Documents shall be removed immediately from the site of the work and replaced with satisfactory material by the Contractor at no additional cost to the Owner.</p> <p>9.2.02 Work done without control lines and grades having been furnished by either the Architect/Engineer or the Field Representative, work done beyond the scope of the Contract, work done without proper inspections, or any Extra Work done without written authority, will be at the Contractor's risk, and such work shall not be paid for unless written authorization in the form of a Work Order or Change Order is obtained. In the event written authorization is not obtained, such work shall be removed or replaced by the Contractor, at no additional cost to the Owner, upon the directions of the Field Representative.</p> <p>9.2.03 Work that is defective or Work that fails to conform with the Contract Documents will be at the Contractor's risk, and no payment shall be made for such work. As specified in the</p>
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	<p>Contractor and its Surety shall be liable to the Owner for the Liquidated Damages identified in the Instructions to Bidders. In the event that the Contractor completes any required portions of the Work ahead of the milestone dates or is precluded from doing so by acts of the Owner or third parties, the Contractor shall not be entitled to damages against the Owner for completing or failing to complete the Work earlier.</p> <p>3.4 WARRANTY</p> <p>3.4.1 - The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly authorized by the Owner, may be considered defective. If required by the OAR or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided in the Work. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless otherwise provided in the Contract Documents. The Contractor shall deliver all required warranty documents before submitting the final application for payment. When the specifications require that a warranty shall be for longer than one year, the Contractor shall ensure that the warranty is issued directly to the Owner as the original purchaser warrantee. Any breach of the warranties will be a breach of this Contract.</p> <p>12.2 CORRECTION OF WORK</p> <p>12.2.1 The Contractor shall promptly correct Work rejected by the OAR, Designer, Owner or any governmental authority that fails to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the OAR's and Designers services and expenses incurred by the Owner.</p> <p>12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties or by terms of an applicable special warranty required by the Contract</p>	<p>Technical Specifications or at the option of the Owner, an agreed equitable amount may be deducted from the Contract amount in lieu of replacement or repair of work not fully meeting the requirements of the Contract Documents. Acceptance by the Owner of such deduction shall not modify the requirements of any guarantees called for by the Contract Documents. Written authorization for such work must be obtained in the form of a Work Order or Change Order with the appropriate credit to the Owner. In the event written authorization is not obtained, and upon the directions of the Field Representative, such work shall be removed or replaced by the Contractor at no additional cost to the Owner.</p> <p>9.2.04 If either the Architect/Engineer or the Field Representative so requests, the Contractor shall at any time before final acceptance of the work, remove or uncover such portions of the finished work as may be directed. After examinations, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. If the work thus exposed or examined proves acceptable, the uncovering or removing and the replacing of the covering or making good of parts removed shall be at the Owner's expense; but if the work so exposed or examined proves unacceptable, the uncovering or removing and the replacing of the covering or making good of the defective work shall be at the Contractor's expense.</p> <p>9.2.05 No extension of time will be allowed the Contractor in connection with the correction of work that fails to conform with the Contract Documents.</p> <p>9.3 CORRECTION OF WORK</p> <p>9.3.01 The Contractor shall promptly correct all Work rejected by either the Architect/Engineer or the Field Representative as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting rejected Work, including the cost of the Architect/Engineer's services, the Field Representative and the Owner's additional services.</p> <p>9.3.02 After being notified in writing by the Field Representative, or the Owner, of work that is not in accordance with the requirements of the Contract Documents, or of any defects in the Work, the Contractor shall promptly commence and prosecute</p>
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	<p>Documents, any of the work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall, at its cost, correct it promptly after receipt of written notice from the Owner or OAR to do so unless the Owner has previously given the Contractor a written acceptance of that specific condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the Final Completion of the Work. The obligations under this paragraph shall survive acceptance of the Work under the Contract and termination of the Contract. Even after the expiration of the one-year period, the Contractor shall cooperate with the Owner to resolve any issues that may arise with product warranties provided under this Contract.</p> <p>12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.</p> <p>12.2.4 If the Contractor does not correct such nonconforming Work within the reasonable time set forth in the written notice, the Owner may correct or remove such nonconforming work and all costs for such corrections or removals shall be assessed against the Contractor.</p> <p>12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or separate contractors caused by the Contractors performing correction or removal of Work which is not in accordance with the requirements of the Contract Documents.</p> <p>12.2.6 Nothing contained in Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Paragraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability and damages with respect to the Contractor's obligations other than specifically to correct the Work. Nor shall anything contained in this subsection be construed to limit any other remedies available to the Owner under the Contract or Florida law.</p>	<p>with due diligence all work necessary to fulfill the terms of the Contract, and to complete the Work within a reasonable period of time.</p> <p>9.3.03 In the event of an emergency, constituting an immediate hazard to the health or safety of personnel and/or property, the Owner, without prior notice, has the right but not the obligation to undertake at the Contractor's expense, all work necessary to correct such hazardous condition when it was caused by work of the Contractor not being in accordance with the requirements of the Contract Documents.</p> <p>9.3.04 If, within one (1) year after the date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct such work within ten (10) days after receipt of a written notice from the Owner to do so. In the event the Contractor fails to comply, the Owner may proceed to have such work done at the Contractor's expense and the Contractor and/or its surety will pay the cost thereof upon demand. The Owner shall be entitled to all costs, including reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.</p> <p>9.3.05 All such defective or non-conforming work shall be removed from the site if necessary, and the work shall be corrected to comply with the Contract Documents without cost to the Owner.</p> <p>9.3.06 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.</p> <p>9.3.07 Upon failure on the part of the Contractor to comply forthwith with any order of the Field Representative made under the provisions of this Article, the Owner will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the Owner) from any monies due or to become due the Contractor.</p> <p>9.3.08 Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents.</p> <p>11.4 GUARANTEES AND WARRANTIES</p> <p>11.4.01 The guaranty period for the entire Work covered by the</p>
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	<p>12.3 ACCEPTANCE OF NONCONFORMING WORK                  12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal or correction. If the Owner accepts the Work under such circumstances, the Total Contract Price will be reduced in an equitable manner through a Contract Modification, whether or not final payment has been made.</p>	<p>Performance and Payment Bonds shall not begin until Substantial Completion of all work under the Contract and will be for a period of one (1) year unless otherwise stipulated in the Contract Documents.</p> <p>11.4.02 The guaranty period for equipment covered by Contractor's and Subcontractors' guarantees shall start at the time of Beneficial Occupancy for any portion of the Work which is occupied by the Owner prior to Substantial Completion, or at Substantial Completion, whichever occurs first, and will be for a period of one (1) year unless otherwise stipulated in the Contract Documents.</p> <p>11.4.03 The Contractor hereby warrants and guarantees that all work shall be in accordance with the Contract Documents. The Contractor will submit a written guarantee in the form found in the Contract Documents prior to Substantial Completion. The Contractor further agrees that it will correct all defects discovered within one (1) year (or longer if a longer period is stipulated in the Contract Documents,) of the date of Substantial Completion and that it will commence work on such repairs within ten (10) days after being notified by the Owner of the need for this work.</p> <p>11.4.04 If the Contractor fails to act within this time period, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the cost thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.</p> <p>11.4.05 The Contractor will correct all latent defects discovered within ten (10) years after Substantial Completion provided that the Owner shall notify the Contractor of each latent defect within the time specified by law. The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for all damages sustained by the Owner resulting from latent defects, fraud, or such gross mistakes as may amount to fraud, discovered after the stated guarantee and warranty periods have expired. If the Contractor fails to act within ten (10) days, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the cost thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.</p> <p>11.4.06 Required Guarantees:                  A. Subcontractor's Guarantees                  The Contractor shall furnish a written guaranty from each</p>
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		<p>Subcontractor in the form found in the Contract Documents.</p> <p>B. Manufacturer's Guarantees          The Contractor shall furnish an original guaranty or warranty from each of the manufacturers of equipment or materials supplied and installed under this Contract. Each guaranty or warranty shall be in accordance with the respective manufacturer's association Standard Guaranty and shall be in favor of the Contractor and the Owner.</p> <p>C. Special Guaranty and Warranty Requirements          The Contractor shall also furnish any special guaranty or warranty called for in the Contract Documents.</p> <p>11.4.07 All guarantees and warranties shall be delivered to the Field Representative prior to Beneficial Occupancy or Substantial Completion, whichever is applicable.</p> <p>11.4.08 Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to the health or safety of employees, property, lessees, or the general public, the Owner may undertake, at the Contractor's expense without prior notice, all work necessary to correct such hazardous condition when it was caused by work of the Contractor not being in accordance with the requirements of this Contract.</p>
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**RISK: CLAIMS PRESENTATION & DISPUTE RESOLUTION**

Talking Points:	<ul style="list-style-type: none"> <li>• Claim presentation timing requirements for notice and substantiation options (for example, notice within 15 days of event, substantiation 30 days later).</li> <li>• Pre-suit mediation or tiered-negotiation options for pre-suit resolution.</li> <li>• Claim audit rights and/or limited discovery rights.</li> <li>• Litigation or arbitration as final resolution option (specifying jury versus non-jury, or if arbitration, the number of panelists, plus governing law, venue, and jurisdiction).</li> <li>• Consider Advanced ADR/Dispute Resolution Boards for larger, complex construction or infrastructure projects.</li> <li>• If allowed by state law, contractually limit statutes of limitation and repose to a commercially reasonable duration.</li> </ul>
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Source:

AIA (A102-2007)	Orlando International Airport	Miami International Airport
<p>ARTICLE 13 DISPUTE RESOLUTION § 13.1 INITIAL RECOMMENDATION The Architect will make initial recommendations pursuant to Section 4.4 of the AIA Documents A201 2007 as modified, unless the parties appoint another individual, not a party to the Agreement to make initial recommendations.</p> <p>§ 13.2 BINDING DISPUTE RESOLUTION For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007 as modified, the method of binding dispute resolution shall be as follows:</p> <p><i>(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)</i></p>	<p>15.2 <u>Claims Process.</u> The Owner's liability to CM@R for any claims arising out of or related to the subject matter of this Agreement, (including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs damages or losses because of concealed conditions as defined in Article 10 or for additional work), shall be governed by the following provisions:</p> <p>(1) If a CR [Contingency or Time Request] is denied and the CM@R disagrees with the denial, the CM@R must submit a written Notice of Claim to the OAR, copying the Owner's Senior Director of Planning, Engineering and Construction, within <b>5 business days</b> of receipt of the notice of the denial. The Notice of Claim must include a copy of the denial and a detailed statement of all elements of the claim, a description of the work affected, a timeline or schedule of events related to the claim and an itemized, detailed cost breakdown sufficient to analyze the value and time impact of the claim, specifically describing all cost and time impacts. The CM@R shall follow the protocol that is established for its delivery of notices of claims, which must include a transmittal signed by the Program Director or designee. The CM@R waives all claims and releases the Owner from all liability for potential claims when a Notice of Claim is not timely submitted. Daily reports, Applications for Payments and other administrative documents required by this Agreement do not constitute written notice of a claim.</p> <p>(2) For any claim made by the CM@R against the</p>	<p><b>DISPUTES RESOLUTION BOARD</b> <b>X1 Purpose</b> <b>X.1.1</b> The purpose of this dispute resolution process is primarily to assist in the prevention and mitigation of impacts to the project as a result of disputes between the Contractor and the Owner, and secondarily to assist in the resolution of disputes and claims between Contractor and Owner arising out of the Contract Documents. The intent of the establishment of the Dispute Resolution Board ("Board") is to facilitate contemporaneous agreement as to the resolution of events occurring during the progress of the work, and if agreement cannot be quickly reached, then to fairly and impartially consider disputes placed before it and to provide written recommendations for resolution of these disputes to both the Owner and the Contractor. All decisions of the Board are non-binding on the parties. Submission of a disputed matter to the Board for its written recommendation is an absolute condition precedent to filing suit or to filing a demand for arbitration with regard to the matter.</p> <p><b>X.2 Scope of the Work</b> <b>X.2.1 Operations:</b> The Board will formulate its own rules of operation, which will be kept flexible to adapt to changing situations. The Owner and the Contractor will keep the Board informed of construction activity and progress by submitting to the Board monthly written progress reports and other relevant data. Selected project records, including but not limited to schedule updates, requests for information, requests for work orders, requests for change orders, will be furnished to the Board at the same time as they are initially furnished to the other parties engaged on the project. The Board will visit the project at regular intervals and at times of critical construction events and meet with the representatives of the Owner and the Contractor.</p> <p><b>X.2.2 Membership of the Board:</b> The Board shall consist of three neutral</p>

**Construction Agreements**

<p>Arbitration pursuant to Section 15.4 of AIA Document A201-2007</p> <p>Litigation in a court of competent jurisdiction located in the same jurisdiction as the Project, unless another method is agreed to by the Parties to this Agreement.</p> <p>Other (<i>Specify</i>)</p> <p>§ 13.2.1 The prevailing party in any legal action or proceeding to enforce any provision of this Agreement shall be awarded all reasonable attorney's fees and costs incurred in good faith in that legal action or proceeding.</p>	<p>Owner, the basis of which includes a claim by a subcontractor, or any other person or entity under the CM@R's control, for acts or omissions allegedly attributable to the Owner, the CM@R must certify by affidavit that it has carefully examined each subcontractor's claim and has verified the accuracy and contract compliance of each claim. Such certification under oath must be made by the CM@R prior to the submission of any subcontractor claim to the Owner and shall constitute an express condition precedent to the CM@R having a cause of action against the Owner that includes a subcontractor's claim. A copy of such certification shall be provided to the Owner contemporaneous with the submission of any subcontractor claim to the Owner. The Owner will not consider any claim that has not been properly certified by the CM@R.</p> <p>(3) The CM@R's compliance with the CR requirements of Article 10.2 2 [Request for Contract Modifications] and the Notice of Claim and documentation requirements set forth in Paragraphs 15.2 (1) and (2) is an express condition precedent to the CM@R having a cause of action against the Owner and to any other dispute resolution process in this Agreement. The failure to comply with Paragraphs 10.2 and 15.2 (1) and (2) shall constitute a waiver of the claim.</p> <p>(4) The parties shall make every effort to work in good faith and cooperate to fully resolve any claim and agree upon a Contract Modification.</p> <p>(5) If an agreement cannot be reached on a properly submitted claim, either party may provide written notice of the unresolved dispute to the Chair of the Dispute Review Board (DRB), within <b>10 business days</b> after a final decision has been reached on the dispute (i.e., the Owner's denial of the claim or any portion thereof). The Owner, OAR, CM@R, and Consultant shall all be provided a copy of the notice. The notice shall state clearly and in detail the specific issue to be addressed by the DRB, the basis for the party's objection to the final decision made by the other party, and the requested recommendation of the DRB.</p>	<p>members who shall not have been previously employed or acted as a consultant in any capacity for either party. One member shall be selected by Contractor and one member shall be selected by Owner. The third member shall be selected by agreement of the parties or if the parties are unable to reach agreement within 15 days after the award of the contract and prior to the effective date of the Notice to Proceed, by the two party-appointed members. Unless the parties agree otherwise, each party-appointed member shall have significant construction experience and be a non-lawyer. The chairman of the Board shall have significant experience with public building construction and be a lawyer. The non party-appointed Board member will serve as Chairman of the Board. The members of the Board shall be selected no later than 15 days after the award of Contract and prior to the effective date of the Notice to Proceed. Claims by either party arising out of events occurring prior to the selection of the Board are waived and released.</p> <p><b>X.2.3 Meetings:</b> The first meeting of the Board shall occur within 21 days of the effective date of the Notice to Proceed. Subsequent meetings will be regularly held on site as set forth in Frequency of Meetings below. Each meeting will consist of an informal round table discussion and, if possible, a field inspection of the work. The round table discussion will be attended by representatives from the Owner and the Contractor. The round table discussions shall include presentations from both Owner and Contractor to the Board that addresses the following items: construction work accomplished since the last meeting, current status of the work the current and future schedule, payment status, potential future problems that may come before the Board, proposed solutions to those problems, and an update regarding previously handled or ongoing problems. In addition to round table discussions, agendas for regular meetings of the Board may include the following:</p> <p><b>X.2.3.1</b> Presentations by representatives of the parties with respect to any issues that have arisen or have been properly presented to the Board through the below stated Request for Hearing process. Issues that were not submitted to the Board pursuant to the procedures delineated herein shall not be presented to the Board for consideration without the agreement of both parties.</p> <p><b>X.2.3.2</b> Rebuttals, if requested, by representatives of the parties with respect to presentations made by the representatives of the other party.</p> <p><b>X.2.3.3</b> Set a tentative date for next meeting.</p> <p><b>X.2.4 Frequency of Meetings:</b> In order for the Board to become familiar with the project circumstances, it will begin to meet at least once per month. If conditions warrant, the Chairman in consultation with other Board members, the Contractor and the Owner, may reduce/increase the time between meetings to better serve the parties. Factors to be considered</p>
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		<p>when setting the time between meetings include work progress, occurrence of unusual events and the number and complexity of ongoing or potential disputes.</p> <p><b>X.2.5 Procedure for scheduling disputed matters before the Board:</b> The parties should attempt to resolve potential disputes without resorting to use of the Board. However, in the event that a resolution is unlikely, the following procedures must be followed:</p> <p><b>X.2.5.1</b> Before referring a matter to the Board a representative of either party must first submit a letter titled Notice of Disagreement to his/her counterpart from the other party describing the issue that has arisen. The party receiving the notice shall have 7 days from receipt of the letter to submit a response. If after 14 days from the initial receipt of the Notice of Disagreement the issue has not been resolved, the party who sent the original Notice may file a written Request for a Hearing to the Board and the matter will be scheduled before the Board. The written Request shall contain a copy of the initial Notice of Disagreement and the response to this Notice, if any, by the other party. No Request may be filed with the Board without first having complied with the Notice of Disagreement requirements of this section.</p> <p><b>X.2.5.2</b> Upon receipt of a Request for a Hearing, the Chairman will schedule the matter for Hearing at a location in Miami, Florida within 30 days. The parties may request that the matter be deferred in the event that additional preparation is necessary.</p> <p><b>X.2.5.3</b> The parties shall provide to the Board position papers with appropriate supporting documentation no later than 14 days before the commencement of the Hearing. The parties shall provide rebuttal papers, if any, no later than 5 days before the Hearing.</p> <p><b>X.2.5.4</b> The party submitting the Request shall be responsible to provide the Board with 3 copies of each document submitted with the Request, one for each Board member. The party furnishing any written evidence or documentation to the Board shall also furnish copies of such information to the other party concurrently when furnishing the documents to the Board. The Board may request that additional written documentation and explanations from both parties be sent to each member and to the other party for study before the hearing begins.</p> <p><b>X.2.5.5</b> Both parties will be afforded an opportunity to be heard by the Board and to offer evidence. The Board members may ask questions, request clarification, or ask for additional data. In large or complex disputes, additional hearing days may be necessary in order to consider and fully understand all the evidence presented by both parties.</p> <p><b>X.2.5.8</b> Attorneys are generally discouraged from attending the Board meetings, but are allowed to participate in the Hearings on the following limited basis. Any participation in a hearing by legal counsel or</p>
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		<p>independent claims or technical experts will be for the sole purpose of facilitating a party's presentation. Legal counsel may not examine directly or by cross-examination any witness, object to questions asked or factual statements made during the hearing or make or argue legal motions.</p> <p><b>X.2.5.7</b> All of the Board's recommendations for resolution of disputes will be given in writing to both the Owner and the Contractor, within 10 days of completing the Hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. The Board's initial 10 day written recommendation will address contractual entitlement and the number of days of extension of milestones and/or Contract Time, if at issue. The parties will have 7 days after the 10 day written recommendation to resolve the issue. The parties may agree to mediate the resolution during this 7 day period. If the parties cannot agree on the resolution of the 10 day recommendation during this 7 day period, the Board shall issue a written recommendation addressing monetary damages no later than 24 days from completion of the Hearing.</p> <p><b>X.2.5.8</b> No provisions associated with the Dispute Resolution Board shall in any way abrogate the Contractor's responsibility for preserving a claim filed in accordance with the requirements set forth in the Contract Documents.</p> <p><b>X.2.5.9</b> In the event that the Owner is not in agreement with a decision or recommendation of the Board, the Owner may elect to issue a Work Order or Change Order, with appropriate reservations of rights.</p> <p><b>X.2.5.10</b> Although the Board's recommendations are non-binding, all records and written recommendations of the Board will be admissible as evidence in any subsequent court proceeding or other dispute resolution procedures.</p> <p><b>X.2.5.11</b> By agreement of the parties and the Board, the steps listed under this section may be omitted and the time periods shortened in order to hasten resolution.</p> <p><b>X.2.6 Neutrality of Board Members:</b> All Board members shall act impartially and independently when performing their functions as Board members including in the consideration of any Contract provisions and the facts and conditions surrounding any written Request to the Board by the Owner or the Contractor. Board members shall not discuss or communicate with any party without the other party being present. Seeking any Board member's advice or consultation is expressly prohibited, unless it is done in the open at a Board meeting and in the presence of the other party.</p> <p><b>X.2.7 Records of Meetings:</b> While the Board may take notes or keep other records during the consideration of a Notice of Disagreement, it is not necessary for the Board to keep a formal record. If possible, it is desirable to keep the hearings completely informal. However, formal records of the Hearings in regards to Notices of Disagreements may be transcribed by a</p>
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		<p>court reporter if requested by one party. The party requesting the court reporter shall be responsible for any costs. Audio and/or video recording of the meeting is prohibited without prior written agreement by the Board and the parties.</p> <p><b>X.2.8 Recommendations of the Board:</b> All recommendations of the Board shall be executed by all Board members and supported by at least two members. Recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.</p> <p><b>X.2.9 Reconsiderations:</b> Either party may seek written reconsideration of a written recommendation within 3 working days of receipt of such recommendation from the Board.</p> <p><b>X.2.10 Construction Site Visits:</b> The Board members are encouraged to visit the site on a regular basis to keep abreast of construction activities and to develop a familiarity of the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed between the Owner, the Contractor, and the Board. Regarding matters before the Board, it will probably be advantageous but not absolutely necessary for the Board to personally view the site and any relevant conditions. If viewing by the Board would cause delay to the project, photographs and descriptions of these conditions collected by either or both parties will suffice.</p> <p><b>X.3 Coordination and Logistics</b> The Owner, in cooperation with the Contractor, will coordinate the operations of the Board.</p> <p><b>X.4 Time for Beginning and Completion</b> The Board is to be in operation until all Requests for Hearing submitted prior to Final Acceptance of the Program are heard or Final Acceptance of the Program, whichever is later.</p> <p><b>X.5 Payment</b> The amounts paid to the chairman of the Board and the other Board members for their services, including travel costs pursuant to Florida law, shall be paid from a dedicated allowance account established within the Contract for that purpose. The Contractor shall pay the Board members in the first instance, and shall submit a request to the Owner for reimbursement of all expenses incurred, without markup or bond. Owner shall process and pay Contractor for Board expenses as part of regular project periodic pay requests, and the Contractor shall be responsible to promptly pay the Board members with no withholding or deductions. The daily fee to be paid to each Board member shall be _____.</p> <p><b>X.6 Costs and Accounting Records</b> The Board members shall keep available the cost records and accounts pertaining to all of the work by the Board for inspection by representatives of the Owner or the Contractor for a period of three years after final</p>
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		<p>payment. If any litigation, claim, or audit arising out of, in connection with, or related to the Contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records in completed.</p> <p><b>X.7 Termination of Disputes Resolution Board</b>                  Upon mutual written agreement of both parties, this disputes resolution process may be terminated.</p> <p><b>X.8 Termination of Board Membership</b>                  Board members may withdraw from the Board by providing four weeks written notice to all other parties. Should the need arise to appoint a replacement Board member, the replacement Board member shall be selected as was the departing Board member. The selection of a replacement Board member shall begin promptly upon notification of the necessity for a replacement.                  The chairman of the Board may be terminated without cause by agreement of the parties. Each party may change its appointed Board member on one occasion during the life of the Contact on a without cause basis.                  Board members may be terminated for cause by any of the parties. The party desiring to terminate a Board member for cause will notify the other party and the other Board members and shall provide an explanation for the requested termination. If the other party does not agree that cause exists, the remaining Board members shall convene and decide whether cause exists and such decision shall be effectuated.</p> <p><b>X.9 Independent Contractor</b>                  Each Board member, in the performance of his or her duties on the Board shall act in the capacity of an independent agent and not as an employee of either the Owner or the Contractor. Each Board member shall have the same immunity as does a mediator appointed by Court order, as provided by Florida law.</p> <p><b>X.10 Public Records</b>                  Each Board member, Contractor, and the Owner shall allow public access to all documents, papers, letters, and other material made or received by the parties that are related to this Board and the activities of this Board, subject to the provisions of Chapter 119, Florida Statutes. However, upon receipt of any such public records request, the parties hereto shall immediately notify the Owner and obtain prior written consent from the Owner before releasing such records. Plans, schematics, security plans and other project elements may not be released unless the recipient executes the same confidentiality agreement as is part of the Contract Documents.</p> <p><b>X.11 Statute Of Limitations</b>                  No part of the Disputes Resolution Board Section nor any of the procedures delineated herein will in any way toll any statutes of limitations for either of the parties.</p>
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**RISK: STANDARD OF CARE & FAULTY WORK**

Talking Points:	<ul style="list-style-type: none"> <li>• Claim presentation requirements.</li> <li>• Pre-suit mediation or tiered-negotiation.</li> <li>• Litigation or arbitration.</li> <li>• Consider Advanced ADR/Dispute Resolution Boards for larger, complex construction or infrastructure projects.</li> </ul>
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Source:

Chicago O'Hare/Chicago Midway	Orlando International Airport	Salt Lake City International Airport
<p><b>4.2.1. Standard of Performance</b> Contractor shall perform the Services with that degree of skill and care required to satisfactorily meet the requirements as set forth in the Detailed Specifications and to the satisfaction of the CPO. The Contractor will, at all times, act in the best interest of the City.</p> <p><b>4.2.8. Work Performed on City Property</b> Contractor's personnel will exercise safe and sound business practices with the skill, care, and diligence normally shown by professional technicians employed in the type of Services required under this Contract. The Contractor will employ only competent and efficient employees, and whenever, in the opinion of the Commissioner, any employee is careless, incompetent, obstructs the progress of the Services, acts contrary to instructions or conducts themselves improperly, the Contractor will, upon the request of the Commissioner, remove the employee from the premises and will not employ such employee again for the Services under this Contract, except with the written consent of the Commissioner. While on City premises, the Contractor will not store any equipment, tools or materials without prior written authorization from the Commissioner. The City will not be responsible for or liable to pay the Contractor for any loss of equipment, tools or materials stored in unsecured areas without proper authorization.</p> <p><b>3.6.1.4.2. Interruption of Airport Operations</b></p>	<p><b>1. SCOPE OF WORK</b> This Contract will be to furnish all labor, supervision, materials, repair parts and consumables (except for those items identified within as provided by the Aviation Authority), supplies, tools, equipment, manuals, and all other items necessary or proper for, or incidental to, performing twenty four (24) hours per day, seven (7) days per week, on-site maintenance and repair of the Automated People Mover (APM) System at the Orlando International Airport ("OIA") in accordance with the Contract Documents. AU work shall be performed in accordance with the Specifications attached hereto.</p> <p>2.4 The Authority shall conduct inspections and evaluations of the Contractor's work and verify the performance and availability of the system as stated in Section 3.17 of the Specifications to determine whether the work performed under the Contract has in fact been accomplished to the Authority's satisfaction and/or completed in a timely manner.</p> <p>2.5 The Authority shall notify the Contractor of any specific item or items that are unsatisfactory to the Authority, and if the Contractor has not performed such item or items of maintenance and repair services in accordance with the Contract requirements within ten (10) calendar days after the Authority's notice, the Authority, in addition to all other rights provided to the Authority under this Contract, or by law or equity, may deduct a reasonable amount of compensation for such item or items from the Contractor's invoice and shall have no obligation to pay the Contractor for such item or items.</p> <p>2.9 In order to assure that the Authority receives the quality of</p>	<p><b>2.01 Basic Services.</b> Provider shall perform the "Basic Services," as more fully specified in Exhibit A, at the time and in the manner set forth therein. Such work shall include without limitation ongoing preventative maintenance and emergency, on-call services for the Passenger Boarding Bridges (PBBs) as such work is described generally below, and as further set forth in Exhibit A. In general, such services include the following: (a) All ongoing preventative maintenance which shall include routine and recommended practices necessary in order to maintain the PBB system in a good and operable condition. (b) On-call response, which shall include emergency, on-call repair work as needed to restore the PBB system to a good and operable condition, and to minimize any disruption in use. (c) Maintaining equipment and parts inventories, and providing certain parts in connection with Provider's work. (d) Training of City personnel and others designated by City with respect to operation, maintenance, and repair of the PBB system.</p> <p><b>2.02 Additional Services.</b> Provider shall perform Additional Services as more fully specified in Exhibit B, at the time and in the manner specifically authorized in writing in advance by City through an authorized amendment to this Agreement or by Task Order ("Task Order") in accordance with this Agreement. (a) Cost. Provider shall perform Additional Services for the price negotiated between the parties and set forth in an executed amendment or Task Order using the rates set</p>

## Repair/Maintenance Agreements

<p>If Contractor requires interruption of Airport facilities or utilities in order to perform work, Contractor must notify the Deputy Commissioner in charge of the project at least five (5) working days in advance of such time and must obtain the Deputy Commissioner's approval prior to interrupting the service. Interruption of service must be kept to an absolute minimum, and to the extent practicable the work which occasions such interruptions must be performed in stages in order to reduce the time of each interruption. In case of interruptions of electrical services, service must be restored prior to sunset of the same day. Prior to start of work, the Contractor must request of the Deputy Commissioner in charge of the project to provide specific requirements and instructions which are applicable to the particular work site areas, including, but not limited to, areas available for storage of any equipment, materials, tools and supplies needed to perform the work. Contractors must advise the Deputy Commissioner in charge of the project of the volume of equipment, materials, tools, and supplies that will be required in the secured areas of the airport in order to make arrangements for inspection of such equipment, materials, tools, and supplies at a security checkpoint.</p>	<p>service and Contractor response necessary to ensure the safety of the passengers of the APM system and to achieve maximum designed life-cycle of the covered system/equipment, the Authority may impose deductions from the monthly Contract prices due the Contractor, for failure to perform in accordance With the system availability and reliability requirements of Section 3.17 of the Specifications. In no event shall the Contract price be reduced or payments deducted for any event or system malfunction resulting from causes outside of the Contractor's responsibility or control (i.e. third-party damages).</p> <p><b>QUALITY OF WORK</b></p> <p>8.1 The Contractor shall perform all of its obligations and functions under this Contract by means of its own employees, or by a duly qualified subcontractor which is approved in advance by Authority. Such subcontractor which is an affiliate, parent, or subsidiary company; or had principal owners, relatives, close kin, management, or employees common to the Contractor; or any other party that has the ability to significantly influence the management or daily business operations of the subcontractor must be disclosed in writing to the Executive Director. Goods and services provided by subcontractors which are reimbursed by the Authority must be bona fide arm's-lengths transactions. In the event a subcontractor is employed, the Contractor shall continuously monitor the subcontractors performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself perform or remedy any obligations or functions which the subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent a Contractor from using the services of a common carrier for delivering goods to the Authority</p>	<p>forth in Exhibit C, attached hereto and made part hereof.</p> <p>(b) Measures to Determine Price. If City and Provider cannot agree on the cost for any Additional Services City may perform the work or have others perform the work and Provider waives any claims for damages or other costs in connection therewith.</p> <p>(c) Amendment/Task Order. No work on Additional Services under this Article shall be begun by Provider until City and Provider have a signed an amendment to this Agreement or a Task Order specifically for such Additional Services.</p> <p><b>2.03 Completion and Inspection of Work.</b></p> <p>Provider shall inspect all services performed under this Agreement whether such services are performed as a part of Basic Services or otherwise. City may inspect any work performed by Provider under this Agreement, whether such work is performed as a part of Basic Services or otherwise, at anytime. If City finds services performed by Provider insufficient at anytime Provider shall re-do services to City's satisfaction within the timeframe determined by City. No such work shall be considered complete until City has accepted the work. Such acceptance shall be given by City's Representative in writing. No acceptance or inspection by City may relieve Provider of any obligation under this Agreement, whether with respect to performance of the work, the warranty for such work, or otherwise outlined in Exhibits A and B. No acceptance or inspection by City may relieve Provider of any obligation to inspect or perform services and City's right to inspect does not relieve Provider of ensuring Quality Assurance as described in Section 2.04 below.</p> <p><b>2.04 Quality Assurance.</b></p> <p>Provider shall be solely responsible to City for the quality of all services performed by Provider or its subcontractors under this Agreement. All services furnished by Provider or its subcontractors shall be performed in accordance with the best professional judgment and skill and in a timely manner, and shall be fit and suitable for the purposes intended by City as defined in this Agreement. Provider and Provider's work product shall conform to all manufacturers' specifications.</p>
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**RISK: LIABILITY & DAMAGES**

Talking Points:	<ul style="list-style-type: none"> <li>Only consider capping liability for consequential damages to a heightened, but specified amount, if unlimited consequential damages are not available.</li> </ul>
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Source:

Chicago O'Hare/Chicago Midway	Orlando International Airport	LaGuardia Airport
<p>4.2.5.1. Correction or Re-Performance of Services If the Contractor has failed to properly perform the Services, upon direction in writing from the Commissioner, Contractor will promptly re-perform or correct all work or Services identified to be defective or as failing to conform to the standards set forth in the Contract Documents, whether observed before or after completion of the Services. The Contractor is responsible for all costs of correcting such defective or nonconforming Services, including costs associated with fixing any damages, re-performing the Services, and any costs required due to Contractor's inadequate performance.</p> <p>4.2.5.2. Timeliness The Contractor must provide the Services in the time-frame required in the Detailed Specifications. If Contractor's response and/or completion time for performance of the Services fails to meet this standard, the CPO may declare the Contractor in default.</p> <p>4.2.5.3. Delay If the City has caused the Contractor be obstructed or delayed in the commencement, prosecution or completion of the Services by any act or delay of the City or by order of the Commissioner, then the time herein fixed for the completion of said Services will be extended for an equivalent period of time. It is otherwise understood that no extension of time will be granted to the Contractor unless Contractor, immediately upon knowledge of</p>	<p>4.1. The Contractor shall be responsible for the prompt payment of any fines imposed on Authority or Contractor by the FAA, Transportation Security Administration (TSA) or any other federal, state or local governmental agency as a result of Contractor's, or its subcontractors (or the officers', directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit The liability of the Contractor under this Section 4 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provisions of Section 5 hereof, and such liability shall survive the expiration or earlier termination of this Contract.</p> <p>4.2. The Contractor's liability to Authority hereunder shall be limited to Ten Million Dollars (\$10,000,000.00).* In addition, neither party shall be liable for indirect or consequential damages arising out of this Agreement. Such limitations and exclusions shall not apply (a) to claims for bodily injury or death (including obligations of indemnification from claims 8gains1 the Authority for bodily injury or death) and (b) to claims arising under Section 5 hereof (Indemnification and Insurance) and related insurance obligations.</p> <p>4.3. The Contractor shall not be responsible for any costs, damages or losses of any nature whatsoever, including but not limited to delays, penalties, outages or downtime, arising from or caused by work being performed under Contract BPS-10Q, whether or not caused by the act or omission of a party to that Contract or a third party, except for Contractor's and its subcontractors' percentage of fault, if any, for such costs, damages, losses, delays, penalties, outages and downtime.</p> <p><i>*Note that this damage limitation was a non-negotiable for the vendor and due to the complexity of the service, was required. This provision exemplifies how to limit damage caps to insurance coverage.</i></p>	<p>The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. In the event that the Contractor fails to satisfactorily perform all or any part of the Work required hereunder in accordance with the requirements set forth in the Service Agreement (as the same may be modified in accordance with provisions set forth elsewhere herein) then, inasmuch as the damage and loss to the Port Authority for such failure to perform includes items of loss whose amount will be incapable or very difficult of accurate estimation, the damages for such failure to perform shall be liquidated as stated below unless delay is not due to the fault of the Contractor. Under the following paragraphs A thru G that detail conditions in which liquidated damages may be imposed, the amounts listed under each of paragraphs A thru G apply separately to each occurrence that exceeds the specified time required or scope outlined in the Scope of Work.</p> <p>A. If the Contractor fails to meet the requirements of the Implementation Schedule as specified in the Scope of Work as the same may, as hereinafter provided, be revised, within the time required herein, time being of the essence, damages shall be assessed in the amount of \$500 per day or part thereof until the work is completed in accordance with the requirements of the Contract and shall be deducted from the amount payable for the Implementation Costs inserted by the Contractor in Attachment B, Part III – Costs Proposal Form, Section1.</p> <p>B. If the Contractor fails to restore weather forecasting services as specified in the Contract Service Agreement as the same may, as hereinafter provided, be revised, within the time required herein, time being of the essence, damages shall be assessed in the amount of \$100 dollars</p>

## Repair/Maintenance Agreements

<p>the causes of an unavoidable delay, first notifies the Commissioner and CPO in writing, stating the approximate expected duration of delay. Contractor shall not be entitled to an extension of time without such prior notification and request for extension. The CPO and the Commissioner will determine the number of days, if any, that the Contractor has been delayed. Such determination when approved and authorized in writing by the Commissioner and CPO, will be final and binding. It is further expressly understood and agreed that the Contractor shall not be entitled to any damages or compensation from the City, or be reimbursed for any loss or expense on account of any delay or delays resulting from any of the causes aforesaid.</p> <p>Each release issued by the Department will describe the work the Contractor must perform under the release. The Contractor must ensure that it can perform the work in a satisfactory manner. The Contractor will be wholly responsible for faulty performance of the work and will assume all liability for any damages caused in the performance of the work.</p>		<p>per hour or part thereof for each hour beyond the time specified in Section XIV, E1, Time to Repair, On-Call Remedial Maintenance as it relates to weather forecasting services and shall be deducted up to the total monthly fee per Airport.</p> <p>C. If the Contractor fails to respond and repair to reported malfunctions, other than loss of weather forecasting services, as specified in the Contract Service Agreement as the same may, as hereinafter provided, be revised, within the time required herein, time being of the essence, damages shall be assessed in the amount of \$100 dollars per hour or part thereof for each hour beyond the time specified in Section XIV, E1, Time to Repair, On-Call Remedial Maintenance as it relates to reported malfunction and shall be deducted up to the total monthly fee per Airport.</p> <p>D. If the Contractor fails to correct reported software errors as specified in the Contract Service Agreement as the same may, as hereinafter provided, be revised, within the time required herein, time being of the essence, damages shall be assessed in the amount of \$100 dollars per day or part thereof for each day beyond the time specified in Section XIV, E1, Time to Repair, Error Correction and shall be deducted up to the total monthly fee for the amount payable for that calendar month for the Maintenance Costs.</p> <p>E. If the Contractor fails to contact the Manager as specified in the Maintenance Requirements, "Time to Respond" section, within the time required herein, time being of the essence, damages shall be assessed in the amount of \$50 dollars per hour or part thereof for each hour beyond the time specified in the Time to Respond and shall be deducted up to the total monthly fee per Airport.</p> <p>F. If the Contractor fails to test, validate and correct the applications software furnished by the Contractor as specified in the Contract Service Agreement as the same may, as hereinafter provided, be revised, within the time required herein, time being of the essence, damages shall</p>
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		<p>be assessed in the amount of \$200dollars per day or part thereof for each day beyond the time specified in Section XIV, E2 Time to Repair, Validate and Correct Applications Software with Patches and Updates to Third Party Software and shall be deducted up to the total monthly fee.</p> <p>G. If the Contractor fails to meet the Availability requirements as specified in the Maintenance Requirements, "Operational Availability" of paragraph C.4, time being of the essence, damages shall be assessed in the amount of \$50 dollars per hour or part thereof for each hour beyond the allowable downtime computed monthly for availability as specified therein and shall be deducted up to the total monthly fee per Airport.</p> <p>H. The Manager shall determine whether the Contractor has performed in a satisfactory manner and his/her determination shall be final, binding and conclusive upon the Contractor.</p> <p>Failure of the Manager or the Port Authority to impose liquidated damages shall not be deemed Port Authority acceptance of unsatisfactory performance or a failure to perform on the part of the Contractor.</p>
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**RISK: DISPUTE RESOLUTION**

Talking Points:

- Consider mandatory arbitration before an expert for highly technical services.
- Require ongoing performance of obligations while dispute is pending.

Source:

Chicago O'Hare/Chicago Midway	Orlando International Airport	Salt Lake City International Airport
<p>3.4.1. Procedure for Bringing Disputes to the Department The Contractor and using Department must attempt to resolve all disputes arising under this Contract in good faith, taking such measures as, but not limited to investigating the facts of the dispute and meeting to discuss the issue(s). In order to bring a dispute to the Commissioner of a Department, Contractor must provide a general statement of the basis for its claim, the facts underlying the claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the claim. By submitting a Claim, the Contractor certifies that: 1. The Claim is made in good faith; 2. The Claim's supporting data are accurate and complete to the best of the person's knowledge and belief; 3. The amount of the Claim accurately reflects the amount that the claimant believes is due from the City; and 4. The certifying person is duly authorized by the claimant to certify the Claim. The Commissioner shall have 30 days from receipt of the Claim to render a written "final decision of the Commissioner" stating the Commissioner's factual and contractual basis for the decision. However, the Commissioner may take an additional period, not to exceed 10 days, to render the final decision. If the Commissioner does not render a "final decision of the Commissioner" within the prescribed time frame, then the Claim should be deemed denied by the Commissioner.</p>	<p>2.7 In the event of any dispute under or in connection with the Contract, authorized representatives of Contractor and Authority shall meet in person in Orlando, Florida, no later than fifteen (15) calendar days after delivery of either party's request for a face-to-face good faith negotiation. If the parties meet and the dispute cannot be resolved within fifteen (15) days after commencing good faith negotiations, either party may declare an impasse and the parties shall proceed with the dispute resolution procedure set forth below. 2.7.1 If a dispute arises concerning this Contract which cannot be resolved by the procedure as set forth in Section 2.7 above, then each party shall submit a written statement of its contentions to a certified mediator designated by the Authority's Executive Director, within fifteen (15) days after the end of the forty-five (45) days after either party's request for a meeting under the provisions of Section 2.7. 2.7.2 If the dispute cannot be resolved by good-faith negotiations under the direction of the certified mediator (all face-to-face negotiations shall be in Orlando, Florida) within twenty (20) days after submission of the written statements, then either party may file an action in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, or the United States District Court for the Middle District of Florida, Orlando Division, for a determination of any issue which is in dispute between the parties or for enforcement of any right or remedy specified herein or otherwise available under the laws of the State of Florida. The parties irrevocably consent and submit to the personal jurisdiction of such court for the purposes specified above. 2.7.3 If either party institutes an action to interpret or enforce this Agreement or any of its terms, the prevailing party also shall be entitled to recover all its costs, expenses, reasonable attorneys' fees, fees for paralegal assistance, and expert witness fees, for all trial and appeal proceedings. 2.7.4 For any action filed to interpret or enforce this agreement, the</p>	<p><b>11.01 Dispute Resolution Process Required.</b> Before Provider may commence a legal action against City, Provider must first comply with the provisions of this Section 11, which compliance shall be a condition precedent to commencing a legal action under this Agreement. <b>11.02 Dispute Resolution Process.</b> Any dispute or claim that Provider may have which is not disposed of by a written amendment or agreement between the parties shall be decided pursuant to the procedure set forth below. Each notice of claim, dispute, request, submission, appeal, notification, or decision under this Article shall be made by delivery of notice of such action as set forth in Section 12.19 of this Agreement, in compliance with the requirements set forth below. <b>11.03 Provider's Disputes and Claims</b> (a) Provider shall submit written notice of any dispute or claim arising under this Agreement to City's Dispute Resolution Administrator within fifteen (15) days after Provider knows or reasonably should know of the facts giving rise to the dispute or claim. (b) Within thirty (30) days after giving the written notice described above, Provider shall submit the dispute or claim to City's Dispute Resolution Administrator for review by delivering the following to City's Dispute Resolution Administrator: 1. A detailed statement of all the relevant facts and law applicable to such dispute or claim, with citations and references to all relevant evidence, contract provisions and authorities; 2. Copies of all relevant evidence, contract provisions and authorities; 3. The identification, title, address and phone numbers of each person who may have relevant knowledge concerning the dispute or claim, together with a summary of the relevant knowledge believed to be held by each such person; 4. A concise statement of the relief sought by Provider; and, 5. A summary of all amounts, if any, Provider is seeking as monetary relief or damages as part of the claim or dispute,</p>

<p>3.4.2. Procedure for Bringing Disputes before the CPO [Chief Procurement Officer] Only after the Commissioner has rendered a final decision denying the Contractor's claim may a dispute be brought before the CPO. If the Contractor and using Department are unable to resolve the dispute, prior to seeking any judicial action, the Contractor must and the using Department may submit the dispute the CPO for an administrative decision based upon the written submissions of the parties. The party submitting the dispute to the CPO must include documentation demonstrating its good faith efforts to resolve the dispute and either the other party's failure to exercise good faith efforts or both parties' inability to resolve the dispute despite good faith efforts. The decision of the CPO is final and binding. The sole and exclusive remedy to challenge the decision of the CPO is judicial review by means of a common law writ of certiorari. The administrative process is described more fully in the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago", which are available in City Hall, 121 N. LaSalle Street, Bid &amp; Bond Room 301, and online at: <a href="http://www.cityofchicago.org/content/dam/city/depts/dps/RulesRegulations/DisputeRegulations2002.pdf">http://www.cityofchicago.org/content/dam/city/depts/dps/RulesRegulations/DisputeRegulations2002.pdf</a>.</p>	<p>Contractor and Authority agree that discovery shall be conducted in accordance with the applicable Florida Rules of Civil Procedure. In the event any witness or other person in any way involved in the proceeding objects to the discovery procedure applicable hereunder, the party seeking to invoke this Section 2.7.4 may obtain discovery by filing an action for a Bill of Discovery in the appropriate court, to which relief the other party hereby consents.</p> <p>2.7.5 In addition to the foregoing, the Contractor, in support of any claims against Authority and upon notice from the Authority, shall, within thirty (30) days of such notice produce documentation as detailed below showing all its acts and transactions in connection with or arising by reason of the Contract. Unless the aforesaid records are submitted for examination with respect to a claim arising under, relating 10, or by reason of this Contract, the Authority's Authorized Representative and the Authority shall be released from such claim except for the sums certified by the Authority's Authorized Representative to be due under the provisions of the Contract. It is further stipulated and agreed that no person or entity has power to waive any of the foregoing provisions except in writing signed by the Authority, and that in any action against the Authority to recover any sum in excess of the sums certified by the Authority's Authorized Representative to be due under or by reason of this Contract, the Contractor must allege in its complaint and prove, al the trial, compliance with the provisions of this section. In addition to the foregoing, after the commencement of any action by the subcontractor or employee or agent of the Contractor arising under or by reason of this Contract, the Authority shall also have the right through its designees, upon written notice, to require the subcontractor or employee or agent to produce the described books and documents of the subcontractor or employee or agent. For the purposes of this Section 2.7, any Contractor claim for costs shall be supported by the following documentation: Employee Time Sheets; Subcontractor Invoices; Receipts for all Direct Cost; Progress Reports; Daily Logs</p> <p>2.7.6 For any claim made by the Contractor against the Authority, the basis of which is a claim against the Contractor by a Subcontractor, or any other person or entity under the Contractor's control, for acts or omissions allegedly attributable to the Authority, the Contractor must</p>	<p>together with all detailed cost records, receipts, invoices and documents that support the claimed amount.</p> <p>(c) Upon receiving Provider's submission, City's Dispute Resolution Administrator shall be entitled, at his or her sole discretion, to:</p> <ol style="list-style-type: none"> <li>1. Direct Provider to provide additional or supplemental information and documentation to City's Dispute Resolution Administrator that is relevant to the dispute or claim or may lead to the discovery of relevant information;</li> <li>2. Meet with and interview persons who may have relevant knowledge concerning the matter;</li> <li>3. Direct submission of the dispute or claim to an independent expert or experts, or an independent third party or panel of third parties, for review and recommendations, on terms directed by City's Dispute Resolution Administrator;</li> <li>4. Direct any other form of dispute resolution or claim evaluation, as determined by City's Dispute Resolution Administrator, for purposes of providing guidance or recommendations to City's Dispute Resolution Administrator concerning all or any aspect of the dispute or claim;</li> <li>5. Direct meetings between the parties or their agents (including, without limitation, senior decision makers, project personnel, attorneys, agents, and subconsultants) to, among other things, vet the issues, gather information, assure full disclosure, evaluate facts, obtain statements, or encourage settlement;</li> <li>6. Direct legal counsel for the parties to provide legal authorities, citations, opinions or attend meetings to address legal issues;</li> <li>7. Direct such other acts as City's Dispute Resolution Administrator deems reasonable to vet the issues, gather information, assure full disclosure, evaluate facts, obtain statements, encourage settlement and fully and fairly evaluate the relevant facts and law.</li> </ol> <p>(d) Subject to sections 11.03.e, 11.04 and 11.05 below, within sixty (60) days after the events directed by City's Dispute Resolution Administrator have concluded and all information and documentation requested by City's Dispute Resolution Administrator has been provided, City's Dispute Resolution Administrator shall issue a written decision concerning the dispute or claim and such decision by City's Dispute Resolution Administrator shall be final and binding unless it is appealed in writing as set forth in Section 11.03.e. City's Dispute Resolution Administrator shall have the right, in its sole discretion, to adopt, follow or agree with, in whole or in part, any formal or informal</p>
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	<p>certify under oath that it has carefully examined the Subcontractor's claim and has verified the truth and accuracy of such claim.</p> <p>2.7.7 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any court proceedings or arbitration, and the Authority shall continue to make undisputed payments to the Contractor in accordance with the Contract Documents.</p>	<p>guidance, recommendations, or decisions given by any experts, third parties, DRB, or other person. City's Dispute Resolution Administrator shall further have the authority (among other things) to direct whether or not such formal or informal guidance, recommendations or decisions by any such experts, third parties, DRB, or other persons may be introduced, admitted or used as evidence in any subsequent proceedings. Unless otherwise agreed in writing, failure of the City's Dispute Resolution Administrator to issue a written decision within sixty (60) calendar days shall be deemed a denial of Provider's Claim.</p> <p>(e) If Provider disputes City's Dispute Resolution Administrator's decision and wishes to appeal, Provider shall file an appeal with SLCDA's Executive Director in writing within twenty calendar days after the date the City's Dispute Resolution Administrator's decision is issued. If an appeal is not timely filed, then the decision of the City's Dispute Resolution Administrator shall be final and binding upon all parties with respect to its subject matter and the disputes or claims that were at issue. Provider's appeal to SLCDA's Executive Director shall specify all factual and legal grounds that Provider is relying upon for the appeal, and shall certify that the appeal is ready for decision. The appeal shall be limited to the facts, documents, evidence and legal arguments previously submitted to the City's Dispute Resolution Administrator, although SLCDA's Executive Director may, in his/her discretion, direct Provider to provide additional information and documentation deemed necessary to review the issues on appeal. Within twenty (20) business days after SLCDA's Executive Director receives the appeal and all documents requested from Provider in connection with the appeal, then SLCDA's Executive Director shall issue a written decision. A decision by SLCDA's Executive Director shall be final and binding. Unless otherwise agreed in writing, failure by SLCDA's Executive Director to issue a written decision within twenty (20) calendar days shall be deemed a denial of Provider's appeal.</p> <p>(f) Notwithstanding the foregoing, City's Dispute Resolution Administrator shall have the right in his or her sole discretion to waive in writing all or any portion of the foregoing procedures with respect to any particular claim or dispute, or portion thereof.</p> <p><b>11.04 Third Party Disputes and Claims.</b> Notwithstanding the foregoing, if SLCDA's Executive Director or City's Dispute Resolution Administrator in good faith anticipates or becomes aware of a potential claim or dispute that might be made by third parties against the City by reason of Provider's</p>
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		<p>alleged acts or omissions, including without limitation, potential claims for defects or deficiencies, then SLCDA's Executive Director or City's Dispute Resolution Administrator may, in his or her sole discretion, stay the process set forth above with respect to Provider's disputes or claims pertaining to the same subject matter until City is reasonably able to determine the outcome of the potential claim or dispute.</p> <p><b>11.05 Effect of Process.</b></p> <p>Notwithstanding the pendency of any dispute or any appeal, Provider/Provider's selected staff shall, if so ordered by City, comply with all orders and directions of City concerning the performance of this Agreement and City shall continue to fulfill its obligations hereunder. Provider agrees that should Provider discontinue services due to a dispute, City may terminate this Agreement for cause and City may withhold any sums in dispute until after a final resolution of such dispute. Provider's time and expenses incurred in the pursuit of Provider's claims shall not be subject to payment or reimbursement under this Agreement. Provider shall not be entitled to recover any claim preparation costs, mediation or facilitation fees or costs, attorney fees or costs, or any other expense incurred during the pendency of any claim preparation, dispute, appeal, alternative dispute resolution process or litigation.</p>
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**RISK: INDEMNITY**

Talking Points:	<ul style="list-style-type: none"> <li>• Use broadest language possible.</li> <li>• Require duty to defend, where permitted.</li> </ul>
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Source:

<b>Chicago O'Hare/Chicago Midway</b>	<b>Orlando International Airport</b>	<b>Salt Lake City International Airport</b>
<p>Contractor must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses (as defined below), including those related to: (i) injury, death or damage of or to any person or property; (ii) any infringement or violation of any property right (including any patent, trademark or copyright); (iii) Contractor's failure to perform or cause to be performed Contractor's covenants and obligations as and when required under this Agreement, including Consultant's failure to perform its obligations to any Subcontractor; (iv) the City's exercise of its rights and remedies under this Contract; and (v) injuries to or death of any employee of Contractor or any subcontractor under any workers compensation statute.</p> <p>"Losses" means, individually and collectively, liabilities of every kind, including monetary damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the negligent or otherwise wrongful errors, acts, or omissions of Contractor, its employees, agents and subcontractors.</p> <p>At the City Corporation Counsel's option, Contractor must defend all suits brought</p>	<p>5.1 Contractor shall indemnify, defend and hold completely harmless the Authority and the City of Orlando, Florida, ("City"), and the members (including, without limitation, members of the Authority's Board and the City's Council, and members of the citizens' advisory committees of each), officers, employees and agents of each, from and against any and all liabilities (including statutory liability and liability under Workers' Compensation Laws), losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to or the destruction or loss of any property of Authority or the City, or any property of, injury to or death of any person, resulting from or arising out of or in connection with the performance of this Contract or the acts or omissions of Contractor's directors, officers, agents, employees, subcontractors, licensees or invitees, regardless of where the damage, destruction, injury or death occurred, except 10 the extent such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused by Authority's negligence or by the joint negligence of Authority and any person other than Contractor or Contractor's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ij) arising out of or in connection with the failure of Contractor to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by Contractor, or (Iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 5.4 below by or in favor of any person</p>	<p>(1) Provider shall, at its sole cost and expense, indemnify and hold City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns harmless from and against all losses, claims, demands, suits, actions, legal or administrative proceedings, damages, costs, charges and causes of action of every kind or character whatsoever, including, but not limited to, reasonable attorney's fees and other legal costs such as those for paralegal, investigative, legal support services and the actual costs incurred for expert witness testimony, (collectively "Claims") directly or indirectly arising from, related to or connected with, in whole or in part, Provider's work under the Agreement, including but not limited to Claims directly or indirectly arising from, related to or connected with, in whole or in part: any act, omission, fraud, wrongful or reckless conduct, fault or negligence by Provider or its officers, directors, agents, employees, subcontractors or suppliers of any tier, or by any of their employees, agents or persons under their direction or control; violation by Provider or Provider's officers, directors, agents, subcontractors or suppliers of any tier, or by any their employees, agents and persons under their direction or control, of any copyright, trademark or patent or federal, State or local law, rule, code, regulation, policy or ordinance; nonpayment to any of Provider's subcontractors or suppliers of any tier, or if any officers, agents, consultants, employees or representatives of Provider or its subcontractors or suppliers of any tier; any other act, omission, fault or negligence, whether active or passive, of Provider or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Agreement; and, strict liability and no fault claims arising from work provided under the Agreement (collectively "Acts and Omissions"). Claims shall include without limitation allegations strict liability or any other form of no fault liability. This indemnification obligation includes any penalties or fines assessed by the Federal Aviation Administration or Transportation Security Administration as well as any other costs to the City, such as investigation and security training, incurred as a result of any violation of federal security regulations, including the Airport security plan, by the Provider, its subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.</p>

<p>upon all such Losses and must pay all costs and expenses incidental to them. However, the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Contractor of any of its obligations under this Contract. Any settlement may only be made with the prior written consent of the City Corporation Counsel, if the settlement requires any action or obligation on the part of the City. To the extent permissible by law, Contractor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due to third parties arising out of any Losses, including but not limited to any limitations on Contractor's liability with respect to a claim by any employee of Contractor arising under the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, <i>Kotecki v. Cyclops Welding Corporation</i>, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute. The indemnities in this section survive expiration or termination of this Contract for matters occurring or arising during the term of this Contract or as the result of or during the Contractor's performance of work or services beyond the term. Contractor acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by the Contractor's duties under this Contract, including the insurance requirements set forth in the Contract.</p>	<p>described in Section 5.5 below, or (iv) arising out of or in connection with any action by Contractor or its directors, officers, agents, employees, subcontractors, licensees or invitees, except to the extent proximately caused by the Authority's negligence. Authority agrees to give Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow Contractor or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, Contractor shall engage counsel reasonably acceptable to Authority. In any suit, action, proceeding, claim or demand brought in respect of which the Authority may pursue indemnity, the Authority shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the Authority unless (1) the Contractor and the Authority shall have mutually agreed to the contrary. (2) the Contractor has failed within a reasonable time to retain counsel reasonably satisfactory to the Authority, or (3) the Authority and the Contractor are both named parties in any such proceeding and, in the sole judgment of the Authority, representation of both the Authority and the Contractor by the same counsel would be inappropriate due to actual or potential differing interests between them. The indemnification provisions of this Section 5 shall survive the expiration or earlier termination of this Contract with respect to any acts or omissions occurring during the term of the Contract.</p> <p>5.3 The Contractor shall assume all responsibility for loss caused by neglect or violation of any state, federal, municipal or agency law, rule, regulation or order. The Contractor shall give to the proper authorities all required notices relating to its performance, obtain all official permits and licenses, and pay all proper fees and taxes. It shall promptly undertake proper monetary restitution with respect to any injury that may occur to any building, structure or utility in consequence of its work. The Contractor will notify the Authority in writing of any claim made or suit instituted against the</p>	<p>(2) Provider shall, at its sole cost and expense, defend City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns from and against all Claims that are directly or indirectly based, in whole or in part, upon the allegation or assertions, express or implied, that Provider, or its officers, directors, agents, subcontractors or suppliers of any tier, or any of their employees, agents or persons under their direction or control, committed any Acts or Omissions, regardless of whether such allegations or assertions are true and whether or not City, Provider, or its officers, directors, agents, subcontractors or suppliers of any tier, or any of their employees, agents or persons under their direction or control, are ultimately found liable for such Acts or Omissions.</p> <p>(3) Provider's duty to defend shall arise only upon City's tender of defense to Provider in writing. Upon receipt of City's tender of defense, if Provider does not promptly accept the defense and thereafter duly and diligently defend City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns as provided herein, then Provider shall pay and be liable for the reasonable costs, expenses and attorneys' fees incurred after the tender of defense by City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns, in defending against the Claims and enforcing this provision.</p> <p>(4) Nothing herein shall be construed to require Provider to indemnify or defend City from City's fault, which shall be apportioned as required by UCA §13-8- 1.</p> <p>(5) The parties intend that the indemnity and defense provisions in this Section 8 shall be interpreted so as to be enforceable to the fullest extent permitted by law, but nothing herein shall be interpreted in any manner to violate public policy.</p> <p>(6) Provider's agreements with its subcontractors shall provide in writing (in a form acceptable to City) that each subcontractor shall, jointly and severally with Provider, indemnify and defend City, and City's officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns, from any alleged Acts and Omissions of the subcontractor, and its officers, directors, agents, subcontractors or suppliers of any tier, and their employees, agents or persons under their direction or control, to at least the same degree as Provider is bound to indemnify, defend and hold City harmless from and against such alleged Acts and Omissions under the provisions of this Agreement. Nothing in this Agreement shall prevent Provider from making a claim against its subcontractors for contribution at law or pursuing contribution or indemnification from its subcontractors pursuant</p>
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	<p>Contractor because of its activities in performance of the Contract.</p>	<p>to the terms and conditions of the subcontracts between Provider and its subcontractors.</p> <p>(7) The Provider hereby acknowledges receipt of good and valuable consideration for the indemnification obligations of this Agreement.</p> <p>(8) The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or type of damages, compensation or benefits payable by or for the Provider, a sub consultant or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.</p> <p>(9) If the above indemnity provisions in this Agreement are deemed void in whole or in part under Utah law, then the following indemnification obligations shall apply except to the extent such provisions are deemed void: Provider shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the acts or inaction, negligence, recklessness, or intentional wrongful misconduct of the Provider and persons employed or utilized by the Provider in the performance of the Agreement.</p> <p>(10) Environmental Indemnity. Providers Acts and Omissions, for purposes of this Agreement, shall include, without limitation, any violation of federal, State or local environmental laws or requirements by Provider or Provider's officers, directors, agents, subcontractors or suppliers of any tier, and Provider's indemnification obligation shall include (but not be limited to) all cleanup and remedial costs, diminution in the value of City's property, and reasonable legal fees and costs incurred by City in connection with any such violation or the enforcement of this provision.</p> <p>(11) The provisions of this Section 8 shall survive the termination of this Agreement and the completion of the work and shall apply to all Claims regardless of whether they arise before or after completion of the work under the Agreement.</p> <p><b>Patent Infringement Indemnity.</b> Without limitation under this Agreement, in the event of a breach or alleged breach of this warranty Provider shall, at its own expense, defend any suit or proceeding brought against City and shall fully protect and indemnify City against any liability, cost, recovery, or other expense in or resulting from such suit or claim of infringement. City shall give prompt notice in writing of any notice or claim of such suit and City agrees to cooperate with Provider to enable it to make such defense.</p>
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**RISK: EXTENSION AND TERMINATION**

<p>Talking Points:</p>	<ul style="list-style-type: none"> <li>• Avoid automatic, indefinite extensions.</li> <li>• Provide for immediate termination by Owner for cause and identify those causes.</li> </ul>	
<p>Source:</p>		
<p><b>Chicago O'Hare/Chicago Midway</b></p>	<p><b>Orlando International Airport</b></p>	<p><b>Denver International Airport</b></p>
<p><b>3.1.7. Contract Extension Option</b>                  The City may extend this Contract once following the expiration of the contract term for up to 181 Calendar Days or until such time as a new contract has been awarded for the purpose of providing continuity of services and/or supply while procuring a replacement contract subject to acceptable performance by the Contractor and contingent upon the appropriation of sufficient funds. The CPO will give the Contractor notice of the City's intent to exercise its option to renew the Contract for the approaching option period.</p> <p><b>3.5. Events of Default and Termination</b>  <b>3.5.1. Events of Default</b>                  In addition to any breach of contract and events of default described within the Contract Documents, the following constitute an event of default:                  A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the City. B. Contractor's material failure to perform any of its obligations under this Contract including the following: C. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services D. Failure to have and maintain all professional licenses required by law to perform the Services; E. Failure to timely perform the Services; F. Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the CPO or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors; G. Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;                  H. Discontinuance of the Services for reasons within Contractor's reasonable control; I. Failure to update promptly EDS(s) furnished in connection with this Contract when the information or responses contained in it or them is no longer complete or accurate; J. Failure to comply with any other term of this Contract, including the provisions concerning insurance and nondiscrimination; and K. Any change in ownership or control of Contractor without the prior written approval of the CPO, which approval the CPO will not unreasonably withhold. L. Contractor's default under any other Contract it may presently have or may enter into with the City during the life of this Contract. Contractor acknowledges and agrees that in the event of a default under this Contract the</p>	<p>9.1 In the event that:                  9.1.1 the Contractor shall repeatedly fail (defined for this purpose as at least three (3) failures within any consecutive twelve (12) month period) to keep, perform or observe any of the promises, covenants or agreements set forth In this Contract (provided that notice of the first two (2) failures shall have been given to Contractor, but whether or not Contractor shall have remedied any such failure); or                  9.1.2 the Contractor shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than five (5) days after delivery to the Contractor of a written notice of such breach or default; or                  9.1.3 the Contractor's occupational or business license shall terminate or Contractor shall fail to provide Authority with any bond, letter of credit, or evidence of insurance as required by the Contract Documents for any reason; or                  9.1.4 the Contractor fails for any reason to provide the Authority with an acceptable renewal or replacement bond or fetter of credit within the time period specified by a provision of this Contract; or                  9.1.5 the Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or</p>	<p><b>TERM:</b> The term of this Agreement shall commence on _____ and shall terminate _____ at Midnight; however, in the Manager's sole discretion, this Agreement shall remain in full force and effect to permit completion of any work which was commenced prior to the date upon which the term of this Agreement otherwise would have terminated. The term of this Contract may be extended for three periods of one year each, on the same terms and conditions as set forth in this Agreement, including pricing, by written consent of the Manager of Aviation and the Contractor. However, no extension of the Contract Term shall increase the Maximum Contract Liability amount stated herein; such amount may be changed only by a duly executed written amendment to this Contract.</p> <p>A. The City has the right to terminate this Agreement, in whole or in part, without cause, on thirty (30) days written notice to the Contractor, and with cause on ten (10) days written notice to the Contractor. However, nothing herein shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to</p>

**Repair/Maintenance Agreements**

<p>City may also declare a default under any such other agreements.  M. Contractor's repeated or continued violations of City ordinances unrelated to performance under the Contract that in the opinion of the CPO indicate a willful or reckless disregard for City laws and regulations.  N. Contractor's use of a subcontractor that is currently debarred by the City or otherwise ineligible to do business with the City.</p> <p><b>3.5.2. Cure or Default Notice</b>  The occurrence of any event of default permits the City, at the City's sole option, to declare Contractor in default.  The CPO will give Contractor written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice"). If a Cure Notice is sent, the CPO may in his/her sole discretion will give Contractor an opportunity to cure the default within a specified period of time, which will typically not exceed 30 days unless extended by the CPO. The period of time allowed by the CPO to cure will depend on the nature of the event of default and the Contractor's ability to cure. In some circumstances the event of default may be of such a nature that it cannot be cured. Failure to cure within the specified time may result in a Default Notice to the Contractor. Whether to issue the Contractor a Default Notice is within the sole discretion of the CPO and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Contract. If the CPO issues a Default Notice, the CPO will also indicate any present intent the CPO may have to terminate this Contract. The decision to terminate is final and effective upon giving the notice. If the CPO decides not to terminate, this decision will not preclude the CPO from later deciding to terminate the Contract in a later notice, which will be final and effective upon the giving of the notice or on such later date set forth in the Default Notice. When a Default Notice with intent to terminate is given, Contractor must discontinue any Services, unless otherwise directed in the notice.</p> <p><b>3.5.3. Remedies</b>  After giving a Default Notice, the City may invoke any or all of the following remedies:  A. The right to take over and complete the Services, or any part of them, at Contractor's expense and as agent for Contractor, either directly or through others, and bill Contractor for the cost of the Services, and Contractor must pay the difference between the total amount of this bill and the amount the City would have paid Contractor under the terms and conditions of this Contract for the Services that were assumed by the City as agent for Contractor  B. The right to terminate this Contract as to any or all of the Services yet to be performed effective at a time specified by the City; c. The right to seek specific performance, an injunction or any other appropriate equitable remedy; D. The right to seek money damages; E. The right to withhold all or</p>	<p>9.1.6 the Contractor shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute, filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or  9.1.7 there is any assignment by the Contractor of this Contract or any of Contractor's rights and obligations hereunder for which the Authority has not consented in writing; or  9.1.8 the Contractor shall default on any other agreement entered into by and between Contractor and the Authority,</p> <p>then, in its discretion, the Authority shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Contractor. In the event that the Authority terminates this Contract for default, the Contractor shall be paid for compensation earned to the date of termination (but Authority shall have the right to off-set its damages and any amounts owed by Contractor to Authority against any amount owed to Contractor), but Contractor shall not be compensated for any profits earned or claimed after the receipt of the Authority's notice of termination by default. The Authority's election to terminate or not to terminate this Contract in part or whole for Contractor's default shall in no way be construed to limit Authority's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.</p> <p>9.2 Notwithstanding anything else herein contained, the Authority may terminate this Contract in whole or in part at any time for its convenience by giving the Contractor thirty (30) days written notice. In that event, the Contractor shall proceed to complete any part of the work, as directed by the Authority, and shall settle all its claims and obligations under the Contract, as directed by the Authority. The Contractor shall be compensated by the Authority for its costs, including reasonable profits earned to the date of</p>	<p>the Manager.</p> <p>B. If this Agreement is terminated by the Contractor, or if this Agreement is terminated by the City for cause, the Contractor's compensation in such event shall be limited to (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City, (2) the reasonable value to the City of the work which the Contractor performed prior to the date of the termination notice, but which had not yet been approved for payment, and (3) the cost of any work which the Manager approves in writing which he determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated for the convenience of the City and without the fault of the Contractor, the Contractor shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination.</p> <p>C. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Contractor is using by whatever method it deems expedient, and the Contractor shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City.</p>
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## Repair/Maintenance Agreements

<p>any part of Contractor's compensation under this Contract; F. The right to deem Contractor non-responsible in future contracts to be awarded by the City.</p> <p><b>3.5.4. Non-Exclusivity of Remedies</b></p> <p>The remedies under the terms of this Contract are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.</p> <p><b>3.5.5. City Reservation of Rights</b></p> <p>If the CPO considers it to be in the City's best interests, the CPO may elect not to declare default or to terminate this Contract. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Contractor to continue to provide the Services despite one or more events of default, Contractor is in no way relieved of any of its responsibilities, duties or obligations under this Contract, nor does the City waive or relinquish any of its rights.</p> <p><b>3.5.6. Early Termination</b></p> <p>The City may terminate this Contract, in whole or in part, at any time by a notice in writing from the City to the Contractor. The effective date of termination will be the date the notice is received by the Contractor or the date stated in the notice, whichever is later. After the notice is received, the Contractor must restrict its activities, and those of its Subcontractors, to activities pursuant to direction from the City. No costs incurred after the effective date of the termination are allowed unless the termination is partial. Contractor is not entitled to any anticipated profits on services, work, or goods that have not been provided. The payment so made to the Contractor is in full settlement for all services, work or goods satisfactorily provided under this Contract. If the Contractor disputes the amount of compensation determined by the City to be due Contractor, then the Contractor must initiate dispute settlement procedures in accordance with the Disputes provision.</p> <p>If the City's election to terminate this Contract for default pursuant to the default provisions of the Contract is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be deemed to be an early termination pursuant to this Early Termination provision.</p>	<p>termination, but excluding anticipatory profits, and shall justify its claims, as requested by the Authority, with accurate records and data.</p> <p>9.3 In the event this Contract is terminated for any reason, the Contractor shall continue to supply the Authority for the remainder of the life of the APM system provided by the Contractor with its requirements of APM parts and accessories, and technical support, at Contractor's established price, or If no price is established, then at Contractor's cost plus a fifteen (15) percent mark-up.</p>	<p>D. Upon termination of this Agreement by the City, the Contractor shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.</p> <p>E. The Contractor has the right to terminate this contract with cause by giving not less than thirty (30) days prior written notice to the City.</p>
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**RISK: OCCUPANCY LIABILITY & INDEMNITY**

Talking Points:

- Broad language to cover the current tenant/user, subtenants, employees, contractors, agents, licensees, successors, assignees, and other related parties.
- Consider self-insurance of certain risks in appropriate circumstances.

Source:

Denver International Airport	Salt Lake City International Airport	Dallas/Fort Worth International Airport
<p><b>8.01 PERFORMANCE BOND</b></p> <p>Unless otherwise provided by Airport Rules and Regulations, as they may be adopted or amended from time to time, upon the commencement of the term of this Agreement, the Airline shall deliver to the Manager for the City and County of Denver, and shall maintain in effect at all times during the term of this Agreement, including a period of six (6) months after expiration (or earlier termination of the letting of the Demised Premises hereunder) of said Agreement, a valid corporate Performance Bond, or an irrevocable Letter of Credit, in the amount of Three Million Dollars (\$3,000,000,00), or an amount equal to three (3) months of rent, rates, fees or charges payable hereunder, whichever is less, payable without condition to the City and County of Denver, with surety acceptable to and approved by the City's Manager, which bond or irrevocable letter of credit shall guarantee to the City full and faithful performance of all of the terms and provisions of this Agreement to be performed by the Airline, and as said Agreement may be amended, supplemented or extended.</p> <p>Notwithstanding the foregoing, if at any time during the term hereof, the Manager deems the amount of the surety insufficient to properly protect the City from loss hereunder because the Airline is or has been in arrears with respect to such obligations or because the Airline has, in the opinion of the Manager, violated other terms of this Agreement, the Airline agrees that it will, after receipt of notice, increase the surety to an amount required by the Manager; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to the Airline's rental and fee rates in effect under this Agreement.</p> <p><b>8.02 INDEMNIFICATION</b></p> <p>The Airline agrees to indemnify and save harmless the City, its officers, and employees, from and against (A) any and all loss of or damage to property, or injuries to, or death of, any person or persons, including property and officers, employees and agents of the City; and (B) all claims, damages, suits, costs, expense, penalties, liability, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever; which, with respect to clauses (A) and (B) hereof, in any way</p>	<p><b>7.01 Indemnity Provisions.</b></p> <p>(a) Concessionaire Tenant shall, at its sole cost and expense, indemnify and hold City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns harmless from and against all losses, claims, demands, suits, actions, legal or administrative proceedings, damages, costs, charges and causes of action of every kind or character whatsoever, including, but not limited to, reasonable attorney's fees and other legal costs such as those for paralegal, investigative, legal support services and the actual costs incurred for expert witness testimony, (collectively "Claims") directly or indirectly arising from, related to or connected with, in whole or in part, Concessionaire Tenant's work under the Agreement, including but not limited to Claims directly or indirectly arising from, related to or connected with, in whole or in part: any act, omission, fraud, wrongful or reckless conduct, fault or negligence by Concessionaire Tenant or its officers, directors, agents, employees, subcontractors or suppliers of any tier, or by any of their employees, agents or persons under their direction or control; violation by Concessionaire Tenant or Concessionaire Tenant's officers, directors, agents, subcontractors or suppliers of any tier, or by any of their employees, agents and persons under their direction or control, of any copyright, trademark or patent or federal, State or local law, rule, code, regulation, policy or ordinance; nonpayment to any of Concessionaire Tenant's subcontractors or suppliers of any tier, or if any officers, agents, consultants,</p>	<p>Section 11.02 Indemnification and Hold Harmless</p> <p>CONCESSIONAIRE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the BOARD, and the Cities of Dallas and Fort Worth, including but not limited to the Board's directors, officers, agents, employees, and the Cities' council members, officers, agents, and employees (all of which are hereinafter collectively referred to as "the BOARD") individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the BOARD directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE'S activities under this lease, including any acts or omissions</p>

## Tenant and User Agreements

## Appendix D-1

<p>result from, or arise out of, Airline's operations in connection herewith, or its use or occupancy of any portion of the Airport and the acts, omissions, or wrongful conduct of officers, employees, agents, contractors or subcontractors of the Airline including without limitation, the provision or failure to provide security as herein required and the use, disposal, generation, transportation or release of pollutants, including but not limited to oil, glycol, toxic or hazardous materials at Denver International Airport by the Airline, its contractors, employees, agents, customers, or anyone claiming or acting by or through the Airline.</p> <p>Airline further agrees that if a prohibited incursion into the Air Operations Area occurs, or the safety or security of the Air Operations Area, the Airfield, the Baggage System or other sterile area safety or security area is breached by or due to the negligence or willful act or omission of any of Airline's employees, agents, or contractors and such incursion or breach results in a civil penalty action being brought against the City by the U.S. Government, Airline agrees to reimburse the City for all expenses, including attorney fees, incurred by the City in defending against the civil penalty action and for any civil penalty or settlement amount paid by the City as a result of such incursion or breach of airfield or sterile area security. The City shall notify Airline of any allegation, investigation, or proposed or actual civil penalty sought by the U.S. Government for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this Paragraph include but are not limited to those paid or incurred as a result of violation of Federal Aviation Administration (FAA) regulations or Transportation Security Administration (TSA) regulations, as they may be amended, or any similar law or regulations intended to replace or compliment such regulations.</p> <p>Without limitation, the terms of this indemnity include an agreement by Airline to indemnify, defend and hold harmless the City from and against any and all expense, loss, claim, damage, or liability suffered by City by reason of Airline's breach of any environmental requirement existing under federal, state or local law, regulation, order or other legal requirement in connection with any of Airline's acts, omissions, operations or uses of property relating to this Agreement, or such a breach by the act or omission of any of Airline's officers, employees, agents, or invitees, whether direct or indirect, or foreseen or unforeseen, including (but not limited to) all cleanup and remedial costs actually and reasonably incurred to satisfy any applicable remediation obligation required by federal, state or local law, and reasonable legal fees and costs incurred by City in connection with enforcement of this provision, but excluding damages solely relating to diminution in value of City real property.</p> <p>Provided however, the City agrees that (I) the Airline need not save harmless or indemnify the City against damage to or loss of property, or injury to or death of persons, caused by the negligence or willful acts of the City, its officers, employees, contractors and agents, and (II) the City will give prompt written notice to the Airline of any claim or suit and the Airline shall have the right to assume the defense and compromise or settle the same to the extent of its own interest. Provided, however, the indemnity provided for herein shall apply only to the extent the City is</p>	<p>employees or representatives of Concessionaire Tenant or its subcontractors or suppliers of any tier; and, any other act, omission, fault or negligence, whether active or passive, of Concessionaire Tenant or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Agreement (collectively "Acts and Omissions"). This indemnification obligation includes any penalties or fines assessed by the Federal Aviation Administration or Transportation Security Administration as well as any other costs to the City, such as investigation and security training, incurred as a result of any violation of federal security regulations, including the Airport security plan, by the Concessionaire Tenant, its subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.</p> <p>(b) Concessionaire Tenant shall, at its sole cost and expense, defend City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns from and against all Claims that are directly or indirectly based, in whole or in part, upon the allegation or assertions, express or implied, that Concessionaire Tenant, or its officers, directors, agents, subcontractors or suppliers of any tier, or any of their employees, agents or persons under their direction or control, committed any Acts or Omissions, regardless of whether such allegations or assertions are true and whether or not City, Concessionaire Tenant, or its officers, directors, agents, subcontractors or suppliers of any tier, or any of their employees, agents or persons under their direction or control, are ultimately found liable for such Acts or Omissions.</p> <p>(c) Concessionaire Tenant's duty to defend shall arise only upon City's tender of defense to Concessionaire Tenant in writing. Upon receipt of City's tender of defense, if Concessionaire Tenant does not promptly accept the defense and thereafter duly and diligently defend City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns as provided herein, then</p>	<p>of CONCESSIONAIRE, any agent, officer, director, representative, employee, consultant, subcontractor or subtenant of CONCESSIONAIRE, and their respective officers, agents, employees, directors, representatives and subcontractors while in the exercise of performance of the rights or duties under this lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the gross negligence of BOARD in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONCESSIONAIRE AND THE BOARD ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE BOARD UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The rights and obligations set forth in this Section and all indemnification obligations of CONCESSIONAIRE elsewhere in this lease shall survive the</p>
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## Tenant and User Agreements

## Appendix D-1

<p>not reimbursed out of insurance proceeds.</p> <p><b>8.03 INSURANCE MAINTAINED BY AIRLINE</b></p> <p>At all time during the term of this Agreement, unless otherwise required by federal or state governmental law or regulation, the Airline is required and agrees, at its own cost and expense, to provide and keep in force for the benefit of the Airline and the City, a policy, or policies, of insurance written on a single limit each occurrence basis with limits of not less than Three Hundred Million Dollars (\$300,000,000.00) for bodily injury and property damage arising from any operation of the Airline at the Airport and contractual liability coverage. The Manager may increase the limit of insurance required when, in her discretion, she deems the amount stated herein is insufficient. The Manager may establish lesser amounts of insurance for airlines operating exclusively with aircraft of thirty (30) seats or less.</p> <p>Such insurance policy, or policies, and certificates of insurance evidencing the existence thereof shall cover all operations of the Airline at the Airport, shall be in a form and written by a company, or companies, approved by the Airport's Risk Manager and shall insure the Airline's agreement to indemnify the City as set forth in the indemnification provisions hereof. The amount of insurance required hereunder shall in no way limit the liability of the Airline as provided in Section 8.02 of this Agreement. The City shall not be named insured of said insurance. Each such policy and certificate shall contain a special endorsement stating "This policy will not be materially changed or altered or canceled without first giving thirty (30) days written notice by certified mail, return receipt requested, to the Manager of Aviation, Denver International Airport, AOB- 9th Floor, 8500 Pena Boulevard, Denver, Colorado 80249-6340." All such policies of insurance, or certified copies thereof, together with receipts showing payment of premiums thereon, shall be made available for review by the City at such times and places as required by the Manager. Certificates of insurance evidencing the existence of said policies shall be delivered to and left in the possession of said Manager.</p> <p><b>8.04 LIENS</b></p> <p>Except to the extent inconsistent with other provisions of this Agreement, the Airline covenants and agrees to pay promptly all lawful taxes, excises, license fees and permit fees applicable to its operations at the Airport and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon said Airport, and further agrees not to permit any of said taxes, excises or license fees to become delinquent. The Airline further covenants and agrees at all times to maintain adequate Worker's Compensation Insurance in accordance with any present or future Colorado law with an authorized insurance company, or through the Colorado State Compensation Insurance Fund, or through an authorized self- insurance plan approved by the State of Colorado insuring the payment of compensation to all its employees at the Airport. The Airline also covenants and agrees not to permit any mechanic's or materialman's or any other lien to be foreclosed upon the Airport and improvements thereto or thereon, or any part or parcel thereof, by reason of any work or labor performed or materials furnished at</p>	<p>Concessionaire Tenant shall pay and be liable for the reasonable costs, expenses and attorneys' fees incurred after the tender of defense by City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns, in defending against the Claims and enforcing this provision.</p> <p>(d) Nothing herein shall be construed to require Concessionaire Tenant to indemnify or defend City from City's fault, which shall be apportioned as required by UCA §13-8-1.</p> <p>(e) The parties intend that the indemnity and defense provisions in this Section 7.01 shall be interpreted so as to be enforceable to the fullest extent permitted by law, but nothing herein shall be interpreted in any manner to violate public policy.</p> <p>(f) Concessionaire Tenant's agreements with its subcontractors shall provide in writing (in a form acceptable to City) that each subcontractor shall, jointly and severally with Concessionaire Tenant, indemnify and defend City, and City's officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns, from any alleged Acts and Omissions of the subcontractor, and its officers, directors, agents, subcontractors or suppliers of any tier, and their employees, agents or persons under their direction or control, to at least the same degree as Concessionaire Tenant is bound to indemnify, defend and hold City harmless from and against such alleged Acts and Omissions under the provisions of this Agreement. Nothing in this Agreement shall prevent Concessionaire Tenant from making a claim against its subcontractors for contribution at law or pursuing contribution or indemnification from its subcontractors pursuant to the terms and conditions of the subcontracts between Concessionaire Tenant and its subcontractors.</p> <p>(g) The Concessionaire Tenant hereby acknowledges receipt of good and valuable consideration for the indemnification obligations of this Agreement.</p> <p>(h) The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or</p>	<p>termination or expiration of this lease. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONCESSIONAIRE shall promptly advise the BOARD in writing of any claim or demand against the BOARD or CONCESSIONAIRE known to CONCESSIONAIRE related to or arising out of CONCESSIONAIRE'S activities under this lease.</p>
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<p>the request of the Airline by any mechanic or materialman. The Airline further covenants and agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operation of said business on the Airport, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against said premises or improvements thereon which will in any way impair the rights of the City under this Agreement. The Airline shall have the right on giving the City prior written notice to contest any such mechanic's, materialman's or any other lien, and the Airline shall not, pending the termination of such contest, be obligated to pay, remove or otherwise discharge such lien or claim. The Airline agrees to indemnify and save harmless the City from any loss as a result of the Airline's action as aforesaid.</p> <p>If the Airline shall in good faith proceed to contest any such tax, assessment or other public charge, or the validity thereof, by proper legal proceedings which shall operate to prevent the collection thereof or to prevent the appointment of a receiver because of nonpayment of any such taxes, assessments or other public charges, the Airline shall not be required to pay, discharge or remove any such tax, assessment or other public charge so long as such proceeding is pending and undisposed of; provided, however, that the Airline, not less than five (5) days before any such tax, assessment or charge shall become delinquent, shall give notice to the City of the Airline's intention to contest its validity. If such notice is so given by the Airline to the City and such contest is conducted in good faith by the Airline, the City shall not, pending the termination of such legal proceedings, pay, remove or discharge such tax, assessment or other charge.</p> <p><b>8.05 LOSS OR DAMAGE TO PROPERTY</b></p> <p>The City shall not be liable for any loss of property by theft or burglary from the airport or for any damage to person or property on said Airport resulting from airport operations including but not limited to operating the elevators or electric lighting, or wind, water, rain or snow, which may come into or issue or flow from any part of said Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause whatsoever, and the Airline hereby covenants and agrees to make no claim for any such loss or damage at any time.</p> <p><b>8.06 FORCE MAJEURE</b></p> <p>Neither the City nor the Airline shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations under this Agreement if, while and to the extent that such failure is due to embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, sabotage, strikes, boycotts, labor disputes, weather conditions, riots, rebellion and any circumstances for which it is not responsible and which are not within its reasonable control. This provision shall not apply to failures by the Airline to pay rents, fees or other charges, or to make any other money payment whatsoever required by this Agreement, except in those cases where provision is made in this Agreement for the abatement of such rents, fees, charges or payments under such circumstances.</p>	<p>type of damages, compensation or benefits payable by or for the Concessionaire Tenant, a subconsultant or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.</p> <p>(i) If the above indemnity provisions in this Agreement are deemed void in whole or in part under Utah law, then the following indemnification obligations shall apply except to the extent such provisions are deemed void: Concessionaire Tenant shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the acts or inaction, negligence, recklessness, or intentional wrongful misconduct of the Concessionaire Tenant and persons employed or utilized by the Concessionaire Tenant in the performance of the Agreement.</p> <p>(j) Environmental Indemnity. Concessionaire Tenants Acts and Omissions, for purposes of this Agreement, shall include, without limitation, any violation of federal, State or local environmental laws or requirements by Concessionaire Tenant or Concessionaire Tenant's officers, directors, agents, subcontractors or suppliers of any tier, and Concessionaire Tenant's indemnification obligation shall include (but not be limited to) all cleanup and remedial costs, diminution in the value of City's property, and reasonable legal fees and costs incurred by City in connection with any such violation or the enforcement of this provision.</p> <p>(k) The provisions of this Section 7.01 shall survive the termination of this Agreement and the completion of the work and shall apply to all Claims regardless of whether they arise before or after completion of the work under the Agreement.</p> <p><b>7.03 Security for Performance and Payment.</b></p> <p>Prior to execution of this Concession Lease, Concessionaire Tenant shall provide City a Performance Bond or Letter of Credit acceptable to the City Attorney's Office, in an amount equal to the first years MAG, payable to City. Thereafter, Concessionaire Tenant shall at all times maintain such</p>	
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<p><b>8.07 INSURANCE MAINTAINED BY THE CITY</b>  <u>Miscellaneous Insurance.</u> The City shall at all times carry with a responsible insurance company or companies authorized and qualified under the laws of the State to assume the risk thereof:  (A) <u>Fire and Extended Coverage Insurance.</u> From and after the time when any contractors engaged in connection with the Airport, or any part thereof, shall cease to be responsible pursuant to the provisions of their respective contracts for loss or damage thereto occurring from any cause, the City shall insure and at all times keep the Airport insured to the extent possible with a responsible insurance company, companies or carriers authorized and qualified under the laws of the State of Colorado assume the risk thereof against direct physical damage or loss from fire and so-called extended coverage perils in an amount not less than 80% of the replacement value of the Facilities so insured, less depreciation; but such amount of insurance shall at all times be sufficient to comply with any legal or contractual requirement which, if breached, would result in assumption by the City of a portion of any loss or damage as co-insurer; and also if at any time the City shall be unable to obtain such insurance to the extent above required at reasonable cost as determined by the Manager, the City shall maintain such insurance to the extent reasonably obtainable. Insurance against any other risks or type of loss as are or shall be customarily covered may be obtained, under a standard "all risk policy" with extended coverage for public property, or otherwise, including, without limitation, insurance against loss or damage to the Airport by flood or other waters, elements of weather, explosion of any nature, earthquake, and volcanic eruption (or any combination thereof), when, if, and to the extent any such insurance can be procured at reasonable rates in the sole opinion of the Manager.  (B) <u>Loss of Use Insurance.</u> To the extent not provided for in leases and other agreements between the City and others relating to the Airport, insurance covering loss of revenues from Airport facilities by reason of necessary interruption, total or partial, in the use thereof, resulting from damage thereto or destruction thereof, however caused, in such amount as is estimated to be sufficient to provide a full normal income during the period of suspension; but  (1) Such insurance shall cover a period of suspension of the period of reconstruction as estimated by the Airport Engineer, but not less than twelve months;  (2) Such insurance may exclude losses sustained by the City during the first seven days of any total or partial interruption of use; and  (3) If at any time the City shall be unable to obtain such insurance to the extent above required, it shall carry such insurance to the extent reasonably obtainable at reasonable rates in the sole option of the Manager.  In any calculation of the full normal income for such insurance, consideration shall be given to the expected, as well as current and prior, revenues from such Airport facilities, or from other sources, and may also make allowances for any probable decrease in the operation and maintenance expenses or any other charges and expenses while use is interrupted. Any proceeds of such insurance shall be deposited</p>	<p>letter or other security in an amount equal to the amount of the Minimum Annual Guarantee applicable to each Contract Year. Said letter of credit or other security shall be conditioned to ensure the faithful and full performance by Concessionaire Tenant of all covenants, terms, and conditions of this Concession Lease and to stand as security for payment by Concessionaire Tenant of all valid claims by City against Concessionaire Tenant. Such guarantee will serve as a surety or security for the full and faithful performance of all terms, covenants, and conditions of this Concession Lease including but not limited to the rentals, fees, and charges to be paid, throughout the entire term of this Concession Lease. The form of all required letters of credit or other security and their surety company must be satisfactory to City Attorney's Office.</p> <p><b>6.07 Damage or Destruction of Premises.</b>  If the Premises or any portion thereof are damaged by fire or other casualty resulting from any cause whatsoever at any time during the term of this Concession Lease, City shall have the following rights:  (a) If feasible, City may make temporary repairs and require Concessionaire Tenant to continue operations from the Premises until repairs are complete.  (b) City may designate alternate Premises for Concessionaire Tenant's use until repairs can be completed to the Premises.  (c) City may require Concessionaire Tenant to suspend operations at the Airport until repairs can be completed to the Premises.  (d) City may determine not to repair the Premises, and this Concession Lease shall terminate effective as of the date of such casualty upon Concessionaire Tenant's receipt of City's written determination.</p> <p><b>6.08 No Liens.</b>  Concessionaire Tenant agrees to pay, when due, all taxes and fees, and all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Concessionaire Tenant's consent to the Premises. If</p>	
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<p>to the credit of the Revenue Fund and shall be subject to the uses of and shall be applied as provided for moneys in the Revenue Fund.</p> <p>(C) <u>Liability Insurance.</u> Insurance in the form and amount recommended by the Manager and reasonably sufficient to insure against liability to any individual sustaining bodily injury or any person sustaining property damage or the death of any individual by reason of any defect or want of repair in or about the Airport, or by reason of the negligence of any employees, and against such other liability for individuals, including workmen's compensation insurance, to the extent attributed to ownership and operation of the Airport, and damage to property of persons; but in the case of the company or companies insuring the Airport under a general liability policy against loss from bodily injury or property damage, or both, the total liability of such company or companies for all damages because of all bodily injury and all property damage arising out of continuous or repeated exposure to substantially the same general conditions to which the policy applies as the result of any one occurrence, subject to such exclusions generally made to such a policy, shall be not less than \$75,000,000.00 under a single limit of liability endorsement or other like provision of the policy, regardless of the number of:</p> <ol style="list-style-type: none"> <li>(1) Insureds under the policy,</li> <li>(2) Individuals who sustain bodily injury or persons who sustain property damage,</li> <li>(3) Claims made or suits brought on account of bodily injury or property damage, or</li> <li>(4) Occurrences.</li> </ol> <p>(D) <u>Maintenance of Policies.</u> All such insurance policies designated in Subparagraphs (A) and (B) hereof shall be filed with the Manager and shall be subject to inspection at all reasonable times by Airline. If the Manager determines that certain insurance required in Subparagraphs (A) and (B) hereof cannot be obtained to the extent therein required at reasonable rates, the Manager shall prepare a written memorandum to that effect, designating each such type of insurance in question and stating in each such case that the insurance was not obtainable or that designated insurance was required in substitution for the required insurance, the reason or reasons for its substitution, and when and to the extent that the substituted insurance was procured at reasonable rates, as the case may be. Each such memorandum shall be filed with the policies on file with the Manager and shall also be subject to such inspection</p>	<p>any lien is filed against the Premises which Concessionaire Tenant wishes to protest, then Concessionaire Tenant shall immediately procure a bond acceptable to City, in an amount sufficient to cover the cost of removing the lien from the Premises. Failure to remove the lien or furnish a bond acceptable to City within ten (10) days shall constitute an event of default under this Concession Lease and City shall automatically have the right, but not the obligation, to pay the lien off with no notice to Concessionaire Tenant and Concessionaire Tenant shall immediately reimburse City for any sums so paid to remove any such lien. Concessionaire Tenant shall not encumber the Premises or any improvements thereon in any way without prior written approval of City.</p> <p><b>11.15 Force Majeure.</b> Neither City nor Concessionaire Tenant shall be liable in any manner for any failure or delay in the performance or fulfillment of any of its duties or obligations hereunder, other than Concessionaire Tenant's payment of rent and fees, resulting from any cause or circumstance beyond its reasonable control or reasonable ability to remedy, including, but not limited to, acts of God, federal or state laws, or governmental regulations, orders or restrictions, war, war-like conditions, hostilities, mobilization, blockades, embargo or other transportation delay, detention, revolution, riot, looting, strike, lockout or other labor disputes, shortages of labor, inability to secure fuel, materials, supplies or power or because of shortages thereof, epidemic, fire or flood. In connection therewith, City reserves the right to allocate its resources as it, in its sole discretion, deems fair and equitable. Notwithstanding the above, the term of this Concession Lease will not change by reason of this Section 11.15.</p>	
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**RISK: MAINTENANCE & REPAIR**

Talking Points:	<ul style="list-style-type: none"> <li>• Define Airport’s obligations for structural maintenance, repairs, or replacements, including who is responsible for improvements on premises and off-premises serving the premises.</li> <li>• Limit Airport’s liability for maintenance and repair under the control of third parties, like utilities.</li> <li>• Obtain waivers of subrogation from tenant and its insurers.</li> </ul>
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Source:

San Francisco International Airport	Dallas/Fort Worth International Airport	Miami International Airport
<p><b>9. MAINTENANCE AND REPAIR</b>                      9.1 “As-Is” Condition. TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS LEASING THE PREMISES TO TENANT ON AN “AS IS WITH ALL FAULTS” BASIS AND THAT TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, landscaping, utility systems, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the real property, (ix) the condition of title to the Premises, and (x) the agreements affecting the Premises, including, covenants, conditions, restrictions,</p>	<p><b>Section 9.01 Concessionaire's Maintenance Obligations</b>                      Except for such maintenance of the Premises as is to be provided by the Board under the express terms of this Lease, Concessionaire shall be obligated, without cost to the Board, to maintain the Premises and every part thereof, including personal and trade fixtures, in good appearance and repair, and in a safe as-new condition. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all leasehold improvements on the Premises (including, without limitation thereto, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by the Board). All of the maintenance, repairs, finishing and replacements shall be of quality at least equal to the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of the Department of Revenue Management by a Tenant Construction Application. If it is determined that the maintenance is not in compliance herewith, the Board shall so notify Concessionaire in writing. If the maintenance required to be performed as provided in the Board's notice to Concessionaire is not commenced by Concessionaire within five (5) days after receipt of such written notice, or is thereafter not diligently prosecuted to completion, the Board or its agents shall have the right to enter upon the Premises and perform the subject maintenance, and Concessionaire agrees to promptly reimburse the Board for the cost thereof, including such charges as are provided in the then current Schedule of Charges</p>	<p><b>8.01 CLEANING:</b> The Concessionaire shall, at its cost and expense, keep or cause its Subtenants to keep the Location(s) clean, neat, orderly, sanitary and presentable at all times. If the Location(s) are not kept clean as provided in the Standards of Operation, Exhibit L, the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in Damages being assessed pursuant to <b>Sub- Article 3.23 “Damages”</b>.</p> <p><b>8.02 REMOVAL OF TRASH:</b> The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Location(s) and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Concessionaire enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Location(s), such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. The Concessionaire shall have the right to charge Sub-tenants for a proportionate share of any such costs and expenses incurred to remove and properly dispose of all trash, refuse, and pest control as a result of inactions or actions by the Concessionaire and/or its Sub-tenants of any nature whatsoever. Any trash left or stored in any area visible to the public or edible items not properly contained may result in Damages being assessed pursuant to <b>Sub-Article 3.23 “Damages”</b>. The Department reserves the right to charge the Concessionaire retroactively nondiscriminatory proportionate share for waste disposal a proportionate share in a nondiscriminatory manner either</p>

## Tenant and User Agreements

## Appendix D-2

<p>ground leases, and other matters or documents of record or of which Tenant has knowledge.</p> <p>9.2 Tenant's Maintenance Obligations. Tenant, at all times during the Term and at Tenant's sole cost and expense, shall keep the Premises and every part thereof in good condition and repair, and in compliance with applicable Laws, including the replacement of any facility of City used by Tenant which requires replacement by reason of Tenant's use thereof, excepting (a) ordinary wear and tear, and (b) damage due to casualty with respect to which the provisions of Section 14 [Damage or Destruction] shall apply. Tenant hereby waives all right to make repairs at the expense of City or in lieu thereof to vacate the Premises as provided by California Civil Code Section 1941 and 1942 or any other law, statute or ordinance now or hereafter in effect. In addition, if it becomes reasonably necessary during the term of this Lease, as determined by Director, Tenant will, at its own expense, redecorate and paint fixtures and the interior of the Premises and improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings. Without limiting the generality of the foregoing, at all times, Tenant shall be solely liable for the facade of the Premises separating the Premises from the Terminal common areas, including the external face thereof, all windows and display areas therein, and all finishes thereon. As provided below in Section 15.4 [City's Right to Perform], in the event Tenant fails to perform its maintenance and repair obligations hereunder, City shall have the right to do so, at Tenant's expense. The parties acknowledge and agree that Tenant's obligations under this Section are a material part of the bargained-for consideration under this Lease. Tenant's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Initial Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties</p>	<p>of the Board. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a directive from the Department of Revenue Management. At the sole discretion of the Board, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is removed.</p> <p><b>Section 9.02 The Board's Maintenance and Utility Obligations</b></p> <p>The Board shall provide structural maintenance of the Terminal Buildings and shall (except as provided in the immediately following sentence) maintain and repair the exterior walls of the Premises in the Terminal Buildings. However, maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility.</p> <p>The Board provides mains and utility lines throughout the terminal buildings. Concessionaire, at its sole cost, shall tie into the mains and the utility lines at the locations as specified by the Board. Supplemental air, electrical needs or other utilities required by Concessionaire in excess of what is customarily available in the terminal buildings will be, if approved, at the expense of Concessionaire. The Board, its officers, employees, representatives and contractors may, for the benefit of Concessionaire, or for the benefit of others than Concessionaire at the Airport, maintain the utilities within the Premises and enter upon the Premises at all reasonable times to make the repairs, replacements and alterations as may, in the opinion of the Board, be deemed necessary or advisable, and from time to time, to construct or install over, on, in, or under the Premises new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that the Board shall exercise such right in a manner so as to interfere as little as reasonably possible with Concessionaire's operations. The Board agrees that it will at all times maintain and operate with adequate, efficient and qualified personnel and keep in good repair the</p>	<p>indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.</p> <p><b>8.03 MAINTENANCE AND REPAIR:</b> Except with respect to Department's maintenance and repair obligations as set forth in <b>Sub-Article 6.01 "Department Services"</b>, the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Location(s). Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, wind equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass which repairs shall be in quality and class equal to or better than original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Concessionaire or its Sub-tenants specifically as a result of their operation shall remain the obligation of the Concessionaire or its Sub-tenants. The Concessionaire shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Location(s) to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Location(s), or with appropriate notice, enter upon the non-public areas of the Location(s), to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of either the Concessionaire and/or a representative of the applicable Sub-tenant may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire (or if the Concessionaire fails to cause the Sub-tenant to perform such maintenance) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Location(s) and perform such maintenance</p>
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## Tenant and User Agreements

## Appendix D-2

<p>contemplated the particular requirement involved, or the relationship between the requirement involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such requirement, on account of any such occurrence or situation.</p> <p>9.3 Tenant's Pest Management Obligations. Tenant shall, at all times during the Term of the Lease and at Tenant's sole cost and expense, keep the Premises and every part thereof in clean and sanitary conditions, including having a pest control program in place in accordance to the Airport's standards. Tenant shall hire a licensed pest control company or may contract with the Airport to provide these services. Tenant and the pest control company must adhere to the following set of standards in accordance to the City and County of San Francisco (CCSF) Environment Code, Chapter 3, including but not limited to the following:</p> <p>(a) Using pesticides on the CCSF allowed list only when application is made on City property i.e. SFO.</p> <p>(b) Any pesticide exemption must be granted by the San Francisco Department of Environment before using non-approved pesticides.</p> <p>(c) All posting requirements regarding pesticide application must be adhered to prior to use.</p> <p>(d) Pesticide use reports shall be made to Airport IPM (Integrated Pest Management) staff by the 10th of the month following application.</p> <p>(e) Tenant must provide Airport the name of the pest control company providing service within thirty (30) days from the effective date of the service contract.</p>	<p>Terminal Buildings and all appurtenances, facilities and services now or hereafter connected therewith; provided, however; Concessionaire's sole remedy for interruption of any utilities provided by the Board shall be an abatement of the MAG on a per diem basis. Concessionaire shall have no remedy against the Board for interruption of any utilities or failure of any systems not caused by the Board. The Board may implement a shared telecommunications system for telephone, facsimile, local access, long distance service, internet, intranet, or other such services. Concessionaire shall use such systems as and when implemented by the Board.</p>	<p>and charge Concessionaire for such services, as provided by <b>Sub-Article 8.04 "Failure to Maintain"</b>.</p> <p><b>8.04 FAILURE TO MAINTAIN:</b> Upon failure of the Concessionaire or its Sub-tenants to maintain the Location(s) as provided in this <b>Article 8 "Maintenance"</b>, the Department may enter upon the Location(s) and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Concessionaire, in addition to any Damages imposed by the Department pursuant to <b>Sub-Article 3.23 "Damages"</b>. Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in <b>Sub-Article 12.02 "Payment Default"</b>.</p> <p><b>8.05 ENVIRONMENTAL RECYCLING:</b> The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Concessionaires. Participation in this program, once established, will be mandatory. The Concessionaire and/or its Sub-tenants shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld. Proper disposal of contaminated and/or regulated materials generated by the Concessionaire or its Sub-tenants is the sole responsibility of the Concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other Federal or local regulatory agency.</p> <p><b>8.06 FIRE PROTECTION AND SAFETY EQUIPMENT:</b> The Concessionaire and its Subtenants must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Location(s).</p>
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**RISK: BUILDOUT**

Talking Points:

- Airport should retain final rights of approval for any buildout.
- Airport should retain reasonable rights of approval of the tenant's contractors and subcontractors.

Source:

Dallas/Fort Worth International Airport	Miami International Airport	Orlando International Airport
<p><b>ARTICLE 8: CONSTRUCTION AND CAPITAL INVESTMENT</b></p> <p>Section 8.01 Capital Investment Treatment</p> <p>A. Concessionaire shall make a minimum capital investment in the Premises as set forth in Article I. Concessionaire shall use due diligence to complete the approved project. Later remodeling shall be done as reasonably deemed necessary by the Board; however, work subsequent to that described in the first sentence hereof shall not be considered "Capital Investment" as defined in this Article, unless the project and capital dollars are first approved in writing by the Department of Revenue Management as qualifying for capital investment treatment. Capital investment cost estimates on new construction or remodeling as well as renderings of the project shall be first submitted to the Department of Revenue Management prior to construction or installation thereof. Capital investment costs shall be amortized on a straight-line basis over the Term of this Lease. Title to all additions shall vest in the Board immediately upon installation by Concessionaire. The final cost of all items subject to amortization as defined in this Article, shall be certified to the Board by Concessionaire's Chief Financial Officer within ninety (90) days after installation on the Premises. Failure to timely file a Certification shall relieve the Board of any obligation on unamortized investments otherwise provided for in this Lease.</p> <p>B. Capital investment(s), and any obligation of the Board to Concessionaire for any unamortized capital investment as may be provided in this Lease, shall be defined and subject to the following conditions:</p> <p>1. Capital Investment dollars are those dollars spent in actual construction or remodeling as well as</p>	<p><b>4.01 IMPROVEMENTS TO LOCATION(S):</b> The Concessionaire shall be required to invest a minimum of _____ Dollars per square foot (\$ _____ psf), for approved improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for each Location listed in Exhibit A and any additional location taken by the Concessionaire pursuant to <b>Sub-Article 1.07(A) "Addition of Location"</b>. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for a Location, the maximum proportion of soft costs permitted to be included as approved improvements shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Concessionaire to build such improvements in compliance with MDAD TAC procedures. It is the intent of the parties that approved improvements may include but are not limited to the décor, remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail in the Final Plans; as such term is defined in <b>Sub-Article 4.02 "Design of Improvements"</b>.</p>	<p><b>ARTICLE 6 - IMPROVEMENTS TO PREMISES</b></p> <p>A. <b>Improvements to be Provided by the Aviation Authority.</b></p> <p>1. Except as otherwise provided in this paragraph, Aviation Authority shall provide and Company shall accept Premises in their "as is" condition. Aviation Authority shall make available the following:</p> <p>a. Heating and air conditioning stubbed to the Premises or chilled water from the nearest existing chilled water piping;</p> <p>b. An electrical panel, located within one hundred (100) feet of the Premises. (Company shall provide conduit and wire to the designated electrical panel and provide electrical distribution via a separate panel within the Premises). The maximum design load for the Premises shall comply with the then current edition of the Energy Efficiency Code of the State of Florida without waiver or variance. Kilowatt-hour usage shall be monitored by the Aviation Authority;</p> <p>c. A telephone backboard, located in a communication room in the located within one hundred (100) feet of the Premises. (Company shall provide conduit and arrange for telephone service);</p> <p>d. Sprinklers throughout the Premises. (Company shall adjust heads and/or increase the number of heads or line sizes as required by local building codes based on Company's specific layout and occupancy classification); and</p> <p>e. Fire alarm, heat detection and smoke detection ("fire alarm system") is provided within the Premises or at a connection point located within one hundred (100) feet of the Premises. (Company shall modify or provide for additional fire alarm systems from a fire alarm panel located in close proximity and installed throughout the Premises as required by local building codes based on Company's specific layout and occupancy classification).</p> <p>f. To the extent Company requires lighting, natural gas or additional electrical power, telephone outlets, or adjustments to the heating and air conditioning system or any other improvements, such additional Improvements or services shall be subject to the prior written approval of the Aviation Authority, and any such approved Improvements or services shall be made at Company's expense. Company understands and agrees that, other than the Improvements specified as being provided by the Aviation Authority in this Article</p>

<p>architectural and engineering fees relating thereto. Capital Investment dollars shall also include dollars paid to the Board or to a prior tenant of the space, in order to acquire a release of the space for Concessionaire's use.</p> <p>2. Capital Investment shall be reported to the Department of Revenue Management in written form itemizing each element of expense. Further, the report must clearly reflect the total capital investment claimed per location. The report shall be submitted within ninety (90) days of the completion of each project (each shop being a separate project), and Concessionaire shall during the Term hereof and for a period of twelve (12) months following termination retain all records in support of each report.</p> <p>3. The Board shall have the right to audit each capital investment report at any time during the term of this Lease and for a period of twelve (12) months following termination.</p> <p>4. In the event of an audit, any itemization of capital investment costs not supported by proper documentation, such as invoice, receipts, canceled checks, shall be disallowed.</p> <p>5. Any obligation by the Board to pay unamortized capital investment after a termination without cause shall be based upon Concessionaire's timely submitted report as provided herein.</p> <p>C. Capital investment costs associated with each shop location shall be reasonable in scope and subject to Board audit. Any shop being remodeled or newly constructed shall be renovated or constructed only after Concessionaire submits to the Board the estimated cost of the capital investment.</p> <p>Section 8.02 Theme, Design and Décor The theme, design and decor of each location shall not deviate from that which is in keeping with the Tenant Design Handbook and which decor is first approved in writing by the Board staff. Any changes desired by Concessionaire shall be submitted to the Department of Revenue Management for approval. Changes that are made without approval will constitute a breach of this Lease.</p>	<p>Improvements not constituting approved improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to <b>Sub-Article 4.08 "Cost Documentation,"</b> and (iii) can be removed without damage to the premises. The Concessionaire is liable and shall indemnify the Department for any damage to the Location(s) which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement. Off-Airport properties used as storage space will not be considered as Location(s), as stated in <b>Article 4 "Improvements to the Location(s)"</b> or as an extension of this Agreement, and costs incurred by either the Concessionaire or its Sub-tenants to provide such storage space shall not constitute approved improvements.</p> <p><b>4.02 DESIGN OF IMPROVEMENTS:</b> Plans for the design of improvements will be in accordance with Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures" or "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan", the "MDAD Public Address System Master Plan", and the "MDAD Design Guidelines Manual" as may be established.. As plans for the improvement of individual Location(s) or common area improvements are completed, the Concessionaire shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The</p>	<p>6.A.1., Aviation Authority shall not be obligated to provide any additional Improvements or services of any type, character, or nature (including electrical or telephone outlets) on the Premises during the term of this Agreement.</p> <p>2. Company shall have the right, at its own expense, to receive telephone service provided by the Aviation Authority and to receive or install in the Premises private communication or audio systems (other than a public paging system) compatible with the Aviation Authority's telephone and communication systems, provided that any such telephone service and communication systems shall be approved by the Executive Director prior to installation.</p> <p><b>B. Improvements to be Constructed by Company.</b></p> <p>1. Notwithstanding any other provisions herein, Company shall be responsible for undertaking at its own cost and expense the demolition of existing improvements and the installation of all Improvements in the Premises together with, fixtures, furnishings, signage, trade fixtures and equipment necessary to conduct its operations at the Premises, including, but not limited to, all interior and exterior finishes, counter shelving, cabinets, display cases, air conditioning and heating ductwork and controls for air distribution within the Premises, lighting, communication and power fixtures, all wiring, accessories and panels required to bring power from the main electrical panel to the Premises, and any water piping, control and drainage facilities (if the same are required for its operations on the Premises). Additionally, Company shall provide air handlers, variable volume controllers, fan coil, distribution ductwork, chilled water piping, etc., for heating and air conditioning throughout the Premises. Air handlers, and/or fan coils shall be controlled by space temperature sensors and microzone controllers (HVAC suppliers utilize microflow controllers) provided by Company tied to the building automation system. Company shall at its expense provide the necessary hardware and installation to connect its electrical services to the Aviation Authority's automation system. (Terminal units shall be controlled by Company-provided thermostats that are interlocked to close when the associated air handler is shut down).</p> <p>2. To ensure construction of a first class concession, Company agrees to expend not less than Nine Hundred Three and 85/100 Dollars (\$903.85) per square foot and an approximate total of Four Million Seven Hundred Thousand and No/100 Dollars (\$4,700,000.00) in the Original Improvements of portion of the Premises located on Level 2 designated as a Sit-Down Restaurant; not less than One Thousand Sixty-Six and 67/100 Dollars (\$1,066.67) per square foot and an approximate total of Six Hundred Forty Thousand and No/100 Dollars (\$640,000.00)</p>
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<p>Section 8.03 Due Diligence                  Within thirty (30) days from the date of the execution of this Lease, Concessionaire shall submit to Board the final plans and specifications for the construction of Concessionaire's location in accordance with Board's current design criteria. Concessionaire shall commence construction of said project within thirty (30) days from the date Board approves Concessionaire's plans and issues its permit and construction approval letter to Concessionaire, and Concessionaire shall diligently proceed with construction so as to complete said project and open for business on or before 90 days from issuance of the approval letter. Concessionaire acknowledges that the financial success of the Airport depends, in part, on both (i) the completion of the construction, remodel and renovation of the Premises as herein required; and, (ii) Concessionaire's opening for business in a timely manner, and that Board's damages arising from Concessionaire's failure to do so are extremely difficult and impracticable to fix. Therefore, should Concessionaire fail to either complete said project as required or open the Premises for business as required, Concessionaire shall pay to Board as liquidated damages and not as a penalty, upon receipt of invoice, the sum of Two hundred Fifty Dollars (\$250.00) per day per any and all locations not in compliance. Concessionaire agrees that said amount of Two hundred Fifty Dollars per day per location is fair compensation to Board for said liquidated damages.</p> <p>Section 8.04 Construction by Concessionaire                  Concessionaire shall not erect any structures, make any improvements or modifications, or do any other construction work on the Premises, or alter, modify, or make additions, improvements, or repairs (except emergency repairs) to, or replacements of any structure now existing or built, or install any fixtures (other than trade fixtures removable without permanent injury to the Premises or improvements thereon) without the prior</p>	<p>Final Plans shall be prepared by an architectural, interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.</p> <p><b>4.04 CERTAIN CONSTRUCTION CONTRACT TERMS:</b> All contracts entered into by the Concessionaire and/or its Sub-tenants for the construction of the improvements shall require completion of the improvements within the schedules submitted pursuant to <b>Sub-Article 4.02 "Design of Improvements"</b> and shall contain reasonable and lawful provisions for the payment of actual or Damages to the County in the event the contractor fails to complete the construction on time. The Concessionaire agrees that it will use its best efforts and shall also require the Sub-tenants to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.</p> <p>Prior to the commencement of any installation/construction work by the Concessionaire, the Concessionaire shall provide or cause to be provided to the County copies of a fixed price contract or contracts for all work to be performed at the Location(s). The work to be performed under such contract(s) shall be insured by the "Surety Performance and Payment Bond" provided by Concessionaire to the County in the form contained in Exhibit B "Surety Performance and Payment Bond" in this Lease and Concession Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation/construction contract.</p> <p><b>4.05 IMPROVEMENTS FREE AND</b></p>	<p>in the Original Improvements of portion of the Premises located on Level 2 designated as a Bar; and expend not less than One Hundred Fifty-One and 90/100 Dollars (\$151.90) per square foot and an approximate total of Sixty Thousand and No/100 Dollars (\$60,000.00) in the Original Improvements of portion of the Premises located on Level 1 designated as Commissary and Support space.</p> <p>3. Company shall abide by the Tenant Design Criteria Retail, Food and Beverage as shown on Exhibit "D", which were delivered by Aviation Authority to Company on CD ROM prior to the execution of this Agreement, and to the other provisions of this Agreement. The Executive Director shall have the right at any time during the term of this Agreement to enter the Premises to ensure that Company's operations conform to the Tenant Design Criteria Retail, Food and Beverage. Immediately upon its receipt of written notice from the Executive Director that it has been determined that Company's display, design, or operations are not in compliance with the Tenant Design Criteria Retail, Food and Beverage or the other provisions of the Agreement, Company shall make modifications necessary to achieve compliance.</p> <p>4. Company shall construct, the Premises and install new (acceptable to the Executive Director in his sole discretion) fixtures and furnishings in accordance with the provisions of this Article 6.</p> <p>5. Any clocks exposed to public view shall be compatible with and be connected to the Aviation Authority's master clock system, at Company's expense and with the prior written approval of the Executive Director.</p> <p>6. No televisions may be located in any portion of the Premises that is visible to the public.</p> <p>7. The Improvements required hereunder are not required to enhance the value of the Premises or to provide monetary benefit to the Aviation Authority. The improvements are closely associated with Company's brand concept, and will be demolished and rebuilt to meet the requirements for a successive concessionaire for a subsequent concession at the end of Company's Term. Therefore, such improvements required under this Article 6.B. should not be considered rental payments subject to the Florida commercial rental sales tax.</p> <p><b>C. Requirements and Procedures.</b></p> <p>1. <b>Approval Required.</b></p> <p>a. All Improvements to the Premises, including both the Original Improvements and any Improvements constructed, installed or altered thereafter by Company, and all furnishings, fixtures, signage, trade fixtures and equipment to be installed by Company on or in the</p>
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<p>written approval of the Board as provided herein and as more specifically provided in the DFW Design Criteria Manual and the Board's Tenant Design Handbook, as they may be amended from time to time in the Board's sole discretion. In the event that any construction, improvement, alteration, modification, addition, repair (excluding emergency repairs), or replacement is made without such approval, or in a different manner than approved, the Board may terminate this Lease in accordance with the provisions for termination herein, or upon notice to do so, Concessionaire will remove the same, or, at the discretion of the Board, cause the same to be changed to the satisfaction of the Board. In case of any failure on the part of Concessionaire to comply with the notice, the Board may, in addition to any other remedies available to it, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to the Board upon demand.</p>	<p><b>CLEAR:</b> The improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever, other than the County's obligation to reimburse the Concessionaire for the unamortized value of the approved improvements as provided in this Agreement. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Location(s) or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County (and the Concessionaire for contracts entered into by Sub-tenants) from the claims of any laborers, subcontractors or material men against the Location(s) or improvements.</p>	<p>Premises, and the plans and specifications therefor, must be in accordance with the Tenant Design Criteria Retail, Food and Beverage and must have been submitted to and approved in writing by the Executive Director prior to construction, alteration or installation. In the case of signage, the size, location, text, material, and appearance thereof shall also be subject to such approval. Following approval by the Executive Director, such Improvements shall be made or altered, and such furnishings, fixtures, signage, trade fixtures and equipment shall be installed in strict accordance with such plans and specifications, and in accordance with all applicable statutes, ordinances, building and health codes, rules and regulations, the Tenant Design Criteria Retail, Food and Beverage and the Airport Development Standards, as the same may be amended from time to time.</p>
<p>Section 8.05 Preliminary Activities Prior to commencement of any construction, demolition, additions or other modifications to the Premises during the term of this Lease, Concessionaire shall familiarize itself with the Board's Tenant Design Handbook and the DFW Design Criteria Manual. Concessionaire shall comply with the provisions of the Tenant Design Handbook and the prescribed provisions of the DFW Design Criteria Manual.</p>	<p><b>4.06 OTHER REQUIREMENTS:</b> The Concessionaire shall or shall cause the Sub-tenants to apply for and obtain a building permit from the County for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Concessionaire shall furnish or shall cause the Sub-tenants to furnish to the Concessionaire and the County one complete set each of legible prints (black line), of construction drawings in electronic file format and in full compliance with Autodesk's DWG file format and standard revised as to "as built". Based upon submission date, the AutoCad.dwg version must be within two years of the latest release. MDAD will not accept the submission of any AutoCad drawing deliverable which contains references to external source drawing files. The closeout document package should include all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy</p>	<p>b. In addition to complying with the requirements of Article 6.C.1.a., Company shall, prior to entering into any contract for the purchase, construction or installation of any Original Improvement, submit such contract to the Executive Director for approval of the cost of such purchase, construction or installation. If the Executive Director reasonably determines that the cost of any one or more of such Original Improvements is excessive, or that the cost of any such Original Improvement cannot be justified economically, the Executive Director shall advise Company of the portion of such cost which the Executive Director will allow as the "approved cost" for purposes of the buy-out provisions of Article 2.D., above, and its obligations to make expenditures for Improvements, fixtures and furnishings in accordance with the provisions of Article 6.B., above. The Executive Director shall not be required to assign an approved cost to any such Original Improvement which is not reasonably necessary to the operation by Company on the Premises hereunder, or to assign an approved cost to any such Improvement in excess of the cost then generally prevailing therefore in Orange County, Florida. Company may pay costs with respect to an Original Improvement in excess of the approved cost thereof if it so elects, but no portion of such cost in excess of the approved cost shall be taken into account for purposes of the Buy-Out Payment described in Article 2.D., above, or for purposes of Company's obligations to make expenditures for Improvements, fixtures and furnishings in accordance with the provisions of Article 6.B., above.</p>
<p>Section 8.06 Construction Contracts, Liens and Certificate of Occupancy A. Concessionaire shall include in all construction contracts entered into in connection with any or all of the construction work aforesaid, a provision requiring the contractor, or, in the alternative, Concessionaire, to indemnify, hold harmless, defend and insure the Airport Board, and the Cities of Dallas and Fort Worth including but not limited to the Board's directors, officers, agents, employees, and the Cities' council-members, officers, agents and employees</p>		<p>2. <b>No Liens.</b> Company shall obtain all necessary licenses and permits to accomplish such work and Company hereby warrants to Aviation Authority that all such Improvements shall be free and clear of any claims, liens, and encumbrances and agrees to indemnify and save Aviation Authority and the City harmless from and against any and all losses, damages and costs, including Attorneys' Fees, with respect</p>

<p>against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of such construction work, whether the claims and demands made are just or unjust, unless same are caused by the gross negligence or willful act of the Board, its directors, officers, agents, employees or contractors, acting within the course and scope of employment. Concessionaire shall furnish, or require the contractor to furnish, insurance, as required herein.</p> <p>B. Concessionaire shall also include in any construction contract such provisions as may be required by the Board relating to the operations of the contractor on the Airport; such provisions, among any other, shall include the requirement for a payment and Performance Bond for any work in excess of \$25,000 to be performed by Concessionaire or the contractor.</p> <p>C. Concessionaire shall not allow any liens to attach to the Premises or Concessionaire's leasehold interest therein without prior written approval of the Board. Prior to the commencement of any addition or non-emergency repair of a sum greater than that stated above, Concessionaire or its contractor shall furnish the Board, on forms attached to the Tenant Construction Application, and without expense to the Board, a surety bond issued by a surety company licensed to transact business in the State of Texas and satisfactory to and approved by the Board, with Concessionaire's contractor or Concessionaire as principal, in a sum not less than one hundred percent (100%) of the estimated or actual, as the case may be, total cost of the contract or contracts for the addition or non-emergency repair of the Premises or any part thereof. The bond shall guarantee prompt payment to all persons supplying labor, materials, provision, supplies and equipment used directly or indirectly by the contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in the construction contract and shall provide for the full performance of the work contracted for by Concessionaire, and shall protect the Board from any liability, losses or damages arising therefrom. Upon</p>	<p>provided the Concessionaire does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.</p> <p>No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.</p> <p><b>4.07 REVIEW OF CONSTRUCTION:</b> The County shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Concessionaire or the Sub-tenant and approved by the County.</p> <p><b>4.11 CONSTRUCTION SERVICES:</b> The Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:</p> <p><b>1) Concessionaire Improvements</b> Pursuant to the terms of this Agreement, the Concessionaire shall construct or cause to construct certain improvements. The Concessionaire shall provide the Department with a scope of proposed improvements and a preliminary estimate of hard and soft costs for such improvements within a reasonable timeframe. Once the Department and the Concessionaire have mutually agreed on the scope of the improvements and the preliminary estimates, the Concessionaire shall proceed to design and construct or cause to be designed and constructed the improvements in accordance with the provisions of this Agreement.</p> <p><b>2) Design and Construction Coordination</b> Concessionaire shall:</p> <ol style="list-style-type: none"> <li>1. Be responsible for construction management and coordination of all improvements to the Location(s) and authorized administrative support space</li> </ol>	<p>thereto. If any such claim or lien shall be filed against the Premises, or any Improvements thereto or Company's rights under this Agreement, the Company shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.</p> <p>3. <b>Performance and Payment Bond.</b> Prior to construction of any Improvements in the Premises, as they currently exist, Company shall record and post a Notice of Commencement. No work hereunder shall be commenced by or at the direction of Company until Company, or Company's contractor has, at no cost or expense to the Aviation Authority provided to Aviation Authority from a company reasonably acceptable to the Executive Director (i) a surety Payment Bond for the benefit of Aviation Authority, in the form attached as Exhibit "E", in an amount equal to the total estimated cost of the work, which bond shall guarantee the payment of all contractors' and subcontractors' charges and charges of all other persons and firms supplying services, labor, materials or supplies in connection with the work, and (ii) a surety Performance Bond for the benefit of Aviation Authority, in the form attached as Exhibit "F", in an amount equal to the full value of the construction contract which shall guarantee the prompt completion of the work by Company in accordance with the approved plans and specifications. Company, or Company's contractor as applicable, shall maintain the Performance Bond in effect for at least five (5) years after the completion of Improvement. In the event Payment and Performance Bonds are posted by Company's contractor, Company shall continue to be responsible to Aviation Authority for completion of all Improvements in accordance with the approved plans, and payment of all sums to ensure no claims against the Improvements by contractor, subcontractor or any other person supplying services, labor, materials or supplies in connection with the work.</p> <p>4. <b>Actions After Completion of Improvements.</b> Company shall, within ninety (90) days following the completion of construction, installation or alteration of any Improvements, fixtures, furnishings, signage, trade fixtures and equipment at the Premises, provide to the Executive Director a written statement setting forth the actual costs thereof, in such detail with respect to the cost of the various elements thereof as the Executive Director may require, and such statement shall be certified by an officer (if Company is a corporation), a partner (if a partnership), or the owner (if a sole proprietorship), of Company. Company shall make available to the Executive Director, upon the Executive Director's request, receipted invoices for labor and materials covering all Improvements, including architectural and engineering fees, fixtures, furnishings, signage, trade fixtures and equipment. In</p>
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<p>completion of construction, Concessionaire shall obtain lien waivers from all contractors and subcontractors providing labor or materials to the construction project.</p> <p>D. Prior to entering into any contract for construction work, Concessionaire shall submit to the Airport Project Coordinator, or his/her designee as named by the Department of Revenue Management, for approval the name of the general contractor and/or construction manager to whom Concessionaire proposes to award the contract for the construction work and/or construction management. The Airport Project Coordinator shall have the right to approve or disapprove any such contractor and/or construction manager and approval shall not be unreasonably withheld or delayed.</p> <p>E. Concessionaire further agrees that all construction work to be performed, including all workmanship and materials, shall be of first-class quality and shall be in accordance with the plans and specifications approved by the Airport Project Coordinator. As used herein, the term "first-class quality" shall mean of the same quality as buildings used or to be used for the same or similar purposes already constructed on the Airport. Concessionaire agrees that it shall deliver to the Airport Project Coordinator, mylar "as built" record documents of the construction, addition and other modifications constructed by it on the Premises and shall, during the term of this Lease, keep said documents current, showing therein any changes or modifications which may be made by it in or to the Premises or additions thereto. Concessionaire shall further provide the information described in this paragraph on electronic records.</p> <p>F. When the construction work hereinabove provided has been completed, Concessionaire shall certify to Board that such construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations and orders. When the Airport Project Coordinator is satisfied that such construction is so in compliance, he shall deliver</p>	<p>including those of Sub-tenants.</p> <ol style="list-style-type: none"> <li>2. Coordinate meetings with Sub-tenants and Sub-tenant's architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.</li> <li>3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.</li> <li>4. Provide Sub-tenants, if applicable, with required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.</li> <li>5. Provide and coordinate access to Location as necessary.</li> <li>6. Purchase materials and services, and coordinate the fabrication and installation of the Concessionaire development requirement, whereby such elements are the designated responsibility of the Concessionaire, if so implemented.</li> </ol> <p><b>3) Construction</b> Concessionaire shall:</p> <ol style="list-style-type: none"> <li>1. Attend or cause Sub-tenants to attend pre-construction meetings, construction meetings, coordinate construction with Sub-tenants if applicable, monitor schedule, and coordinate Location(s) development with the Department as required, pursuant to the TAC-N procedures.</li> <li>2. Adhere to and or cause Sub-tenants to adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.</li> <li>3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and</li> </ol>	<p>addition, within ninety (90) days after completion of construction, Company shall, at its expense, provide the Executive Director with record drawings showing the "as built" condition of all Improvements constructed by Company on the Premises in both hard copy and electronic format acceptable to the Aviation Authority as outlined in the Tenant Design Criteria Retail, Food and Beverage. Company shall further provide the Executive Director with such information and supporting documents pertaining to the cost and replacement value of the improvements to the Premises as the Executive Director may from time to time request.</p> <p><b><u>D. Time Schedule Preparation and Approval of Plans and Specifications.</u></b></p> <ol style="list-style-type: none"> <li>1. If they have not already been submitted to the Aviation Authority, preliminary plans and specifications for all Original Improvements to be made to the Premises by Company shall be submitted to the Aviation Authority promptly after the date of this Agreement. Preliminary plans for all other Improvements shall be submitted to Aviation Authority promptly after the completion of such preliminary plans. Final plans and specifications for all Original Improvements and/or all other Improvements shall be submitted to the Executive Director within thirty (30) days after the Company receives written notice from the Executive Director that the Executive Director has approved the preliminary plans and specifications therefore. The Executive Director shall, within thirty (30) days after his receipt of preliminary or final plans and specifications, either approve or disapprove such plans and specifications so submitted. The Executive Director's right to approve or reject such plans and specifications shall extend to all matters relating thereto, including, without limitation, space layouts and architectural, engineering, and aesthetic matters, and the Executive Director shall specifically have the right to reject any designs submitted and to require Company to resubmit designs and layout proposals until they meet his approval.</li> <li>2. In the event the Executive Director disapproves any portion of the preliminary or final plans and specifications, Company shall promptly submit necessary modifications and revisions thereof. No changes or alterations shall be made in said plans or specifications after approval by the Executive Director without the approval of such changes or alterations by the Executive Director. One copy of plans and specifications for all Original Improvements and for all other Improvements or subsequent alterations thereof shall, within fifteen (15) days after their approval by the Executive Director, be signed by Company and deposited with the Executive Director as an official record thereof.</li> </ol>
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## Tenant and User Agreements

## Appendix D-3

<p>a Certificate of Occupancy to Concessionaire.</p> <p>G. Concessionaire shall not, during the Term hereof, without first submitting for review the appropriate plans as may be required in the Tenant Design Handbook and obtaining written approval thereof, erect any additional structures, make any other additions, structural repairs, or do any other construction work on the Premises, or alter, modify, or make additions, improvements or structural repairs to or replacements of, any structure now existing or built at any time during the Term hereof, or install any fixtures except trade fixtures, furniture and other items of personal property removable without material damage to the structure. Concessionaire shall further update the mylar "as built" record documents and computer software to reflect said additions and changes. If the structure is damaged by such removal, it shall be immediately repaired by Concessionaire.</p> <p>Section 8.07 Inspection of Premises Board representatives may enter upon the Premises at any and all reasonable times during the term of this Lease for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to rights of the Board hereunder. Board representatives will make best efforts not to interfere with Concessionaire's business operation.</p> <p>Section 8.08 Default During Design and Construction In the event of default of Concessionaire during the design or construction period of any additions hereunder, the Board shall have the right, which right shall be set forth in all contracts between Concessionaire and its independent contractors and suppliers for work or materials relating to additions hereunder, to replace Concessionaire with itself and to continue the contracts of Concessionaire with said independent contractors and suppliers. A provision substantially similar to the following shall comply with this Section: "The Board of Directors of the Dallas/Fort Worth International Airport, acting for the Cities of Dallas</p>	<p>requirements, as applicable, are adhered to by all.</p> <p>4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Location(s), including those of any Sub-tenants.</p> <p>5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-today field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.</p> <p>6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.</p> <p>7. Establish a uniform system for the timely processing and control of drawings.</p> <p>8. Review status of drawings with contractor(s) and architect(s) at progress meetings.</p> <p>9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.</p> <p>10. Monitor punch list completion and review testing and inspection reports for all Location(s).</p> <p>11. Organize and have available upon request completed project files.</p> <p>12. Coordinate access to the Location to allow staff training and equipment testing.</p> <p>13. Obtain Certificate of Occupancy for each Location.</p> <p>14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.</p>	<p>3. The Executive Director's approval of any plans and specifications submitted by Company shall not constitute the assumption of any liability by the Executive Director or Aviation Authority for the compliance or conformity of such plans and specifications with applicable building codes, zoning regulations and municipal, county, state and federal laws, ordinances and regulations, including, without limitation, the Americans with Disabilities Act or any accessibility guidelines promulgated thereunder, or for their accuracy or suitability for Company's intended purpose, and Company shall be solely responsible for such plans and specifications. The Executive Director's approval of such plans and specifications shall not constitute a waiver of the Executive Director's right thereafter to require Company, at Company's expense, to amend the same so that they comply with applicable building codes, zoning regulations and municipal, county, state and federal laws, ordinances and regulations, and to make such construction changes as are necessary so that the completed work is in conformity with such amended plans and specifications.</p> <p><b>E. Completion of Improvements.</b></p> <p>1. Upon the Executive Director's approval of Company's plans and specifications and when authorized to occupy the Premises and proceed with construction of improvements in accordance with the provisions of Article 2.B. and Article 6.C. and 6.D., above, and applicable law, Company shall immediately begin construction and installation of the approved Improvements, furnishings, fixtures, signage and trade fixtures at the Premises and prosecute the same diligently to completion; provided, however, that any delay in construction due to fire, earthquake, wars, or other calamity beyond the reasonable control of Company, or acts of Aviation Authority or one of its contractors, shall extend the time within which such construction and installation shall be completed. Company agrees (i) that its Improvements, fixtures, furnishings, trade fixtures and equipment to be constructed or installed in the Premises shall be completed no later than one hundred twenty (120) days after Aviation Authority notifies Company that the Premises are ready for Company to begin build out of Company's Improvements, and (ii) that a delay in completion of any Improvements beyond such date will not postpone Company's obligation to open for business and begin paying Concession Fees to the Aviation Authority pursuant to Article 5, above, unless such delay results from causes described in the proviso to the first sentence of this Article 6.E.1., or Company has failed to complete construction of its Improvements to the Premises because it has not been afforded access by the Aviation Authority to the Premises for purposes of such</p>
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## Tenant and User Agreements

## Appendix D-3

and Fort Worth (and herein referred to as the "Board"), shall have the right, but not the obligation, in the event that the Board elects to replace Concessionaire with itself under the terms of the Board's contract with Concessionaire, to continue this contract between Concessionaire and contractor, upon assuming in writing all the liabilities of Concessionaire under this contract between Concessionaire and contractor; and Board thereby shall receive all the rights, title, interests and remedies that Concessionaire has under the terms of this contract between Concessionaire and contractor. The Board shall have the right to demand, collect (including suit for damages and cost of litigation and reasonable attorney fees) from Concessionaire all costs incurred by the Board in assuming the obligations of Concessionaire as provided in this Section."

### Section 8.09 Signs

Concessionaire shall have the right to install and maintain signs on the Premises, provided that the design, installation and maintenance of all signs shall be subject to the terms of this Section and comply with the Tenant Design Handbook and DFW Design Criteria Manual. Concessionaire further acknowledges the Board's desire to maintain a high level of aesthetic quality in all concession facilities throughout the Terminal Buildings. Therefore, Concessionaire covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to the Board, through a Tenant Construction Application, the size, design, content, construction or fabrication and intended location of each and every sign it proposes to install on or within the Premises and that no signs of any type shall be installed on or within the Premises without the specific prior written approval of the Board as to the size, design, content, construction or fabrication and location, which approval shall not be unreasonably withheld or denied if the proposal is in compliance with the Board's criteria governing signage. Concessionaire shall reimburse the Board for

construction for a period of less than one hundred twenty (120) days (in which event Company's obligation to open for business and commence paying Concession Fees with respect to the Premises shall be delayed by, as applicable, the number of days that the causes described in such proviso delayed Company's construction of its Improvements to the Premises or the number of days necessary to afford Company one hundred twenty (120) days to complete construction of its Improvements to the Premises).

2. Once Company has begun construction of any other Improvements which the Executive Director has approved the final plans and specifications thereof pursuant to Article 6.D., above, Company shall prosecute the same diligently to completion. Company shall require the designer of record and Company's mechanical, electrical and plumbing contractors or subcontractors: to (a) provide construction administration and inspection services throughout construction on the Premises, one (1) inspection weekly at a minimum, and (b) to attend weekly construction meeting with the Aviation Authority's representatives.

3. Company's improvements to the Premises are required to be substantially completed as determined by Company's architect and engineer and the Executive Director prior to opening of the Premises for business. All punch list work shall be completed within thirty (30) days of substantial completion. Company agrees that, should the Aviation Authority allow Company to open for business prior to completion of all punch list work, Company will issue a cashier's or certified check to the Aviation Authority to be held in escrow until completion of the work. The amount of the check will be five (5) times the estimated value to complete the work or Ten Thousand and No/100 Dollars (\$10,000.00), whichever is greater. In the event the punch list work has not been completed within thirty (30) days of substantial completion, the Aviation Authority shall have the right, but not the obligation, to use these funds to complete the Improvements, or if the escrow funds are insufficient to complete the Improvements, Company shall be obligated to reimburse the Aviation Authority any remaining balance due within ten (10) days of written notice by the Aviation Authority.

4. At all times during the construction and installation of all Original Improvements and all other Improvements, fixtures, trade fixtures, furnishings and equipment by the Company, Company shall coordinate the activities of its contractors and installers on the Premises with Aviation Authority.

F. **Removal of Property.** Provided it is not then in default hereunder, Company shall, within four (4) calendar days after the expiration or sooner termination of this Agreement, remove from the

## Tenant and User Agreements

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Concessionaire's reasonable pro-rata share of the Board's cost of fabricating and installing any signs for advertising or providing information on multiple named concessions.

### Section 8.10 Refurbishment

If this Lease is for a Term of more than five years, then Concessionaire shall refurbish the Premises in the fifth year of the Term. Said refurbishment shall include without limitation all refinishing, repair, replacement, redecorating, repainting and re-carpeting necessary to keep said areas in first class condition and shall comply with all other terms and conditions of this Article. Concessionaire shall submit its plans for refurbishment to the Department of Revenue Management for review and approval within ninety (90) days following the beginning of the fourth year of operation.

Premises its furnishings, interior signage, trade fixtures, equipment, and other personal property, provided that such removal can be accomplished without material injury to the Premises or any Improvements thereto and provided that any damage caused to the Premises or Improvements thereto as a result of such removal is repaired by Company at its own cost and expense to the satisfaction of the Executive Director. Any property not so removed within such time period shall become the sole property of Aviation Authority, or, alternatively, Aviation Authority may remove and dispose of such property at Company's expense.

G. **Periodic Refurbishment of Premises.** After the commencement of the fifth (5<sup>th</sup>) Agreement Period and prior to the seventh (7<sup>th</sup>) Agreement Period, but in any event Company shall expend to refurbish, replace or supplement such Improvements, furnishings, trade fixtures and equipment no less than Fifty and No/100 Dollars (\$50.00) per square foot for the portions of the Premises located on Level 2, which, as of the Effective Date, is estimated at Five Thousand Eight Hundred (5,800) square feet and shall additionally expend such sums as may be required by the Executive Director with respect to the Level 1 portions of the Premises dedicated for commissary and support space, subject to the right of the Aviation Authority, in the Aviation Authority's sole discretion, to direct Company to make all or any portion of such expenditure at such earlier time prior to the commencement of such fifth (5<sup>th</sup>) Agreement Period as it deems appropriate. Provided, however, under this Article 6.G. an expenditure for Improvements, furnishings, trade fixtures or equipment shall not include interest charges, Company's own overhead expenses or any portion of Company's expenditures which exceed the fair market price for any such Improvement, furnishing, trade fixture or equipment.

In order that funding is available for such periodic refurbishment, Company and Aviation Authority will enter into a Concession Improvement Trust, hereafter known as the "Trust". The sole purpose of the Trust is to fund the Company's obligations as provided above in this Article 6.G. All costs necessary to plan, design, and construct the remodeling, refurbishment or replacement of Improvements, furnishings, trade fixtures or equipment shall be paid from the accumulated funds held in the Trust. Company shall deposit monthly into the Trust a total of Six Thousand Forty-One and 67/100 Dollars (\$6,041.67) which equates to Fifty and No/100 Dollars (\$50.00) per square foot for refurbishment of the portion of the Premises located on Level 2. Payment shall commence on first (1<sup>st</sup>) day of the fifth (5<sup>th</sup>) month after the Commencement Date, and continue for Forty-seven (47) consecutive months thereafter. Disbursements from the Trust shall be

		<p>requested by Company or may be directed by the Aviation Authority. The Aviation Authority will determine the need for such disbursement in consultation with Company, but such disbursement shall be at the sole discretion of the Aviation Authority. Aviation Authority shall deliver monies from the Trust, after execution of a payment certificate, to a designated payee, outright and free of Trust. A payment certificate shall be executed by an authorized representative of Company and the Executive Director.</p> <p>In the event that Company has expended its own funds and those of the Trust in excess of Fifty and No/100 Dollars (\$50.00) per square foot with respects to the food and beverage sale and dispensing space prior to the commencement of the fifth (5<sup>th</sup>) Agreement Period for refurbishment as described in this Article 6.G., and the commissary and support space for food storage have been refurbished to the standards to be established by the Executive Director, the Trust will be discontinued and any remaining balance in the Trust will be refunded to Company. In the event that Company has not expended in excess of the minimum sums set forth above in Improvements, furnishings, trade fixtures or equipment prior the commencement of the seventh (7<sup>th</sup>) Agreement Period, Aviation Authority may, at the Aviation Authority's sole option, grant Company additional time to make such expenditures or take possession of the remaining balance in the Trust without recourse from Company.</p>
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**RISK: REMEDIES FOR DEFAULT**

Talking Points:	<ul style="list-style-type: none"> <li>• Include clear "non-waiver" language.</li> <li>• Check state and local landlord-tenant statutes and ordinances and bankruptcy law for additional rights or remedies.</li> </ul>
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Source:

Salt Lake City International Airport	LaGuardia Airport	San Francisco International Airport
<p><b>Article 13 City Remedies</b>                      13.01 <i>Events of Default.</i> The events described below shall be deemed events of default by Operator hereunder. Upon the occurrence of any one of the following events of default, City may immediately issue written notice of default.                      13.01.1 The conduct of any business or performance by Operator of any acts at the Airport not specifically authorized herein or by other agreements between City and Operator, and said business or acts do not cease within thirty (30) days of receipt of City's written notice to cease said business or acts.                      13.01.2 The failure to cure a default in the performance of any of the terms, covenants, and conditions required herein (except insurance requirements as set forth in Section 12.03, and payment of rentals, fees, and charges, as provided for in Article 9) within thirty (30) days of receipt of written notice by City to do so; or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by Operator of written demand from City to do so, Operator fails to commence the remedying of such default within said thirty (30) days following such written notice, or having so commenced, shall fail thereafter to continue with diligence the curing thereof. Operator shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, and (ii) that it is proceeding with diligence to cure said default and that such default will be cured within a reasonable period of time.                      13.01.3 The failure by Operator to pay any part of the rentals, fees, and charges due hereunder and the continued failure to pay said amounts in full within</p>	<p><b>Section 14.2 Remedies.</b>                      Upon the occurrence and continuance of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below), may do any one or more of the following:                      (a) Landlord may exercise its right of self-help provided in Section 16.10.                      (b) Landlord may, at any time thereafter, at Landlord's option, give written notice to Tenant stating that this Sublease and the Term shall expire and terminate on the date specified in such notice, which date shall not be less than three (3) days after the giving of such notice, whereupon this Sublease and the Term and all rights of Tenant under this Sublease shall automatically expire and terminate as if the date specified in the notice given pursuant to this Section 14.2(b) were the originally scheduled expiration date and Tenant shall immediately quit and surrender the Premises, but tenant shall remain liable for damages as provided herein or pursuant to law. Thereupon Landlord may re-enter the Premises, but summary proceedings or otherwise, and may remove Tenant and all other persons and property from the Premises, and may store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant without resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby and without prejudice to any other remedies which Landlord may have hereunder, at law or in equity.                      (c) Landlord may exercise any other legal or equitable right or remedy which it may have.                      (d) Landlord may decline to retake possession of the premises and may sue for the Rental as the same becomes due or sue for the</p>	<p>15.3 Remedies. Upon the occurrence and during the continuance of an Event of Default, City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:                       (a) City shall have the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Tenant's right to possession of the Premises. In the event this Lease is so terminated, City may recover from Tenant the following damages:                      (i) The "<b>worth at the time of the award</b>" of the unpaid Rent earned to the time of termination hereunder;                      (ii) The "<b>worth at the time of the award</b>" of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;                      (iii) The "<b>worth at the time of the award</b>" of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and                      (iv) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. For purposes of the foregoing, the "<b>worth at the time of award</b>" of the amounts referred to in clauses (i) and (ii) above is computed by allowing interest at the lower of 18% per annum and the highest rate legally permitted under applicable law. The "<b>worth at the time of award</b>" of the amount referred to in clause (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1% (one percent). Notwithstanding any other provisions hereof, any efforts by City to mitigate damages caused by Tenant's</p>

## Tenant and User Agreements

## Appendix D-4

thirty (30) days of City's written notice of payments past due; provided, however, if a dispute arises between City and Operator with respect to any obligation or alleged obligation of Operator to make payments to City, payments under protest by Operator of the amount due shall not waive any of Operator's rights to contest the validity or amount of such payment.

13.01.4 The failure by Operator to provide and keep in force insurance coverage in accordance with Article 12.

13.01.5 The appointment of a trustee, custodian, or receiver of all or a substantial portion of Operator's assets.

13.01.6 The divestiture of Operator's estate herein by operation of law, by dissolution, or by liquidation (not including a merger or sale of assets).

13.01.7 The abandonment by Operator of the Operator Premises, or its conduct of business at the Airport; and, in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a labor dispute or other governmental action in which Operator is directly involved.

13.01.8 The failure by Operator to remit PFCs in accordance with Section 18.04.

13.02 *Continuing Responsibilities of Operator.* Notwithstanding the occurrence of any event of default, Operator shall remain liable to City for all rentals, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless City elects to cancel this Agreement, Operator shall remain liable for and promptly pay all rentals, fees, and charges accruing hereunder for the Term of this Agreement.

13.03 *Remedies.* Upon the occurrence of any event enumerated in Section 13.01 and after any applicable notice and cure periods, the following remedies shall be available to City:

Present value of the Rental to accrue under this Sublease and other damages or remedies to which Landlord may be entitled.

(e) Landlord may elect to retake possession of the Premises and, without initially reletting the Premises, sue for the present value of the Rental to accrue under this Sublease and other damages or remedies to which Landlord may be entitled.

(f) Landlord may retake possession of the Premises, relet the Premises and sue for damages. During the period of time that Landlord is trying to relet the Premises, Tenant will be liable for the full Rental. Landlord may sue from month to month for the damages which accrue in accordance with this subsection, or may sue for the present value of the total damages which will be due throughout the remaining Term in accordance with the measure of damages set forth in Section 14.3. The election of whether to sue on a month-to-month basis or for the total amount shall be at the sole option and discretion of Landlord.

(g) If Tenant vacates or abandons the Premises, Landlord shall have the right, but not the obligation, to relet the Premises for the remainder of the Term of this Sublease. Nothing herein shall be construed as in any way denying Landlord the right in the event of any breach or default under this Sublease to treat the same as an entire breach at Landlord's option and immediately sue for the entire damages occasioned thereby, including the present value of all future damages to be incurred.

(h) Landlord's re-entry or taking of possession of the Premises shall not be construed as an election to terminate this Sublease unless Landlord gives written notice of such termination. Any re-entry or taking of possession by Landlord shall not affect or diminish the ongoing obligation or liability of Tenant for all Rental and other obligations due and owing under this Sublease. Re-entry by Landlord will not obligate Landlord to mitigate damages by reletting. Wherever in this Sublease Landlord has reserved or is granted the right of re-

breach of this Lease shall not constitute a waiver of City's right to recover damages hereunder and shall not affect the right of City to indemnification pursuant to the provisions of Section 12 [Waiver; Indemnity; Insurance] hereof. For purposes of calculating City's damages comprising Base Rent based on Gross Revenues, that amount will be computed by determining the highest Base Rent accruing in any Lease Year during the immediately preceding three Lease Years or such shorter period if the Term prior to termination was less than three Lease Years. Tenant agrees that Tenant's obligations under this Lease, including the payment of Base Rent, are independent covenants and are not conditioned on the covenants or warranties of City.

(b) City shall have the right and remedy described in California Civil Code Section 1951.4. City may elect not to terminate this Lease and let this Lease continue, in which case City may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon the initiative of City to protect City's interest under this Lease shall not constitute a termination of Tenant's right to possession.

(c) City shall have the right and power, as attorney in fact for Tenant, to enter and to sublet the Premises, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Tenant (as permitted in accordance with the terms of this Lease) and City is hereby authorized on behalf of Tenant, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as City deems necessary in connection therewith. Tenant shall be liable immediately to City for all costs and expenses City incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. City is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Tenant, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as City in its sole discretion may deem proper. Tenant shall be liable immediately to City for all reasonable costs City

<p>13.03.1 City may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified.</p> <p>13.03.2 City may cancel this Agreement, effective upon the date specified in the notice of cancellation. Upon such date, Operator shall be deemed to have no further rights hereunder and City shall have the right to take immediate possession of the Operator Premises.</p> <p>13.03.3 City may reenter the Operator Premises and may remove all Operator persons and property. Upon any removal of Operator property by City hereunder, Operator property may be stored at a public warehouse or elsewhere at Operator's sole cost and expense.</p> <p>13.03.4 City may relet Operator Premises and any improvements thereon or any part thereof, at such rentals, fees, and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations, repairs of improvements on said Operator Premises.</p> <p>13.03.5 In the event that City relets Operator Premises, rentals, fees, and charges received by City from such reletting shall be applied: (i) to the payment of any indebtedness, other than rentals, fees, and charges due hereunder, from Operator to City; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by City and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges as would have been payable during applicable periods by Operator hereunder, then Operator shall pay such deficiency to City whenever rentals, fees or charges are due to City hereunder. Operator shall also pay to City, as soon as ascertained, any</p>	<p>entry into the Premises, the use of such word is not intended, nor shall it be construed to be limited to its technical legal meaning. If Landlord re-enters, it may take possession of the Premises, remove all persons and property from the Premises and store such property at Tenant's expense or resort to legal process without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.</p> <p>(i) Landlord may relet the Premises or any part thereof for such term or terms (which may extend beyond the Term), and at such rentals and upon such other terms and conditions as Landlord in its sole discretion deems advisable and such reletting shall not in any way relieve Tenant from the obligations and liabilities under this Sublease. Any and all amounts received upon such reletting and all rentals received by Landlord therefrom shall be applied first to any indebtedness owed by Tenant to Landlord other than Rental due hereunder, then to pay any cost and expense or reletting, including brokers' and attorneys' fees and costs of alterations and repairs, then to the Rental due hereunder; if there is any residue, it shall be applied to any deficiencies of future Rental that may become due under this Sublease. At the expiration of the Term any funds due Tenant shall then be paid. It is understood that said funds shall not draw interest while held by Landlord as security for Tenant's obligations hereunder.</p> <p>(j) Notwithstanding any reletting without termination, Landlord may, at any time in the future after said reletting, elect to deem this Sublease terminated for any prior breach or default.</p> <p>(k) The covenant to pay Rental and other amounts hereunder and to perform all obligations hereunder are independent covenants from the other terms and provisions of this Sublease and Tenant shall have no right to hold back, offset or fail to pay any such amounts for any alleged default by Landlord or for any other reason whatsoever.</p> <p>(l) The remedies described herein are not exclusive and are cumulative, and Landlord</p>	<p>incurs in reletting the Premises required by the reletting, and other costs. If City relets the Premises or any portion thereof, such reletting shall not relieve Tenant of any obligation hereunder, except that City shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Tenant hereunder to the extent that such rent or other proceeds compensate City for the nonperformance of any obligation of Tenant hereunder. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and City need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. City may execute any lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see to the application by City of any rent or other proceeds, nor shall Tenant have any right to collect any such rent or other proceeds. City shall not by any reentry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless City shall have given Tenant express written notice of City's election to do so as set forth herein.</p> <p>(d) City shall have the right to have a receiver appointed upon application by City to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to this Section 15.3.</p> <p>(e) City shall have the right to enjoin, and any other remedy or right now or hereafter available to a landlord against a defaulting tenant under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.</p> <p>(f) City may elect to terminate any other agreement between Tenant and City, including the Other Agreements, if any.</p> <p>15.4 City's Right to Perform. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at its sole cost and expense and without any abatement of Rent. If Tenant shall fail to make any payment or perform any act on its part to be performed hereunder and</p>
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<p>reasonable costs and expenses incurred by City in such reletting not covered by the rentals, fees, and charges received from such reletting.</p> <p>13.03.6 No reentry or reletting of Operator Premises by City shall be construed as an election on City's part to cancel this Agreement unless a written notice of cancellation is given to Operator.</p> <p>13.04 <i>Remedies under Federal Bankruptcy Laws.</i> Notwithstanding the foregoing, upon the filing by or against Operator of any proceeding under Federal bankruptcy laws, this Agreement shall automatically terminate (unless such termination is affirmatively waived at the time of the filing or subsequently by City) in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, as such may be subsequently amended, supplemented, or replaced. Notwithstanding the foregoing, City shall be entitled to waive the automatic termination provision mentioned above in writing. In the event that City waives the automatic termination requirement, City shall not be obligated to perform under the terms of this Agreement so long as any proceeding under Federal bankruptcy laws remains outstanding. As provided in Section 18.02 hereof, any waiver by City of the automatic termination provision in this Section 13.04 shall not be construed to be a waiver of any subsequent automatic termination hereof. City's rights under this Section 13.04 shall be in addition to all other rights and remedies provided to City under this Agreement.</p> <p>13.05 <i>Customer Service Standards.</i> Operator shall appoint a customer service representative who will work with (a) representatives from the Airport's Customer Service and Operations Divisions and (b) representatives from the other Air Transportation Companies that provide passenger service at the Airport to voluntarily and collectively set minimum performance standards to</p>	<p>will be entitled to any and all other remedies now or hereafter provided by law or in equity in the event of any default or breach by Tenant of the terms of this Sublease. Landlord may pursue one or more remedies against Tenant and need not elect its remedy until such time as findings of fact have been made by judge or jury, whichever is applicable, in a trial court of competent jurisdiction. To the extent permitted by law, Tenant waives any right of redemption, re-entry or Section 3.2 to use commercially reasonable efforts to mitigate its damages in the event of any default by Tenant hereunder. For purposes of this Section, reasonable efforts shall not require Landlord to market or sublet the Premises in preference to any other space then available in the Terminal. In the event that the Port Authority takes the position of Landlord under this Sublease, the Port Authority is expressly exempt from any responsibility to mitigate damages contained in this Section 14.2(1).</p> <p>Tenant acknowledges that the continued operation of business in the Premises in the manner and upon the terms set forth in this Sublease are of a special importance to the commercial viability of the retail Area. Therefore, in the event this Sublease is not canceled and terminated upon the occurrence of the events set forth in Section 14.1(h), then Tenant, and the trustee in bankruptcy or other representative of Tenant, or, in the event of an assignment, Tenant's assignee shall, prior to the assumption of this Sublease by such representative or trustee or assignee, comply with all of the provisions of Article 13 hereof and, in addition, provide adequate assurance to Landlord of the source of Rental and other consideration payable under this Sublease; that any Percentage Rental payable under this Sublease shall not decline substantially after the date of such assumption or assignment, as the case may be; that assumption or assignment of this Sublease will not breach any provision of the Prime Lease and will not breach substantially any provision in any other sublease, financing agreement, or master agreement relating to the Retail Area; of the continued use of the Premises in accordance with the Permitted Use only, Tenant hereby acknowledging that only</p>	<p>such failure shall continue for ten (10) days after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. All sums so paid by City and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable to City on demand, and City shall have (in addition to any other right or remedy of City) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of Rent.</p> <p>15.5 Rights Related to Termination. In the event of any termination based on any breach of the covenants, terms and conditions contained in this Lease, City shall have the option at once and without further notice to Tenant to enter upon the Premises and take exclusive possession of same. City may remove or store any personal property located therein, at the sole cost and expense of Tenant without City being liable to Tenant for damage or loss thereby sustained by Tenant. Upon such termination by City, all rights, powers and privileges of Tenant hereunder shall cease, and Tenant shall immediately vacate any space occupied by it under this Lease, and Tenant shall have no claim of any kind whatsoever against City or any City Entity by reason of such termination, or by reason of any act by City or any City Entity incidental or related thereto. In the event of the exercise by City of such option to terminate, Tenant shall have no right to or claim upon any improvements or the value thereof, which may have been previously installed by Tenant in or on the Premises.</p> <p>15.6 Cumulative Rights. The exercise by City of any remedy provided in this Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.</p> <p>15.7 Prepayment. As provided in Section 4.10 [Prepay Rent], if Tenant defaults in the payment of Rent, City may require prepayment of Rent. Such right shall be in addition to and not in lieu of any and all other rights hereunder, or at law or in equity.</p>
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**Tenant and User Agreements**

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<p>provide passengers at the Airport with the highest and best customer service possible. These standards will be self-imposed and self-policed by the Airport and the Air Transportation Companies that provide passenger service at the Airport. The Airport reserves the right to disclose the success of the Air Transportation Companies that provide passenger service at the Airport in meeting these standards.</p>	<p>in the operating of such business for the Permitted Use may Landlord be adequately assured that assumption or assignment of this Sublease will not disrupt substantially the tenant mix or balance in the Retail Area; that the quality of goods to be sold in the Premises will not decline; that the operation of the business in the Premises shall continue to be of the high standard compatible with Landlord’s other tenants in the Retail Area; that Tenant’s suppliers of merchandise or good for sale in the Premises are willing to continue to furnish such merchandise and goods of the same quality and caliber as theretofore sold in the Premises, of the source of funds necessary to pay for Tenant’s merchandise and goods to be sold in the Premises, all on a current basis; of the continuous operation of business in the Premises in strict accordance with the requirements of Article 4 hereof; that the design and furnishings of the premises shall continue to be acceptable to Landlord in accordance with the terms hereof; and of such other matters as Landlord may reasonably require at the time of such assumption or assignment. The furnishing of assurances in accordance with the foregoing, or as may be directed by a court of competent jurisdiction, shall not be deemed to waive any of the covenants or obligations of Tenant set forth in this Sublease. In the event that any person assuming this Sublease, or taking the same by assignment, shall desire to make alterations to the Premises, Landlord may approve, of the source of payment for the estimated cost of any work to be performed in connection therewith. Notwithstanding the foregoing, such alterations shall be subject in all respects to the rights and obligations of Landlord or Tenant relating to such alterations, including, without limitations, those set forth in Article 9 hereof [Repairs and Alterations].</p>	<p>15.8 Fines. If Tenant defaults under any of the Lease terms specified below, Director may elect to impose the fines described below on the basis of per violation per day:</p> <table border="1"> <thead> <tr> <th data-bbox="1346 256 1570 280">Violation</th> <th data-bbox="1604 256 1688 280">Section</th> <th data-bbox="1803 256 1864 280">Fine</th> </tr> </thead> <tbody> <tr> <td data-bbox="1346 321 1528 378">Violation of Premises Clause</td> <td data-bbox="1604 321 1619 345">1</td> <td data-bbox="1803 321 1864 345">\$100</td> </tr> <tr> <td data-bbox="1346 418 1528 475">Violation of Use Section</td> <td data-bbox="1604 418 1619 443">3</td> <td data-bbox="1803 418 1864 443">\$300</td> </tr> <tr> <td data-bbox="1346 516 1528 638">Failure to open Facility by Rent Commencement Date</td> <td data-bbox="1604 516 1640 540">2.3</td> <td data-bbox="1803 516 1864 540">\$500</td> </tr> <tr> <td data-bbox="1346 678 1562 800">Failure to cause operations or Premises to comply with Laws</td> <td data-bbox="1604 678 1654 703">3.13</td> <td data-bbox="1803 678 1864 703">\$100</td> </tr> <tr> <td data-bbox="1346 841 1562 1011">Failure to submit required documents and reports, including Sales Reports</td> <td data-bbox="1604 841 1730 865">4.4, 4.5, 4.6</td> <td data-bbox="1803 841 1864 865">\$100</td> </tr> <tr> <td data-bbox="1346 1052 1562 1141">Construction or Alterations without City approval</td> <td data-bbox="1604 1052 1619 1076">7</td> <td data-bbox="1803 1052 1864 1076">\$100</td> </tr> <tr> <td data-bbox="1346 1182 1528 1239">Failure to make required repairs</td> <td data-bbox="1604 1182 1619 1206">9</td> <td data-bbox="1803 1182 1864 1206">\$300</td> </tr> <tr> <td data-bbox="1346 1279 1507 1369">Unauthorized advertising or signage</td> <td data-bbox="1604 1279 1633 1304">10</td> <td data-bbox="1803 1279 1864 1304">\$100</td> </tr> </tbody> </table>	Violation	Section	Fine	Violation of Premises Clause	1	\$100	Violation of Use Section	3	\$300	Failure to open Facility by Rent Commencement Date	2.3	\$500	Failure to cause operations or Premises to comply with Laws	3.13	\$100	Failure to submit required documents and reports, including Sales Reports	4.4, 4.5, 4.6	\$100	Construction or Alterations without City approval	7	\$100	Failure to make required repairs	9	\$300	Unauthorized advertising or signage	10	\$100
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		Failure to obtain/maintain insurance	12	\$300
		Failure to obtain or maintain Deposit	13	\$300
		Failure to abide by any other term in this Lease		\$300

**RISK: HAZARDOUS MATERIALS**

Talking Points:	<ul style="list-style-type: none"> <li>• Establish the base-line environmental condition at the beginning and expiration of the lease.</li> <li>• Reserve the right to conduct environmental testing or remediation, but do not assume liability for cleanup or damages.</li> </ul>
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Source:

Miami International Airport	LaGuardia Airport	San Francisco International Airport
<p><b>ARTICLE 8</b>  <b>Environmental Compliance</b>                      8.01 <u>Definitions</u>: For purposes of this Agreement, the following additional definitions apply:                      (A) "Baseline Environmental Conditions" means the presence or release of Hazardous Materials, at, on, under, or from the Premises prior to Lessee's Occupancy Date, the presence or release of which was not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers. Solely for purposes of this Agreement, it shall be presumed that the Baseline Environmental Conditions consist of the conditions identified in any existing (as of the date of this Agreement) Miami-Dade County maintained records, including contamination assessment reports and any other technical reports, data bases, remedial action plans, the Baseline Audit or the presence, discharge, disposal or release of any other Hazardous Materials originating prior to the Occupancy Date that comes to be located on the Premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers.                      (B) "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Lessee with respect to its operations at Homestead General Aviation Airport or against or with respect to its operations at Homestead General Aviation Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against County), and any claim at any time threatened or made by any person against Lessee with respect to its operations at Homestead General Aviation Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such claim against County), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any applicable Environmental Requirement.                      (C) "Environmental Law" means any applicable federal, state or local law, statute, ordinance, code, rule, or regulation, or license, authorization, decision, order, injunction, or decree, any of which may be issued by a judicial or regulatory body of competent jurisdiction, or rule of common law including, without limitation, actions in nuisance or trespass, and any judicial or agency interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 <i>et seq.</i>; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.</p>	<p>Section 8.4 Hazardous Materials                      Without limiting the generality of its other covenants hereunder, Tenant agrees in regard to the use and occupancy of the Premises to comply with all environmental laws, rules, regulations, statues and ordinances, including, without limitation, those applicable to Hazardous Substances, as defined herein. Tenant shall not dispose of any Hazardous Substances at the Premises or the Terminal. Tenant unconditionally, absolutely, and irrevocably indemnifies and agrees to hold harmless Landlord, the Port Authority and their respective officers, employees, agents, contractors and those claiming by, through, or under Landlord or the Port Authority, from and against all loss, cost and expense (including, without limitation, attorney's fees) of whatever nature suffered or incurred by Landlord or the Port Authority on account of the use on the Premises or the release or discharge from the Premises, of Hazard Substances, including, without limitation, any claims, costs, losses, liabilities and expenses arising from the violation (or claimed violation) of any environmental laws or the institution of any action by any party against Tenant, Landlord or the Port Authority, based upon nuisance, negligence, or other tort theory alleging liability due to the improper</p>	<p>17.1 Definitions. As used herein, the following terms shall have the meanings hereinafter set forth: (a) "<b>Environmental Laws</b>" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section</p>

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§ 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act 42 U.S.C. § 7401 *et seq.*; the Toxic Materials Control Act 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; Chapters 403, 376 and 373, Florida Statutes; Chapters 24 and 25 of Miami-Dade County Code, and any other applicable local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

(D) "Environmental Requirement" means any Environmental Law, or any agreement or restriction entered into or applicable by law (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

(E) "Hazardous Material" means any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a hazardous substance, a hazardous waste or pesticide, or otherwise classified as hazardous or toxic, in or pursuant to any applicable Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause contamination or a nuisance on the Premises, any adjacent Premises or a hazard to the environment or to the health or safety of persons on the Premises or Other Airport Property.

(F) "Initial Construction Period" means for any lease which contemplates construction or renovation for Premises not previously occupied in whole or in part by Lessee under this Agreement and/or any previous Agreement, a period of time not to exceed six (6) months commencing with the date on which Lessee breaks ground on the Premises for construction of foundations or commences such renovation.

(G) "Occupancy Date" means the date Lessee first entered, occupied or took possession of the Premises under any written or verbal agreement.

(H) "On" or "in" when used with respect to the Premises or any premises adjacent to the Premises, means "on, in, under, above or about."

(I) "Other Airport Property" means property on the Airport occupied or used by Lessee, or upon which Lessee performs operations, but which is not subject to a lease, sublease or other legal agreement governing the terms of Lessee's occupation, use or operations at such property.

(J) "Recognized Environmental Condition" shall have the meaning set forth in ASTM E 1527-05, Section 1.1.1, as such provision may be amended or superseded from time to time.

(K) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

(L) "Remediation" means any investigation, clean-up, removal action, remedial action, restoration, repair, response action, corrective action, monitoring, sampling and

generation, storage, disposal, removal, transportation or treatment of Hazardous Substance or the imposition of a lien on any part of the Retail Area, the Common Area or the Terminal under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), or any other federal, state or local laws pursuant to which a lien may be imposed due to the existence of Hazardous Substances. Tenant further unconditionally, absolutely and irrevocably guarantees the payment of any fees and expenses incurred by Landlord or the Port Authority in enforcing or seeking enforcement of the liability of Tenant under this indemnification.

For the purposes of this Section, "Hazardous Substances" shall mean and include, but shall not be limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment or work place and upon expose, ingestion, inhalation or assimilation into any organism, either directly or indirectly, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction or physical deformations in such organisms or their offspring, and all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or

25249.5, et seq.)

(b) "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to any Environmental Law; any asbestos and asbestos containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and any materials listed in the Airport's TI Guide.

(c) "**Release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

(d) "**Pre-Existing Condition**" means the existence of any Hazardous Materials on the Premises immediately prior to the Commencement Date.

17.2 Tenant's Covenants. (a) Neither Tenant nor any Tenant Entity shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Airport, or transported to or from the Premises

analysis, installation, reclamation, closure, or post-closure in connection with the suspected, threatened or actual release of Hazardous Materials.

(M) "Trespassers" means third parties who have entered the Premises and whose actions while on the Premises have resulted in Release of Hazardous Materials directly onto the Premises. Notwithstanding the foregoing, for purposes of this Agreement, Trespassers shall not include those third parties whose actions took place off of the Premises and which resulted in the presence of Hazardous Materials on the Premises due to the migration of Hazardous Materials from that off-Premises location.

8.02 Lessee's Acceptance of the Risks and Condition of Premises As-Is: Lessee agrees that the Premises shall be leased and delivered to Lessee in its current "as is/with all faults" condition (but it is not intended by this provision that County be relieved from its duties expressly set forth in this Agreement or any other applicable agreement). Lessee hereby, warrants, covenants, agrees, and acknowledges that:

(A) Hazardous Materials may be present on the Premises and Other Airport Property. The County is currently engaged in a significant environmental remediation program at its airports.

(B) Under Article 8.05 below, Lessee is provided the opportunity to conduct an independent investigation of the Premises and the physical condition thereof, including the potential presence of any Hazardous Materials on or about the Premises. Lessee's report on the investigation, if any such report has been prepared (Contamination Assessment Reports (CARS), Remedial Action Plans (RAPS) and other documents), has been provided to the County. Whether Lessee has conducted such an investigation or not, Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the premises of the properties surrounding the premises, subject to Lessee's right to terminate this Agreement as otherwise provided herein.

(C) Because of the possible presence of environmental contaminants on the Premises or other Airport property, County has made no express, implied, or other representations of any kind with respect to the suitability or usability of the Premises or other Airport Property, or any improvements appurtenant thereto, including, without limitation, the suitability or usability of any building materials, building systems, soils or groundwater conditions (due to the presence of Hazardous Materials in, on, under, or about the Premises or other Airport property), for Lessee's proposed or intended use, and Lessee has relied solely on Lessee's own inspection and examination of such matters.

(D) Except as to County's obligations set forth in this Article of elsewhere in this Agreement, Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises at the commencement of this Agreement may affect the suitability or usability of the Premises for Lessee's proposed or intended use. Lessee agrees that, except to the extent of County's Remediation obligations provided in this Article 8, or any other discharge, disposal or release of Hazardous Materials or violation of Environmental Requirements, caused by County, its agents, employees or contractors and except with respect to Baseline Environmental Conditions, County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises. Notwithstanding the foregoing, in no

materials which are included under or regulated by any local, state, or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, CERCLA and regulations adopted pursuant to such Act, the Toxic Substances Control Act of 1976, as heretofore or currently in effect ("TSCA") and the Resource Conservation and Recovery Act of 1976, as heretofore or currently in effect ("RCRA").

13. Materials

No materials used in connection with the Tenant's work in or about the Terminal shall contain any asbestos or other hazardous or toxic materials (collectively, "hazardous materials"). If the transportation, storage; use or disposal of any hazardous materials anywhere on the Terminal associated in any way with the Tenant's work results in any 1) contamination of the soil or surface or groundwater or 2) loss or damage to person(s) or property, then Tenant agrees to respond in accordance with the following paragraph:

Tenant agrees i) to notify the Landlord immediately of any contamination, loss or damage, (ii) after consultation and approval by the Landlord, to clean up the contamination in full compliance with all applicable statutes, regulations and standards, and (iii) to Indemnify, defend and hold landlord harmless from and against any claims, suits, causes of action, costs and fees, including attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage. This provision shall survive the

or the Airport; provided that Tenant may use such substances as are customarily used in retail sales so long as such use is in compliance with all applicable Environmental Laws and the Airport's TI Guide.

(b) Tenant shall handle Hazardous Materials discovered or introduced on the Premises during the Term in compliance with all Environmental Laws and the Airport's TI Guide. Tenant shall protect its employees and the general public in accordance with all Environmental Laws.

(c) In the event Tenant becomes aware of the actual or possible Release of Hazardous Materials on the Premises or elsewhere on the Airport, Tenant shall promptly give notice of the same to City. Without limiting the generality of the foregoing, Tenant shall give notice to City of any of the following: (i) notice of a Release of Hazardous Materials given by Tenant, any subtenant, or other occupant to any governmental or regulatory agency; (ii) notice of a violation or potential or alleged violation of any Environmental Law received by Tenant, any subtenant, other occupant on the Premises from any governmental or regulatory agency; (iii) any inquiry, investigation, enforcement, cleanup, removal, other action that is instituted or threatened by a government or regulatory agency; (iv) any claim that is instituted or threatened by a third party against Tenant, any subtenant, or other occupant on the Premises that relates to Hazardous Materials;

## Tenant and User Agreements

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event shall County be liable to Lessee for damages relating to physical or personal injury, business interruptions relocation costs or any other cost (other than a cost for which County is liable under this Article 8 resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement.

### 8.03 Responsibilities for Hazardous Materials:

(A) Unless the parties agree otherwise in writing, the County shall conduct response actions mandated by existing Environmental Requirements applicable to the County for (i) Hazardous Materials disclosed in the Lessee Audit to the extent required by Article 8.05 and (ii) Baseline Environmental Conditions, provided however that

1) To the extent this Agreement covers Premises not previously occupied by Lessee and if this Agreement contemplates construction or renovation by the Lessee, any Hazardous Material discovered during the Initial Construction Period as defined in Article 8.01 (F), shall be presumed to be a Baseline Environmental Condition under this Agreement except to the extent the Aviation Department demonstrates to the satisfaction of Lessee by written notice setting forth the Aviation Department's explanation as to why the Hazardous Material originated from a discharge, disposal or release that was caused by Lessee, Lessee's agents, employees, contractors, invitees or Trespassers. Should Lessee determine that such a demonstration has not been made to Lessee's satisfaction, County may invoke the dispute resolution provision of 8.16 Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Material shall remain with the Aviation Department.

(A) The extent this Agreement covers premises previously occupied by Lessee, and except for Baseline Environmental Conditions, Remediation of any Hazardous Material discovered on the Premises shall be the responsibility of the Lessee, except to the extent that Lessee demonstrates to the satisfaction of Aviation Department Management by written notice setting forth Lessee's explanation as to why the Hazardous Material originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees; (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the date upon which Lessee first occupied the premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or Trespassers; or (3) a discharge, disposal or release caused by the County, its agents, employees, contractors or any third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 8.15. Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Material shall remain with Lessee.

(B) County's responsibility for Remediation under this Article. 8.03 shall be limited to the Recognized Environmental Conditions required to be remediated under applicable Environmental Requirements. If County is permitted to leave any Hazardous Material in place under applicable Environmental Requirements, County shall have the option of so doing, unless a governmental authority requires at any time the removal of Hazardous Materials for Lessee to be able to continue with construction or occupancy of the Premises.

termination of the lease to which this Schedule "B" is annexed. No consent or approval by the Landlord shall in any way be construed as imposing upon Landlord any liability for the means, methods, or manner of removal, containment or other compliance with applicable law for and with respect to the foregoing.

Tenant shall immediately notify Landlord upon Tenant's receipt of any inquiry, notice, or threat to give notice by any governmental authority or any other third party with respect to any hazardous material.

### John F. Kennedy International Airport Privilege Permit:

#### 18. Prohibited Acts

b) The Permittee shall not dispose of, release or discharge nor permit anyone to dispose of, release or discharge any Hazardous Substance on the Airport except that the Permittee may release or discharge de-icing fluids utilized in the Permittee's ordinary course of business in the performance of any of the privileges granted hereunder so long as such release or discharge is not a violation of the terms and conditions of Sections 17 [Rules and Regulations] or 19 [Law Compliance] hereof. In addition to and without limiting Section 19 hereof, any Hazardous Substance disposed of, released or discharged by the Permittee (or permitted by the Permittee to be disposed of, released or discharged) on the Airport shall upon notice by the Port Authority to the Permittee and subject to the provisions of paragraph (1) of Section 17 hereof and to all Environmental Requirements, be completely removed and/or

and (v) any notice of termination, expiration, or material amendment to any environmental operating permit or license necessary for the use of the Premises.

(d) At Director's request, Tenant shall provide information necessary for City to confirm that Tenant is complying with the foregoing covenants.

17.3 Environmental Indemnity. Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses arising during or after the Term as a result of or arising from: (a) a breach by Tenant of its obligations contained in the preceding Section 17.2 [Tenant's Covenants], or (b) any Release of Hazardous Material from, in, on or about the Premises or the Airport caused by the act or omission of Tenant or any Tenant Entity, or (c) the existence of any Hazardous Materials on the Premises, except to the extent that Tenant can demonstrate that such Hazardous Materials constitutes a Pre-Existing Condition.

17.4 Environmental Audit. Upon reasonable notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director, an environmental audit or any other appropriate investigation of the Premises for possible environmental contamination. Such investigation may include environmental sampling and equipment and facility testing, including the testing of secondary

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The County shall notify Lessee of any such decision to leave Hazardous Material in place.

(C)(1) To the extent they exist, the County has made available to Lessee a listing of contamination assessment reports, remedial action plans and other documents regarding any soil and groundwater contamination at the Premises. The County may have already installed or may have plans to install remediation systems to clean up the contamination described in such reports to the extent they exist. Lessee agrees that during the term of the Agreement, County's authorized representatives shall have the right to enter the Premises in order to operate, inspect, maintain, relocate and replace any such installed systems. Without limiting the generality of the foregoing, the County shall have the right to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort; and (c) undertake such related activities as the Aviation Department or other governmental authorities may require or recommend, utilizing such methods as the Aviation Department or the applicable governmental authorities may elect in order to remediate the contamination described in any such reports.

(2) County shall utilize reasonable efforts to minimize any disturbance of the Lessee's use of the Premises caused by any Remediation it undertakes and shall provide Lessee prior written notice of such Remediation. Lessee agrees that it shall not unreasonably interfere with or obstruct such Remediation. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remediation to be performed, the Lessee will effect such relocation at no expense to the County.

(3) If Remediation equipment or materials need to be temporarily stored in a secure location on the Premises, the Lessee will provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County, provided, however, that Lessee shall bear no liability and otherwise shall have no responsibility for any theft of and/or damage to such equipment or materials so stored, to the extent Lessee took reasonable measures to prevent, such theft and/or damage and such theft and/or damage was not caused by Lessee or Lessee's employees. To the extent that water and electrical service within the Premises are not metered and the Lessee does not pay for such services directly, the Lessee will provide the County with water and electrical service from the Premises in connection with the Remediation, without charge. The Lessee acknowledges the Remediation may be conducted at the locations approved by the County at any time during the term of the Agreement and may continue until such time as a no further action letter is obtained from the appropriate regulatory authorities.

8.04 Baseline Audit: The County has provided Lessee with a copy of an environmental audit of the Premises, conducted to identify any Recognized Environmental Conditions associated with the Premises, which audit may include analyses of soil and groundwater samples (the initial "Baseline Audit"). Except to the extent Lessee previously occupied the Premises, the

remediated by the Permittee at its sole cost and expense, provided, however, the forgoing shall not apply to releases and discharges which are in compliance with the terms and conditions of Sections 17 and 19 hereof of de-icing fluids utilized in the Permittee's ordinary course of business in the performance of any of the privileges granted hereunder and the obligation of the Permittee to remove and remediate such de-icing fluids shall be as required by the terms and conditions of Sections 17 and 19 hereof. The obligations of the Permittee pursuant to this paragraph shall survive the expiration, revocation, cancellation or termination of this Permit.

(e) "*Environmental Requirement*" shall mean all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, "best management practices plans", and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all judicial, administrative,

contamination. No such testing or investigation shall limit Tenant's obligations hereunder or constitute a release of Tenant's obligations therefor. Tenant shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Materials contamination as to which Tenant is liable hereunder.

17.5 Closure Permit. Prior to the termination or expiration of this Lease, Director shall have the right to require Tenant to file with the City an application for a Closure Permit for decontamination of the site and investigation and removal of all Hazardous Materials in compliance with the Airport's TI Guide, the Airport Rules, and all Laws. The Closure Permit may require a plan for long-term care and surveillance of any contamination allowed to remain at the Premises or Airport property and an acknowledgment of responsibility and indemnification for any and all Losses associated with any such contamination. Without limiting the foregoing provision, City reserves the right to require Tenant to, and in such event Tenant shall, at Tenant's sole cost and expense, decontaminate the Premises and remove any Hazardous Materials discovered during the Term, except those Hazardous Materials which constitute Pre-Existing Conditions. Such removal shall be performed to the Director's reasonable satisfaction.

9.1 "As-Is" Condition. TENANT

**Tenant and User Agreements**

**Appendix D-5**

<p>County shall be responsible for any Recognized Environmental Conditions within the meaning of ASTM E 1527-05, or most recent version, disclosed by the Baseline Audit. Except to the extent Lessee previously occupied the Premises, Lessee may terminate this Agreement within sixty (60) days of receipt of the Baseline Audit if Lessee, in its sole discretion, determines that the Recognized Environmental Conditions disclosed in such Baseline Audit are unacceptable. To the extent Lessee previously occupied the Premises, Lessee, subject to its right to invoke the dispute resolution provision of 8.15, shall be responsible for all Recognized Environmental Conditions disclosed in the Baseline Audit, which are not otherwise Baseline Environmental Conditions, unless Lessee demonstrates to the County's satisfaction that the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents employees, contractors or invitees; or (2) a discharge, disposal or release of Hazardous Material on the Premises prior to Lessee's first occupancy of the Premises and not caused by Lessee, Lessee's agents, employees, contractors, invitees, or Trespassers.</p>	<p>voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:</p>	<p>SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS LEASING THE PREMISES TO TENANT ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, landscaping, utility systems, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials</p>
<p>8.05 <u>Lessee Audit</u>: Lessee, at its sole cost and expense, shall have the right to conduct, within sixty (60) days from the receipt of the Baseline Audit, an environmental inspection of the Premises (the "Lessee Audit"), through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. If Lessee elects to conduct a Lessee Audit, it shall furnish County a copy of the Lessee Audit within thirty (30) days of Lessee's receipt of the Lessee Audit. The purpose of the Lessee Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions not identified in the Baseline Audit, any previous audits, or any contamination assessment reports or remedial action plans, to the extent any such documents exist. Within thirty (30) days of receipt of such Lessee Audit, the County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of any subsurface conditions described in the Lessee Audit. If the Lessee Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in any contamination assessment reports, remedial action plans, or the Baseline Audit, and which are not otherwise considered Baseline Environmental Conditions under the term of this Agreement, then, except to the extent that Lessee previously occupied the Premises, the County, at its option, shall: (i) allow Lessee to terminate the Agreement, without penalty, within sixty (60) days of receipt of such notice or dispute from the County; or (ii) notify Lessee that it has agreed to be responsible for such Recognized Environmental Conditions and delineated subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in any contamination assessment reports, remedial action plans and the Baseline Audit. If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate, Lessee's failure to terminate shall constitute a waiver of 1) Lessee's rights to terminate its obligations under this Agreement as to any findings in such Lessee Audit, except as to its right to cancel the lease on thirty (30) days' notice under Article 1.01 (B) and, 2) as provided in Article 8.03, any claim it may have against the County with respect either to Recognized Environmental</p>	<p>(i) All requirements pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist; and (ii) All requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public.</p>	

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<p>Conditions and subsurface contamination disclosed in such Lessee Audit. To the extent the Lessee previously occupied the Premises, Lessee shall be responsible for all Recognized Environmental Conditions disclosed in the Lessee Audit that are not Baseline Environmental Conditions unless Lessee demonstrates to the satisfaction of Aviation Department Management by written notice setting forth Lessee's explanation why the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors, or invitees; (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the Occupancy Date and not caused by Lessee or Lessee's agents, employees, contractors, invitees or Trespassers; or (3) a discharge, disposal or release caused by County or third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 8.16 Until such time as the parties reach an agreement or until such time as the dispute is otherwise resolved, responsibility for such Recognized Environmental Condition shall remain with Lessee.</p> <p>8.06 <u>Environmental Maintenance of Premises</u>: Except for the obligations of the County under this Article 8, Lessee shall, at its sole cost and expense, keep, maintain and use the Premises, and operate within the Premises at all times, in compliance with all applicable Environmental Laws, and shall maintain the Premises in good and sanitary order, condition, and repair.</p> <p>8.07 <u>Lessee's Use of Hazardous Materials</u>: Tab C (Lessee's Hazardous Material List) is a complete list of all Hazardous Materials which Lessee currently intends to use on the Premises or Other Airport Property during the term of the Agreement which have been approved by the County, and the use, storage and transportation of which on or about the Premises shall not be subject to County's approval or objections. Except for those Hazardous Materials listed on Tab C, Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises or Other Airport Property without first providing the County thirty (30) days written notice prior to bringing such Hazardous Material upon the premises. To the extent certain Hazardous Materials are needed to be used by Lessee on a non-routine basis, such as for emergency repairs, Lessee may provide such notice within twenty-four (24) hours of bringing such Hazardous Material upon the premises. Notwithstanding the foregoing, County may object to the use of any previously-approved Hazardous Material should County reasonably determine that the continued use of the Hazardous Material by Lessee presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises of Other Airport Property, or noncompliance due to a change in regulation' of such Hazardous Material under applicable Environmental Law. Upon County's objection, Lessee shall immediately remove the Hazardous Material from the site. This section 8.08 shall not apply to Hazardous Materials which are not used, generated, treated or disposed of by Lessee but which are otherwise transported by Lessee solely in the course of Lessee's business, such as cargo operations, and for which Lessee has no knowledge as to the identity of such hazardous materials prior to such transport. County's objection or failure to object to the use, storage,</p>		<p>used in any improvements on the real property, (ix) the condition of title to the Premises, and (x) the agreements affecting the Premises, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Tenant has knowledge.</p> <p>12.1 Waiver. Tenant, on behalf of itself and its assigns, waives its rights to recover from and releases and discharges City and all City Entities and their respective heirs, successors, personal representatives and assigns, from any and all Losses whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected with (a) the physical or environmental condition of the Premises or any law or regulation applicable thereto, (b) any damage that may be suffered or sustained by Tenant or any person whosoever may at any time be using or occupying or visiting the Premises, or in or about the Airport, or (c) any act or omission (whether negligent, non-negligent or otherwise) of Tenant or any Tenant Entity, whether or not such Losses shall be caused in part by any act, omission or negligence of any of City, Commission, its members, or any officers, agents, and employees of each of them, and their successors and assigns (each, a “<b>City Entity</b>”), except if caused by the sole gross negligence or willful misconduct of City. In connection with the foregoing waiver, Tenant expressly waives the benefit of</p>
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generation, treatment, transportation, or disposal of Hazardous Material under this paragraph, or the exclusion of certain Hazardous Materials under this paragraph, shall not limit or affect Lessee's obligations under this Agreement, including Lessee's duty to remedy or remove releases or threatened releases; to comply with applicable Environmental Law and/or Environmental Requirements relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County against any harm or damage caused thereby. Lessee shall promptly and completely answer periodic questionnaires from the County concerning Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

### 8.08 Entry by County:

(A) Notwithstanding any other right of entry granted to County under this Agreement, and subject to the requirements set forth in Article 8.08(8), MDAD shall have the right, at its own expense and upon reasonable notice, to enter the Premises or to have consultants enter the Premises throughout the Term of this Agreement for the purposes of: (1) determining whether the Premises are in conformity with applicable Environmental Law; (2) conducting an environmental review or investigation of the Premises; (3) determining whether Lessee has complied with the applicable environmental requirements of this Agreement; (4) determining the corrective measures, if any, required of Lessee to ensure the safe use, storage, and disposal of Hazardous Materials; or (5) removing Hazardous Materials (except to the extent used, stored, generated, treated, transported, or disposed of by Lessee in compliance with applicable Environmental Requirements and the terms of this Agreement). Lessee agrees to provide access and reasonable assistance for such inspections. MDAD shall use its best efforts to reasonably minimize interruptions of business operations on the Premises.

(B) Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples of environmental conditions or soil or groundwater conditions. Lessee shall have the right to collect split samples of any samples collected by MDAD, MDAD shall not be limited in the number of such inspections during the Term of this Agreement MDAD will conduct such inspections during Lessee's normal business hours, but MDAD may conduct such inspections in other than normal business hours if the circumstances so require. For inspections conducted by MDAD, MDAD agrees to provide Lessee with reasonable notice (not less than twenty four (24) hours) prior to inspecting the Premises; provided however, that such notice period shall not apply under circumstances in which MDAD reasonably determines that there exists an immediate threat to the health, safety, or welfare of any persons. Based on the results of such inspections, should MDAD reasonably determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Lessee shall, in a timely manner, at its expense, remove such Hazardous Materials in a manner not inconsistent with applicable Environmental Law and otherwise comply with the reasonable recommendations of MDAD and any regulatory authorities related to the results of such inspections. The right granted to MDAD herein to inspect the Premises shall not create a duty on MDAD's part to inspect the

Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

### 16. SURRENDER

Tenant shall at the end of the Term surrender to City the Premises and all Alterations, additions and improvements thereto in the same condition as when received, ordinary wear and tear and damage by fire, earthquake, act of God, or the elements excepted. Subject to City's right to require removal pursuant to Section 7 [Investments; Alterations] hereof, all Alterations and improvements installed in the Premises by Tenant (other than Tenant's trade fixtures), shall, without compensation to Tenant, then become City's property free and clear of all claims to or against them by Tenant or any third person. In the event that Tenant shall fail to remove its personal property, including trade fixtures, on or before the Expiration Date, such personal property shall become City's property free and clear of all claims to or against them by Tenant or any third person. In such event, City shall not be responsible for any Losses related to such personal property, and City may sell or otherwise dispose of such

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<p>Premises, nor liability of MDAD for Lessee's use, storage, or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith. MDAD shall provide the results of such inspections to the Lessee in a timely manner if requested to do so in writing. Nothing herein shall be construed to limit, restrain, impair or interfere with County's regulatory authority to conduct inspections and/or the manner in which it conducts such inspections. Lessee shall not be liable or otherwise responsible for any property damage to the Premises or injury to any person caused by County, its agents or consultants during County's inspection under this Section 8.08.</p> <p>8.09 <u>Permits and Licenses</u>: The Lessee warrants that it will secure at the times required by issuing authorities all applicable permits or approvals that are required by any governmental authority having lawful jurisdiction to enable Lessee to conduct its obligations under this Agreement. Upon written request, Lessee shall provide to County copies of all permits, licenses, certificates of occupancy, approvals, consent orders, or other authorizations issued to Lessee under applicable Environmental Requirements, as they pertain to the Lessee's operations on or use of the Premises or Other Airport Property.</p> <p>8.10 <u>Notice of Discharge to County</u>:</p> <p>(A) In the event of: (i) the happening of any material event involving the spill, release, leak, seepage, discharge or cleanup of any Hazardous Material on the Premises or Other Airport Property in connection with Lessee's operation thereon; or (ii) any written Environmental Claim affecting Lessee from any person or entity resulting from Lessee's use of the Premises or Other Airport Property, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. If County is reasonably satisfied that Lessee is not promptly commencing the response to either of such events. County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises, which if true, could result in an order, suit or other action against the County. If Lessee is unable to resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Agreement and shall be payable by Lessee upon demand, except to the extent they relate to a Baseline Environmental Condition.</p> <p>(B) With regard to any reporting obligation arising out of Lessee's operations or during the Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, Miami-Dade County Department of Regulatory and Economic Resources, and the United States Environmental Protection Agency, as appropriate, with regard to any and all applicable reporting obligations while simultaneously providing written notice to County.</p> <p>(C) Within sixty (60) days of execution of this Agreement, Lessee shall submit to</p>		<p>personal property.</p> <p>20.15 Reservations by City. City may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. City shall use reasonable efforts to minimize disruption in Tenant's business. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive of Tenant from the Premises. City reserves the exclusive right to use all areas of the Airport not comprising the Premises, and the exterior walls and roofs the Premises. City reserves the exclusive right to use such areas together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Premises. This reservation in no way affects maintenance obligations imposed in this Lease.</p>
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<p>County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of Hazardous Materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.</p> <p>8.11 <u>Reports to County</u>: For any year in which any Hazardous Materials have been used, generated, treated, stored, transported or otherwise been present on or in the Premises, (or on or in other Airport property for purposes related to Lessee's operations on the Premises), Lessee shall provide County with a written report listing: the Hazardous Materials which were present on the Premises or other Airport property; all releases of Hazardous Material that occurred or were discovered on the Premises or other Airport property and which were required to be reported to regulatory authorities under applicable Environmental Laws; all enforcement actions related to such Hazardous Materials, including all, consent agreements or other non-privileged documents relating to such enforcement actions during that time period. In addition, Lessee shall provide County with copies of any reports filed in accordance with the Emergency Planning and Community Right to Know Act (EPCRA) and shall make available for review upon request by County copies of all manifests for hazardous wastes generated from operations on the Premises. Lessee shall provide the report required under this section to the County by April 1 of each year for the preceding calendar year.</p> <p>8.12 <u>Periodic Environmental Audits</u>: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on the Premises with all applicable Environmental Laws, which system shall include, no less than once each year a detailed review of such compliance (the "Environmental Audit Exhibit E") by such consultant or consultants as County may approve, which approval shall not be unreasonably withheld, delayed or conditioned. Alternatively, if the Aviation Department approves, which approval shall not be unreasonably withheld, delayed, or conditioned, such Environmental Audit may be conducted by Lessee's personnel but in either case Lessee shall provide County with a copy or summary of its report of its annual Environmental Audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits" which shall include in its scope the items listed in Exhibit E hereto or other recognized format approved by County. If the Environmental Audit indicates any unresolved violation of any applicable Environmental Law and/or Environmental Requirements, Lessee shall, at the request of County, provide a detailed review of the status of any such violation within thirty (30) days of the County's request.</p> <p>8.13 <u>Remediation of Hazardous Material Releases</u>: If Lessee or Lessee's agents, employees, contractors, invitees or trespassers cause any Hazardous Materials to be released, discharged, or otherwise located on or about the Premises or Other Airport Property during the term of this Agreement ("Hazardous Material Release"), Lessee shall promptly take all actions, at its sole expense and without abatement of rent, as are reasonable and necessary to return the affected portion of the Premises or Other Airport Property and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release in a manner</p>		
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not inconsistent with applicable Environmental Law. County shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Lessee proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work; (ii) any reports or disclosure statements to be submitted to any governmental authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any governmental authorities. The County's approvals shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, County's prior consent shall be not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Lessee's best efforts, It is not practicable to obtain County's consent before taking remedial action to abate such immediate threat, provided that: (a) Lessee shall notify County as soon as possible and shall thereafter obtain County's consent as otherwise provided in this paragraph; and (b) Lessee shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this paragraph. In addition to any rights reserved by County in this Agreement, County shall have the right, but not the obligation, to participate with Lessee, Lessee's consultants and Lessee's contractors in any meetings with representatives of the governmental authorities and Lessee shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all applicable Environmental Laws. The County's consent to any remedial activities undertaken by Lessee shall not be withheld so long as County reasonably determines that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County. Lessee's obligations in this section do not apply to Baseline Environmental Conditions.

8.14 Indemnity: Lessee shall indemnify, defend (with counsel reasonably satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all loss, cost, damage, expense (including reasonable attorneys' fees), claim, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Premises or Other Airport Property and caused by Lessee, Lessee's agents, employees, contractors, invitees or trespassers. This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises or Other Airport Property; (d) damages for the loss or restriction on use of the Premises or Other Airport Property; (e) sums paid in settlement of claims; (f) reasonable attorneys' fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment, but shall not extend to such claims, payment, diminution, damages, sums, fess or costs to the extent caused (i) solely by an act of God or (ii) by the negligent or willful misconduct of the County, its officers, employees, contractors or agents. For any legal proceedings or actions initiated in connection with the Hazardous Materials Release, County

shall have the right at its expense but not the obligation to join and participate in such proceedings or actions in which the County is a named party, and control that portion of the proceedings in which it is a named party. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release; provided, however, claims for which Lessee may be liable pursuant to this Article 8.14 shall not be settled without Lessee's consent. Any costs or expenses incurred by County for which Lessee is responsible under this paragraph or for which Lessee has indemnified County: (i) shall be paid to County on demand, during the term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Lessee on demand. Lessee's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assignees and inure to the benefit of County's successors and assignees. Notwithstanding any other provision of this Agreement, this section 8.15 does not apply to Baseline Environmental Conditions or a discharge, disposal or release caused by the County, its officers, employees, contractors or agents.

(A) This indemnity specifically includes the direct obligation of Lessee to perform, at its sole cost and expense, any remedial or other activities required or ordered by court or agency having competent jurisdiction over the subject matter, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of Hazardous Materials.

(B) Lessee agrees in order to minimize its obligations in this regard to use best efforts to assist the Aviation Department in responding to Hazardous Materials spills in or Airport property reasonably close to the Premises used by Lessee by making Lessee's remediation equipment and personnel available for such emergency remediation activity. However, Lessee may provide such assistance only at the direct request of the Aviation Department and only if Lessee's remediation equipment is intended to be utilized for the Hazardous Material spill at issue and only if Lessee's personnel have been trained to respond to the Hazardous Material spill at issue. If Lessee is directed to perform any remedial work under this Article 8.14(B) for which it is later determined that Lessee is not responsible, the Aviation Department shall reimburse Lessee for all costs associated with or arising out of Lessee's performance of such remedial work. Lessee shall cooperate with the Aviation Department in any subsequent effort by the Aviation Department to recover from the responsible parties all costs involved with the remediation effort that utilized Lessee's equipment and personnel. Lessee shall perform all such work in its own name in accordance with applicable laws. Lessee acknowledges that the County's regulatory power in this regard is independent of the County's contractual undertakings herein, and nothing herein shall affect the County's right in its regulatory capacity to impose its environmental rules, regulations, and authorities upon the Lessee in accordance with the law.

(C) In the event Lessee fails to perform its obligations in Article 8.14(A) above, and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in Article 8.13(A) above, and thereafter seek reimbursement for the costs thereof. In accordance with this Article 8, Lessee shall permit County or its designated representative access to the Premises areas to perform such remedial activities.

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(D) Whenever County has incurred costs described in this section as a result of the failure of Lessee to perform its obligations hereunder, Lessee shall, within thirty (30) days of receipt of notice thereof, reimburse County for all such expenses together with interest at the rate of 1½ % per month on the outstanding balance commencing on the thirty-first day following Lessee's receipt of such notice until the date of payment.

(E) To the extent of Lessee's responsibility under this Article and without limiting its obligations under any other paragraph of this Agreement, and except to the extent of County's responsibility for environmental conditions set forth in this Article 8, Lessee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual Hazardous Materials contamination on the Premise. Lessee's responsibility under this paragraph includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders. Lessee shall assume, pursuant to the indemnity provision set forth in this Article 8, any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

8.15 Dispute Resolution: County and Lessee agree that any dispute between them relating to this Article 8 will first be submitted, by written notice, to a designated representative of both County and Lessee who will meet at County's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either party may refer the dispute to mediation, or institute any other available legal or equitable proceeding in order to resolve the dispute.

8.16 Waiver and Release: Lessee, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges County, its principals, officers, directors, employees, agents, representatives and any other person acting on behalf of the County, and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any it's heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future physical characteristic or condition of the Premises, Including, without limitation, any Hazardous Material, in at, on, under or related to the Premises, or any violation or potential violation of any Environmental Law applicable thereto; provided, however, this Article 8.16 shall not constitute a waiver or release of any obligation of County under this Article 8. Lessee acknowledges that County would not enter into this Agreement without Lessee's agreement to the waiver and release provided herein.

8.17 No Waiver of Rights Causes of Actions or Defenses. Notwithstanding any language in this Agreement, including without limitation Articles 8.02, 8.03, 8.04, 8.05, 8.13, 8.14 and

**Tenant and User Agreements**

<p>8.15, Lessee does not agree to waive or release any rights, causes of action or defenses it may have against Miami-Dade County or any other party related to allegations made by the County in (i) Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit, and (ii) a letter dated April 8, 2001, to Lessee and others (who are referred to as "responsible parties" or "RPs"). Nothing herein shall be construed to limit or expand upon any releases previously granted to or exchanged between the parties as a result of judgments or settlements obtained in proceedings between the parties, including, without limitation, settlements in bankruptcy or settlements entered under Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit.</p> <p>8.18 <u>Surrender of Premises</u>: Lessee shall surrender the Premises used by Lessee to County upon the expiration or earlier termination of this Agreement free of debris, waste, and Hazardous Materials used, stored, or disposed of by Lessee or its agents, employees, contractors, invitees or Trespassers, or otherwise discharged on the Premises or Other Airport Property for which Lessee is responsible during the term of this Agreement. The Premises shall be surrendered in a condition that complies with all applicable Environmental Requirements, and such other reasonable environmental requirements as may be imposed by County. Lessee shall not be responsible under this section 8.18 to the extent of County's obligations under this Article 8.</p> <p>8.19 <u>Breach</u>: Any breach by Lessee of any provision of this Article 8 shall, after notice and a reasonable opportunity for Lessee to cure, constitute a default of the Agreement and shall entitle County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law.</p> <p>8.20 <u>Survivability of Terms</u>: the terms and conditions of this Article 8, including the indemnity, waiver, and release, shall survive the termination of this Agreement.</p> <p>8.22 <u>Right to Regulate</u>: As provided for in Article 20 of this Agreement [Waiver of Claims], nothing within this Article 8 shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.</p>		
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**RISK: VACANCY RISK**

Talking Points:

- If necessary, use the residual ratemaking model, knowing that such downside protection comes with a loss of control and authority over Airport capital decisions.
- Under the compensatory model, try to divide the terminal into sub-cost centers where possible. For example, recover the costs of loading bridges or baggage systems or passenger processing equipment separate from the cost of the terminal. Borrowing from the example above, if the terminal were 50% leased and the cost of the baggage system were in the terminal costs, an Airport would only recover 50% of the cost of the baggage system. However, if the baggage system were charged separately with its costs allocated to the airlines based on proportionate users, an Airport may recover all or substantially all of its baggage system costs, thereby reducing its risk of shortfall due to terminal vacancy.

Source:

**Orlando International Airport**

The Signatory Airlines shall pay, as additional rental payments, an amount necessary in any Fiscal Year to satisfy AUTHORITY’s rate covenant, as set forth in Section XXX of the Bond Resolution, or any successor thereto (“Extraordinary Coverage Protection”). Any shortfalls in annual receipts required by the AUTHORITY’s rate covenant shall not be satisfied with prior year surpluses or AUTHORITY cash balances, even if such exist; but shall be satisfied by the Extraordinary Coverage Protection payments described herein. AIRLINE’s share of such Extraordinary Coverage Protection payments shall equal the total required payment times a fraction, the numerator of which is the estimated number of annual Enplaned Passengers for Airline for the Fiscal Year such payment is due and the denominator of which is the estimated number of annual Enplaned Passengers of all Signatory Airlines that actually make an Extraordinary Coverage Protection payment. The estimated number of Enplaned Passengers and the required amount of the Extraordinary Coverage Protection payment shall be determined by AUTHORITY in its reasonable discretion. All Extraordinary Coverage Protection payments shall be due within fifteen (15) days after notice from AUTHORITY. The AUTHORITY may provide notice of the requirement for Extraordinary Coverage Protection payments at any time, and from time to time, during a Fiscal Year that it appears, in the AUTHORITY’s reasonable discretion, that such payments will be required pursuant to the terms hereof; provided, however, that the AUTHORITY shall afford the Signatory Airlines a reasonable opportunity to discuss the requirement with the AUTHORITY prior to requiring such payment.

**Salt Lake City International Airport**

**8.11 Extraordinary Coverage Protection.** Airline acknowledges that in order to satisfy the Coverage Amount Requirement for Debt Service on Bonds and Subordinated Indebtedness, Airline shall be required to make extraordinary coverage protection payments in addition to the Lending Fees and Terminal Rents otherwise established by this Article 8 in any Fiscal Year in which the amount of Revenues less Operating Expenses is forecasted to be less than the sum of the Debt Service plus the Coverage Amount Requirement applicable thereto. Any amounts that must be collected for such extraordinary coverage protection payments shall be allocated in a fair and not unjustly discriminatory manner to the Airfield Revenue Requirement of the Terminal Revenue Requirement or both in the reasonable discretion of the Executive Director.

**RISK: AIRLINE BANKRUPTCY**

Talking Points:

- Require airlines to deposit at least three months of estimated rental charges to be applied in the event of any default in payment.
- Require airlines to obtain a payment bond with a third-party surety that will pay rent in the event of default.
- Make sure that any benefits, such as revenue sharing, do not apply during any period that an airline is in default in paying rent.

Source:

Orlando International Airport	Dallas/Fort Worth International Airport	San Francisco International Airport
<p><b><u>7.08 Security for Performance.</u></b>                      A. Unless AIRLINE has provided regularly scheduled flights to and from the Airport during the eighteen (18) months prior to the Effective Date of this Agreement without the occurrence of any act or omission that would have been an event enumerated in Section 12.01 of this Agreement, if this Agreement had been in effect during that period, AIRLINE shall provide AUTHORITY on the Effective Date of this Agreement with a contract bond, irrevocable letter of credit or other similar security acceptable to AUTHORITY (“Performance Security”) in an amount equal to the estimate of three (3) months’ rentals, fees and charges payable by AIRLINE (excluding PFC’s) pursuant to this Article 7, to guarantee the faithful performance by AIRLINE of its obligations under this Agreement and the payment of all rentals, fees and charges due hereunder. AIRLINE shall be obligated to maintain such Performance Security in effect until the expiration of eighteen (18) consecutive months during which period AIRLINE commits no event enumerated in Section 12.01 of this Agreement. Such Performance Security shall be in a form and with a company reasonably acceptable to AUTHORITY and licensed to do business in the State of Florida. In the event that any such Performance Security shall be for a period less than the full period required by this Section 7.08A or if Performance Security shall be canceled, AIRLINE shall provide a renewal or replacement Performance Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation. The amount of Performance Security required to be maintained by AIRLINE may be adjusted from time to</p>	<p><b><u>SECTION 5.16 SECURITY DEPOSITS</u></b>                      If AIRLINE has not maintained continuous scheduled air service at the Airport for at least two (2) years prior to this Agreement, or if, AIRLINE or any of AIRLINE’s Affiliates fail to timely pay Rents or Landing Fees twice in a twelve (12) month period, AIRLINE will provide DFW with a security deposit equal to Rents and Landing Fees that DFW estimates AIRLINE and its Affiliates will incur during the following three month period, which requirement will be suspended upon completion of one year of continuous scheduled air service at the Airport without another payment default by AIRLINE or any of its Affiliates. The security deposit may be either a letter of credit or a surety bond, issued by an institution and in a form acceptable to DFW, and DFW will at all times be authorized to apply any security deposit towards any outstanding obligations of AIRLINE or any of its Affiliates at the Airport. If AIRLINE’s security deposit is used to cure a monetary obligation or to cure any other event of default, AIRLINE will promptly replenish the depleted security deposit to an amount equal to its security deposit obligation pursuant to this Agreement. DFW reserves the right to waive the requirement of a security deposit.</p>	<p><b><u>Section 1301 Security for Faithful Performance.</u></b>                      A. Security. The full and faithful performance of the Lease and Use Agreement by each Signatory Airline, including this Agreement by Airline, including, but not limited to, the payment of all Terminal Area Rentals, Landing Fees, usage fees, rates and charges now or in the future payable to City hereunder, and the compensation for any loss or damages the City may suffer by a default hereunder or breach or rejection hereof, shall be secured by the Deposit provided in accordance with Section 1302 by such Signatory Airline, including Airline.                       B. Other Agreements. From time to time, Signatory Airlines, including Airline, have entered or may enter into other agreements with City under which Signatory Airlines, including Airline, may provide additional security deposits in accordance with such agreements.   <b><u>Section 1302 Deposit/Faithful Performance Bond.</u></b>                      A. Applicability. The provisions of this Section shall be applicable to all Signatory Airlines, including Airline.                       B. Nature of Deposit. Prior to the Effective Date, Airline will deliver to Director the Deposit in the Deposit Amount. Such Deposit shall be in the form of (a) a surety bond payable to City, naming City as obligee, and otherwise in form satisfactory to City’s City Attorney, and issued by a surety company satisfactory to Director, or (b) a letter of credit naming City as beneficiary, and otherwise in form satisfactory to City’s City Attorney, issued by a bank satisfactory to Director. Such bond or letter of credit shall be renewed annually at Airline’s cost, and shall be kept in full</p>

## Airline Signatory Agreements

time by AUTHORITY based on updated estimates of rentals, fees and charges payable by AIRLINE. AIRLINE shall deposit increased Performance Security promptly after receipt of notice of adjustment from AUTHORITY. AUTHORITY may waive any requirement herein in its exclusive discretion.

B. In the event AUTHORITY is required to draw down or collect against AIRLINE's Performance Security for any reason, AIRLINE shall, within ten (10) business days after AUTHORITY's written demand, take such action as may be necessary to replenish the existing Performance Security to its original amount (three months' estimated rentals, fees, and charges) or to provide additional or supplemental Performance Security from another source so that the aggregate of all Performance Security is equal to three months' estimated rentals, fees, and charges payable by AIRLINE pursuant to this Article 7.

C. If AIRLINE is not required to have Performance Security in place at any time, then, upon the occurrence of any act or omission by AIRLINE that is an event enumerated in Section 12.01, or upon the failure of AIRLINE to pay any rentals, fees or charges hereunder when due for sixty (60) consecutive days, or upon AIRLINE's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984 or any successor statute, as such may be amended, supplemented, or replaced, AUTHORITY, by written notice to AIRLINE given at any time within ninety (90) days after the date such event becomes known to AUTHORITY, may impose or reimpose the Performance Security requirements of Section 7.08A on AIRLINE. In such event, AIRLINE shall provide AUTHORITY with the required Performance Security within ten (10) days from its receipt of such written notice and shall thereafter maintain such Performance Security in effect until the requirements for removal of the Performance Security set forth in Section 7.08A are met.

D. If AIRLINE shall fail to obtain and/or keep in force such Performance Security required hereunder, such failure shall be grounds for immediate cancellation of this

force and effect at all times to ensure the faithful performance by Airline of all covenants, terms, and conditions of this Agreement between City and Airline, including payment of rent and Landing Fees. Airline shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date or termination of such bond or letter of credit of its intention not to renew said bond or letter of credit or to terminate said bond or letter of credit.

C. Draws upon Deposit. If Airline fails to pay any Terminal Area Rentals, Landing Fees, usage fees, rates and charges now or in the future payable to City hereunder, or otherwise defaults with respect to any provision of this Agreement, City may use, apply or retain all or any portion of the Deposit for the payment of such amounts, or for the payment of any other sum to which City may become obligated by reason of Airline's default or to compensate City for any loss or damages which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Airline, within ten (10) days after demand therefor, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof. In the event the surety company or bank declines to renew or elects to cancel the bond or letter of credit comprising the Deposit, Airline shall, at least fifteen (15) days prior to the expiration or cancellation date thereof, replace such bond or letter of credit with another bond or letter of credit. If Airline fails to do so, City may, without notice to Airline, draw on the entirety of the Deposit and hold the proceeds thereof as security hereunder. City shall not be required to keep the Deposit separate from its general accounts. If Airline performs all of Airline's obligations hereunder, the Deposit, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Airline (or, at City's option, to the last assignee, if any, of Airline's interest hereunder) upon the revocation or termination of this Agreement and following Airline's cessation of use of the Demised Premises and Common Use facilities. No trust relationship is created herein between City and Airline with respect to the Deposit.

**Airline Signatory Agreements**

<p>Agreement pursuant to Section 12.01. AUTHORITY’S rights under this Section 7.08 shall be in addition to all other rights and remedies provided to AUTHORITY under this Agreement.</p> <p>E. AIRLINE and AUTHORITY agree that this Agreement constitutes an ‘executory contract’ for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 USC) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Furthermore, AIRLINE and AUTHORITY agree that any Performance Security provided by AIRLINE are not ‘property of the estate’ for purposes of Section 541 of the United States Bankruptcy Code (Title 11 USC), it being understood that any Performance Security is property of the third party providing it (subject to AUTHORITY’s ability to draw against the Performance Security).</p> <p>F. AIRLINE and AUTHORITY agree that, to the extent permitted by applicable law, all PFCs collected by AIRLINE with respect to Enplaned Passengers at the Airport, are property of AUTHORITY when collected, and, to the extent held by AIRLINE, are being held in trust for AUTHORITY.</p>		
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**RISK: DAMAGES TO PREMISES**

Talking Points:	<ul style="list-style-type: none"> <li>• Make sure to address partial damage, substantial damage, and total destruction of airport property.</li> <li>• Specify the allocation of responsibility between the airline and the airport for reconstruction and repair costs and include a timeframe for the completion of such reconstruction and/or repair.</li> <li>• Require the airline to continue to pay rent during the reconstruction and/or repair period and require the airline to waive any and all claims against the airport for damages suffered by reason of any damage, destruction, repair, or restoration of the airport premises.</li> <li>• Allow the Airport to permanently or temporarily move the airline to alternative space without rent abatement.</li> </ul>
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Source:

Orlando International Airport	Dallas/Fort Worth International Airport	San Francisco International Airport
<p><b>10.01 Partial Damage.</b> If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be partially damaged by fire or other casualty or by any AUTHORITY required construction or renovation project, but said circumstances do not render Airline Premises untenable as reasonably determined by AUTHORITY, the same shall be repaired, constructed or renovated to usable condition with due diligence by AUTHORITY as hereinafter provided. No abatement of rentals shall accrue to AIRLINE so long as Airline Premises remain tenantable.</p> <p><b>10.02 Substantial Damage.</b> If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be so extensively damaged by fire or other casualty or by any AUTHORITY required construction or renovation project, as to render any portion of the Airline Premises untenable, but capable of being repaired, as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as hereinafter provided. If such repairs have not been commenced (defined as any material construction related activity, such as preparing plans, applying for permits, etc.) by AUTHORITY within ninety (90) days after such damage, and AIRLINE has not been provided comparable alternative facilities, AIRLINE shall have the option to terminate its agreement related to the facilities</p>	<p><b>Section 8.1 Use of Insurance Proceeds to Repair Casualty Damage.</b> (a) In the event that a casualty causes destruction of or damage to any portion of the Leased Premises of Airline, or to DFW FF&amp;E assigned to the Leased Premises, DFW will build, replace, or repair with due diligence with the proceeds of any insurance carried by DFW for the repair or replacement of said property, regardless of fault, unless Airline and DFW agree that such repair or replacement would be imprudent under the circumstances. Notwithstanding said requirement, such insurance proceeds will be applied as specified in the Bond Ordinance. DFW will not be obligated by this Agreement to incur costs beyond the proceeds of insurance for the repair or replacement of any of its own property, regardless of fault.</p> <p>(b) In the event that a casualty causes destruction of or damage to any property of DFW or the Cities insured by Airline, Airline will use the proceeds of any insurance carried by Airline for the repair or replacement thereof, regardless of fault, unless Airline and DFW agree that such repair or replacement would be imprudent under the circumstances. Airline will not be obligated to incur costs beyond the proceeds of insurance for the repair or replacement of any of its own property, regardless of fault. Airline will not be obligated to use the proceeds of insurance carried by</p>	<p><b>Section 911 Damages and Destruction.</b> A. Partial Damage. If any part of the Demised Premises shall be partially damaged by fire or other casualty, but these circumstances do not render the Demised Premises untenable as reasonably determined by City, the same shall be repaired, constructed or renovated to usable condition with due diligence by the parties as provided in Section 911(D) below.</p> <p>B. Substantial Damage. If any part of the Demised Premises shall be so extensively damaged by fire or other casualty as to render any portion of the Demised Premises untenable, but capable of being repaired, as reasonably determined by City, the same shall be repaired to usable condition with due diligence by the parties as provided in Section 911(D). City shall use commercially reasonable efforts to provide Airline with comparable temporary alternative facilities sufficient to allow Airline to continue its operations while repairs are being completed, at a rental rate applicable to such alternative facilities; provided, however, that Airline shall not be required to lease more alternative space than was rendered untenable in accordance with this Section.</p> <p>C. Destruction. (i) If any part of the Demised Premises shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of the Demised Premises untenable and not economically feasible to repair, as reasonably determined by City, City shall notify Airline within a period of forty-five (45) days after the date of such</p>

<p>so damaged. In the case of damage described herein, the rentals payable hereunder with respect to AIRLINE's affected Airline Premises shall be paid up to the time of such damage and shall thereafter be abated equitably in proportion as the part of the area rendered untenable bears to total Airline Premises until such time as the damaged Airline Premises are again tenable or comparable alternative facilities are made available to AIRLINE. AUTHORITY shall use its best efforts to provide AIRLINE with comparable, alternative facilities sufficient to allow AIRLINE to continue its operations while repairs are being completed, at a rental rate applicable to such alternative facilities; provided, however, that AIRLINE shall not be required to lease more alternative space than was rendered untenable in accordance with this Section.</p> <p><b><u>10.03 Destruction.</u></b></p> <p>A. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be damaged by fire or other casualty or by any AUTHORITY required construction or renovation project, and is so extensively damaged as to render any portion of said Airline Premises untenable and not economically feasible to repair, as reasonably determined by AUTHORITY, AUTHORITY shall notify AIRLINE within a period of forty five (45) days after the date of such damage of its decision whether to reconstruct or replace said space; provided, however, AUTHORITY shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected Airline Premises shall be paid up to the time of such damage and thereafter shall abate until such time as replacement or reconstructed space becomes available for use by AIRLINE.</p> <p>B. In the event AUTHORITY elects to reconstruct or replace affected Airline Premises, AUTHORITY shall use its best efforts to provide AIRLINE with comparable, alternative facilities sufficient to allow AIRLINE to continue its operation while reconstruction or replacement facilities are being completed; provided, however, that AIRLINE shall not be required to occupy</p>	<p>Airline to rebuild any part of a Terminal in which Airline has no occupancy.</p> <p>(c) Nothing in this Section will limit the liability of either party for the intentional or grossly negligent destruction of or damage to property of the other party. Nothing in this Section will presume that any particular insurance carried by either party covers any particular casualty. Nothing in this Section governs the type or form of insurance that either party is required to carry. Nothing in this Section, or in this Agreement in general, waives any immunities or limits on liability as provided by law.</p> <p><b><u>Section 8.2 Abatement of Rents and Fees for Casualties.</u></b> (a) If destruction or damage to any portion of AIRLINE's Leased Premises renders any portion thereof untenable in whole or in part, and such destruction or damage is not the result of Airline's negligence or willful act, Airline's Rent and fees attributable to said portion of the Leased Premises will be abated from the date of such destruction or damage and continue until such portion of the Leased Premises is replaced or repaired. Any such abatement will be made on an equitable basis, giving consideration to the amount of area and character of the Leased Premises, the use of which is effectively denied to Airline.</p> <p>(b) In the event DFW and Airline find it imprudent to rebuild, replace or repair such damage, the effected portions of the Leased Premises will be automatically deleted from the Leased Premises as of the date of such damage.</p> <p>(c) If DFW, for reasons other than Airline's negligence or willful act, prohibits the use of the Airfield or any substantial part thereof for air transport operations for a period of at least sixty (60) consecutive days, and if as a direct result thereof Airline is prevented from conducting its normal operations in its Leased Premises, Airline will be entitled to an abatement of its Rent and fees attributable to said portion of the</p>	<p>damage of its decision whether said space should be reconstructed or replaced; provided, however, City shall be under no obligation to reconstruct or replace such premises.</p> <p>(ii) If City elects to replace or reconstruct the affected Demised Premises, the same shall be replaced or reconstructed to usable condition with due diligence by the parties as provided in Section 911(D), and City shall use commercially reasonable efforts to provide Airline with comparable temporary alternative facilities sufficient to allow Airline to continue its operations while reconstruction or replacement facilities are being completed; provided, however, that Airline shall not be required to occupy and pay for more alternative space than was rendered untenable in accordance with this Section.</p> <p>(iii) If City elects to not reconstruct or replace the damaged Demised Premises, City shall either relocate Airline pursuant to Section 210 above, or if no premises are available to accomplish such relocation, amend this Agreement to remove the damaged facilities. City agrees to amend this Agreement effective as of the date of damage or destruction to reflect such changes, additions and deletions to the Demised Premises. If Airline is not relocated and, after amendment of this Agreement as to the damaged facilities, the remaining tenable portion of the Demised Premises is not sufficient to maintain operations at the Airport, Airline may terminate this entire Agreement upon at least thirty (30) days advance notice given within sixty (60) days after receipt by Airline of notice of amendment of this Agreement as to the damaged facilities.</p> <p>D. Allocation of Responsibility for Reconstruction. (i) In the event any Alterations in the Exclusive Use Space or Preferential Use Space included in the Demised Premises are to be reconstructed or repaired following damage by any casualty described in Sections 911(A), (B) or (C) above. Airline shall repair such damage to its Alterations, at its sole cost and expense, and this Agreement shall continue in full force and effect. In the event such damage occurs to Alterations in Exclusive Use Space or Preferential Use Space that is open or available to the public, Airline shall use commercially reasonable efforts to cause such repair to be</p>
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**Airline Signatory Agreements**

and pay for more alternative space than was rendered untenable in accordance with this Section.

C. In the event AUTHORITY elects to not reconstruct or replace damaged Airline Premises, AUTHORITY shall either relocate AIRLINE, pursuant to Section 4.05B above, or if no premises are available to accomplish such relocation, to terminate this Agreement as to the damaged facilities. In such event, AUTHORITY agrees to amend this Agreement to reflect related additions and deletions to Airline Premises. In the event AIRLINE is not relocated and, after termination of this Agreement as to the damaged facilities, the remaining tenable portion of the Airline Premises is not sufficient to maintain operations at the Airport, AIRLINE may terminate this entire Agreement upon at least sixty (60) days advance notice given within ninety (90) days after receipt by AIRLINE of notice of termination of this Agreement as to the damaged facilities.

**10.04 Damage Caused By AIRLINE.** Notwithstanding any provision of this Article 10 to the contrary, in the event that due to the negligence or willful act or omission of AIRLINE, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Airline Premises. To the extent that the costs of repairs are not fully recovered from any insurance proceeds payable to AUTHORITY by reason of such damage or destruction, AIRLINE shall pay the amount of such additional costs to AUTHORITY. Upon the evacuation of any premises by AIRLINE, whether due to relocation, termination of this Agreement or otherwise, AIRLINE shall reimburse AUTHORITY for the cost to repair any damage to such premises, other than normal wear and tear.

**10.05 AUTHORITY's Responsibilities.** AUTHORITY shall maintain commercially reasonable property insurance; provided, however, that AUTHORITY's obligations to repair, reconstruct, or replace any part of the affected Airline Premises or adjacent facilities under the provisions of this Article 10 shall in any event be

Leased Premises. Such abatement will be made on an equitable basis, giving consideration to the amount of area and character of the Leased Premises, the use of which is effectively denied to Airline.

performed within ninety (90) days. If the damage occurs to Alterations in Exclusive Use Space or Preferential Use Space that is not open or available to the public, Airline shall use commercially reasonable efforts to cause such repair to be performed within one hundred and eighty (180) days.

(ii) In the event any improvements in the Joint Use Space included in the Demised Premises are to be reconstructed or repaired following damage by any casualty described in Sections 911(A), (B) or (C) above, such damage shall be repaired as follows: all Joint Use Space which is an Air Carrier's responsibility pursuant to Exhibit C hereof shall be repaired by the Air Carriers operating in such Joint Use Space, at their sole cost and expense; and all Joint Use Space which is City's responsibility pursuant to Exhibit C hereof shall be repaired by City.

(iii) Any replacement, repair or reconstruction not described in Section 911(D)(i) or (ii) shall be completed by City.

E. No Abatement of Rent; Airline's Remedies. If the Demised Premises is wholly or partially destroyed or damaged, Airline shall have no claim against City for any damage suffered by reason of any such damage, destruction, repair or restoration. Airline waives California Civil Code Sections 1932(2) and 1933(4) providing for termination of hiring upon destruction of the thing hired. In no event will Airline be entitled to an abatement of rent resulting from any damage, destruction, repair, or restoration described herein; provided, however, that Airline shall not be charged rent for both untenable Demised Premises and temporary alternative facilities.

F. Reporting of Damage to Airport Property. Neither Airline nor any Airline Entity shall destroy or cause to be destroyed, injure, deface, or disturb in any way, property of any nature on the Airport, nor willfully abandon any personal property on the Airport. If Airline or Airline Entity is aware of any injury, destruction, damage or disturbance of property on the Airport (regardless of responsibility therefor), Airline shall file a written report with City describing the incident and damage within twenty four (24) hours after discovery, and, if such damage was caused by Airline or any Airline Entity,

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<p>limited to restoring affected Airline Premises or adjacent facilities to (1) substantially the same condition that existed at the date of damage or destruction, or (2) to the extent of insurance proceeds and other funds available to AUTHORITY for such repair, reconstruction, or replacement, whichever is less; provided further that AUTHORITY shall in no way be responsible for the insuring of, or the restoration or replacement of any equipment, furnishings, property, improvements, signs, or other items installed and/or owned by AIRLINE.</p>		<p>upon demand by the Director, shall reimburse the City for the full amount of such damage within sixty (60) days. Failure to file any written reports required by this Section shall constitute an Event of Default under this Agreement and a violation of Airport Rules subject to fines under Section 1507, as applicable.</p>
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**RISK: ENVIRONMENTAL**

<p>Talking Points:</p>	<ul style="list-style-type: none"> <li>• Include an indemnification provision that survives the termination of the agreement.</li> <li>• Require the airlines to cooperate with any investigation or audit of the airport by any governmental agency regarding possible violations of environmental laws.</li> <li>• Include unreimbursed environmental costs in the airfield cost center.</li> </ul>
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Source:

Orlando International Airport	Dallas/Fort Worth International Airport	San Francisco International Airport
<p><b><u>17.5 Environmental.</u></b>  <b>(a) General Conditions. Each Airline must:</b>                      (i) be knowledgeable of all applicable federal, state, regional, and local environmental laws (including common law), ordinances, rules, regulations and orders, which apply to Airline’s operations at the Airport (collectively, “Environmental Laws”) and acknowledge that such Environmental Laws change from time-to-time. Each Airline must keep informed of any such future changes.                      (ii) comply with all applicable Environmental Laws which apply to Airline’s operations. Each Airline shall hold harmless and indemnify the Authority for any violation by such Airline of such applicable Environmental Laws and for any non-compliance by such Airline with any permits issued to Airline or to the Authority (to the extent applicable to Airline) pursuant to such Environmental Laws, which hold harmless and indemnity shall include, but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures or monitor environmental conditions and for any monetary penalties, costs, expenses, or damages, including natural resource damages, imposed against Airline, its employees, invitees, suppliers, or service providers or the Authority by reason of such Airline’s violation or non-compliance.                      (iii) cooperate with any investigation, audit or inquiry by the Authority or any governmental or quasi-governmental agency, regarding possible violation by Airline of any Environmental Law upon the Airport, to the extent applicable or potentially applicable to Airline.                      (iv) promptly provide to the Authority any notice of</p>	<p><b><u>Section 10.8 Environmental Indemnification and Reimbursement.</u></b> (a) Notwithstanding any other provisions to the contrary, and without limiting any other indemnity in this Agreement, Airline agrees to indemnify, defend, and hold harmless DFW, its past, present or future directors, officers, members, agents and employees, and the Cities and their respective councils, council members, agents, and employees ("Environmental Indemnitees"), from and against any and all claims, demands, penalties, fines, suits, actions, administrative proceedings (including formal and informal enforcement), government orders, judgments, loss, damages, liabilities, costs, and expenses (including but not limited to reasonable and documented attorneys' and consultants' fees and expenses, litigation costs, expert witness fees, and expenses of investigation, removal, remediation, or other required plan, report, or response action) when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation to the extent resulting from: (i) the breach by Airline of any representation or warranty made in this Article; or (ii) the failure of Airline to meet its obligations under this Article in a full and timely manner, whether caused by Airline or any third party under Airline's direction or control; or (iii) documented loss by any Environmental Indemnitee(s) from any Environmental Impact Claim, to the extent caused by the operations, activities, action or inaction of Airline or its contractors, subcontractors, employees, agents, licensees, Sublessees, Permitted Airlines or other parties under Airline's direction or control, at the</p>	<p><b><u>Section 2004 Liability.</u></b> In addition to any remedy provided in this Agreement, Airline shall be solely and fully responsible and liable for costs, including without limitation costs of clean-up or other remedial activities, fines or penalties assessed directly against the Airport, attributable to (a) storage, use or disposal of Hazardous Materials on the Airport by Airline or any Airline Entity; or (b) any Hazardous Material release or discharge which is caused or results from the activities of Airline or any Airline Entity.</p> <p><b><u>Section 2005 Environmental Indemnity.</u></b> Airline shall indemnify, defend, and hold harmless City from and against any and all losses resulting or arising from: (a) a breach by Airline of its obligations contained in Section 2002; (b) any Release of Hazardous Material from, in on or about the Airport caused by the act or omission of Airline or any Airline Entity or otherwise arising from Airline's operations hereunder; or (c) the existence of any Hazardous Materials on the Demised Premises, except to the extent that (i) Airline can demonstrate to the reasonable satisfaction of City that such Hazardous Materials constitutes a Pre-Existing Condition and Airline or Airline Entity did not exacerbate such Pre-Existing Condition, or (ii) such Hazardous Material was exclusively caused by City or a third party other than an Airline Entity. Nothing herein shall constitute a release of Airline for any losses arising out of any Pre-Existing Conditions to the extent Airline is responsible therefore pursuant to any other agreement or under applicable law.</p> <p><b><u>Section 2010 Cumulative Remedies.</u></b> All remedies of the City as provided herein with regard to Hazardous Materials or any actual or threatened violations of any Environmental</p>

## Airline Signatory Agreements

<p>violation, notice of non-compliance, or other enforcement action relating to the Airport promptly after receipt by Airline or Airline's agent.</p> <p><b>(b) Stormwater.</b></p> <p>(i) Each Airline shall observe and abide by all stormwater rules and regulations as may be applicable to Airline and its use of the Authority's property.</p> <p>(ii) Any stormwater discharge permit issued to the Authority may name such Airline as a co-permitee. Each Airline shall closely cooperate with the Authority to ensure compliance with any applicable stormwater discharge permit terms and conditions. Each Airline shall undertake such actions necessary to minimize the exposure of stormwater to "significant materials" generated, stored, handled or otherwise used by such Airline, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable stormwater rules and regulations.</p> <p>(iii) Within ten (10) days after receipt of any written notice from the Authority or any governing authority relating to stormwater discharge requirements applicable to Airline, an Airline shall notify the Authority in writing if it disputes any of the stormwater permit requirements it is being directed to undertake. If an Airline does not provide such timely notice, such Airline shall undertake at its sole expense, unless otherwise agreed to in writing between the Authority and Airline, those stormwater permit requirements for which it has received written notice from the Authority, and Airline will hold harmless and indemnify the Authority for any violations or non-compliance by such Airline with any such permit requirements.</p> <p><b>(c) Solid and Hazardous Waste.</b></p> <p>(i) Each Airline shall comply with all applicable federal, state and local laws relating to such Airline's transportation, handling, storage, treatment or disposal of solid or hazardous waste at the Airport, and any rules and regulations promulgated thereunder, including but not limited to, ensuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable law.</p>	<p>Leased Premises or AOA, or at other property at the Airport used by Airline but which is not subject to a lease, sublease or other legal agreement governing Airline's use of such property, during the term of this Agreement.</p> <p>(b) In the event DFW undertakes any action, including but not limited to response or corrective action, repairs, or remediation, in the exercise of its rights with respect to Airline under this Article, Airline shall reimburse DFW, upon reasonable written notice by DFW, for all reasonable and documented costs that DFW incurs in association with such action, including but not limited to consultants' fees, contractors' fees, reasonable attorneys' fees and expenses, and expenses of investigation, repair, response or correction action and remediation.</p> <p>(c) Notwithstanding any other provision to the contrary, and to the extent permitted by law, DFW agrees to indemnify and hold harmless Airline and its directors, officers, agents and employees from and against any and all claims, demands, penalties, fines, suits, actions, administrative proceedings (including informal proceedings), government orders, judgments, loss, damages, liabilities, costs, and expenses (including but not limited to reasonable and documented attorneys' and consultant's fees and expenses litigation costs, expert witness fees, and expenses of investigation, removal, remediation, or other required plan or response action) to the extent resulting from (i) failure of DFW to meet its obligations under this Article, or (ii) the documented loss by Airline, its directors, officers, agents or employees to a third party or governmental entity from any Environmental Impact Claim, to the extent resulting from the operations, activities, actions or inaction of DFW or any other party under DFW's direction and control.</p> <p>(d) Regardless of the date of termination of this Agreement, the indemnifying party's representations, obligations and liabilities under this Article shall</p>	<p>Laws and permits are deemed to be cumulative in nature. The City's right to indemnification as provided in this Section shall survive the expiration or early termination of this Agreement with respect to occurrences during the Term of this Agreement.</p>
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**Airline Signatory Agreements**

<p>(ii) Each Airline shall provide the Authority, or, at Authority's option, make available for review by the Authority, upon request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation, responses, storage, disposal and contingency plans and material safety data sheets applicable to Airline's operations at the Airport, within ten (10) days after any such requests by the Authority, all of which shall be maintained in compliance with applicable Environmental Laws. Each Airline shall have, and shall implement as needed, to the extent required by applicable Environmental Laws, a written plan addressing containment and clean up of fuel and/or oil spills.</p> <p>(d) Air Quality. Each Airline agrees to comply with all applicable Environmental Laws relating to the quality of air in any confined or indoor spaces.</p>	<p>continue as long as the indemnified party bears any liability or responsibility under this Article or the Environmental Laws.</p>	
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**RISK: UNAUTHORIZED SOLICITATION OF PASSENGERS**

Talking Points:	<ul style="list-style-type: none"> <li>Clearly delineate the areas where the transportation providers are permitted to solicit passengers and conduct their operations.</li> <li>Specifically prohibit certain types of signage/displays and solicitation practices outside of designated areas.</li> <li>Require all commercial transportation providers to use commercial lanes and abide by all ground transportation rules.</li> </ul>
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Source:

Orlando International Airport	Denver International Airport	Salt Lake City International Airport
<p><b>5.8 No Solicitation.</b> No representative of Company shall solicit passengers at the Airport in any manner whatsoever or attempt to divert them from other forms of ground transportation; provided, however, Company's personnel in a Level 2 Booth, at a Level 1 Counter, or acting as an expeditor for any line that is formed in front of a Level 2 Booth or Level 1 Counter, shall be permitted to discuss ground transportation and make sales to passengers who have approached such personnel for the purpose of discussing ground transportation. At no time shall such personnel attempt to attract persons by calling or motioning to them, and Company agrees to take all reasonable steps to ensure that such conduct will not occur.</p>	<p><b>3.02. Use of Concession Space.</b> Concessionaire may use the Concession Space only for the operation of a non-exclusive concession for providing commercial ground transportation services to the public and for no other purposes, unless explicitly permitted to do so by this Agreement or otherwise authorized in writing by the Manager. Concessionaire shall not sell or offer for sale any service or merchandise not authorized by the Manager, nor shall Concessionaire place, maintain, or use in its operations hereunder, fixtures or furnishings in any areas located outside the Concession Space, regardless of whether such areas are adjacent to the Concession Space. Concessionaire covenants and agrees to operate its Concession in strict conformity with the Permitted Use.</p> <p><b>Express Restrictions.</b> Unless otherwise authorized in writing by the Manager, Concessionaire shall not offer for sale items expressly restricted on the Summary Page; nor shall Concessionaire offer for sale any merchandise, services, or engage in any activity not specifically provided for under the terms of this Agreement.</p> <p><b>No Displays Outside the Concession Space.</b> Concessionaire shall not place, install, maintain or use any racks, stands or other display of merchandise, trade fixtures or furnishings in or upon any areas located outside the Concession Space, regardless of whether such areas are adjacent to the Concession Space.</p>	<p><b>2.06 Advertising.</b> Concessionaire may not advertise at the Operations Areas, including the dispensing of brochures, pamphlets or leaflets or like items whether for profit or not, except informational signs and brochures, as described in Section 2.07, below. Concessionaire shall be permitted to exhibit advertising or promotional material upon its vehicles used in the performance of services under this concession, subject to the City's right to object to same. If any such material is deemed inappropriate or offensive, in the sole discretion of City, said advertising or promotional material will be removed immediately at the request of City, at Concessionaire's expense.</p> <p><b>2.07 Informational Signs and Brochures.</b> Concessionaire will cooperate and coordinate with other on-demand taxicab Concessionaires to produce and install necessary signs and distribute necessary and appropriate brochures in the Operations Areas. The term "signs" as used herein shall mean informational and directional signs or any similar device to assist customers using on-demand taxicab service or to guide the taxicab drivers providing this service. The term "brochures" as used herein shall mean informational brochures, pamphlets, leaflets, guides or any similar device to be distributed to passengers seeking taxicab service in the Operational Areas that set forth authorized taxicab fares and sample fares to major designations within or outside the City. The number, size, content, location, and general type and design of all signs and brochures to be installed or distributed in the Operations Areas are subject to the prior written approval of the City. At no time will hand-lettered, nonprofessional signs or posting of newspaper</p>

	<p><b>No Solicitation Outside the Concession Space.</b> In no event will Concessionaire engage in any activity on the Airport outside of the Concession Space for the recruitment or solicitation of business.</p> <p><b>6.04 Operations.</b> Concessionaire agrees to conduct its business to accommodate the public using the Airport and to operate the concession in the following manner:</p> <p>I. Concessionaire’s employees and agents shall not engage in “high pressure” sales tactics or unfair or deceptive trade practices in the operation of the concession. Additionally, Concessionaire’s employees and agents shall not engage in solicitation for or in connection with any services offered on or about the Airport by Concessionaire or any other party, except for offering Concessionaire’s services to persons at the Concession Space. No payment shall be made to individuals, such as skycaps, for the purpose of diverting customers to Concessionaire’s counter or vans. Concessionaire will not interfere with the operations of adjoining or other Airport tenants. Without limiting the foregoing, Concessionaire will not attempt to divert passengers who are waiting in line to obtain service from its competitors or who have pre-booked travel arrangements with any other ground transportation company. Failure by Concessionaire to comply with the provisions of this Section 6 shall constitute a material breach of this Agreement.</p>	<p>advertisements be permitted. Prior to the erection, construction, or placing of any sign in the Operations Areas, or use of any brochures, Concessionaire shall submit for City's approval drawings, sketches, designs, and dimensions of such signs and brochures, as applicable. Any conditions, restrictions, or limitations with respect to the use thereof as imposed by City in writing shall become conditions of this Concession Agreement. All signs and brochures shall comply with any applicable City and Airport signage standards as they may change from time to time.</p> <p><b><u>Exhibit B: Performance and Operational Standards.</u></b></p> <p><b>Personnel</b>          Concessionaire shall ensure that its owners, employees, officers, agents or contractors not engage in pressure sales tactics for services offered.</p> <p><b>Use of Operations Areas</b>          Concessionaire shall ensure that no solicitations for business by Concessionaire’s owners, officers, agents, contractors, employees and staff, other than as herein provided, shall be carried on within the Operations Areas, and no carrying on or conducting, or the administration or supervision of any other type or kind of business, except as provided herein, shall be carried on within the Operations Areas.</p>
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**RISK: PERSONAL INJURY TO PASSENGERS AND DRIVERS**

Talking Points:	<ul style="list-style-type: none"> <li>• Get indemnity from ground transportation provider for all operations, regardless of fault.</li> <li>• Require airlines to maintain appropriate insurance coverage naming the Airport as an additional insured to cover liability related to personal injury resulting from their operations on the airport premises.</li> </ul>
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**Source:**

<b>Orlando International Airport</b>	<b>Denver International Airport</b>	<b>Salt Lake City International Airport</b>
<p><b>11.1 Indemnification.</b> Company shall, indemnify, defend and hold completely harmless, the Authority, the City and the members (including, without limitation, all members of the governing board of the Authority, the Orlando City Council and the advisory committees of each), officers, agents and employees of each, from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities (including statutory liability and liability under Workers' Compensation Laws), and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert fees and Attorneys' Fees) which may be incurred by, charged to or recovered from any of the foregoing (a) arising directly or indirectly out of the use, occupancy or maintenance of the Premises, including any Improvement thereto, or Company's operations at the Airport or in connection with any of Company's rights and obligations contained in this Agreement, including but not limited to any and all claims for damages as a result of the injury to, or death of, any person or persons, or damage to any property which arises as a result of any act or omission on the part of Company or its officers, partners, employees, agents, contractors, subcontractors, licensees or invitees, regardless of where the damage, injury or death occurred, unless such claim, suit demand, judgment, loss, cost, fine, penalty, damage, liability or expense was proximately caused solely by the Authority's negligence or by the joint negligence of the Authority and any person other than Company or Company's officers, partners, employees, agents, contractors, subcontractors, licensees or invitees or (b) arising out of the failure of Company to keep, observe or perform any of its obligations under this Agreement.</p>	<p><b>9.01. Indemnity.</b>                      (a) Concessionaire hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to, directly or indirectly, its operations in connection herewith work performed under this Agreement, its construction of the Concession Improvements, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents of the Concessionaire; ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Concessionaire or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.                       (b) Concessionaire's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Concessionaire's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.</p>	<p><b>7.01 Indemnification.</b> Concessionaire agrees to indemnify, save harmless and defend City, its officers, agents, elected officials, volunteers and employees from and against all losses, claims, demands, actions, damages, costs, charges and causes of action of every kind or character, including without limitation attorneys' fees, to the extent they are caused by Concessionaire's action or inaction in connection with this Agreement. If City's tender of defense, based upon this indemnity provision, is rejected by Concessionaire and Concessionaire is later found by a court of competent jurisdiction to have been required to indemnify City, then in addition to any other remedies City may have, Concessionaire shall pay City's reasonable costs, expenses and attorneys' fees incurred in proving such indemnification, defending itself or enforcing this provision. Nothing herein shall be construed to require Concessionaire to indemnify City against City's sole negligence. The provisions of this Section 7.01 shall survive the termination of this Concession Agreement.</p>

	<p>(c) Concessionaire will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.</p> <p>(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Concessionaire under the terms of this indemnification obligation. The Concessionaire shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.</p> <p>(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.</p>	
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**RISK: PROPERTY DAMAGE**

Talking Points:			<ul style="list-style-type: none"> <li>• Get indemnity from ground transportation provider for all operations, regardless of fault.</li> <li>• Require airlines to maintain appropriate insurance coverage naming the Airport as an additional insured to cover liability related to property damage resulting from their operations on the Airport premises.</li> </ul>
Source:			
<b>Orlando International Airport</b>	<b>Denver International Airport</b>	<b>Salt Lake City International Airport</b>	
<p>11.2 <b>Liability Insurance.</b> Company, at its own cost and expense, shall obtain and maintain or cause to be obtained and maintained throughout the term of this Agreement, the following types of insurance naming the Authority, the City and the members including, but without limitation, all members of the governing board of the Authority, the Orlando City Council and the advisory committees of each), officers, agents and employees of each as additional insured's.</p> <p>11.2.1 <b>Automobile.</b> Automobile Liability insurance (any auto, including owned autos, non- owned autos and hired autos). Limits for automobile liability insurance shall not be less than: (i) ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for injuries and property damage per occurrence or accident, or (ii) such limits as the City of Orlando may from time to time require, whichever are higher, with such deductible as may be acceptable to the Executive Director. The Executive Director shall have the right to alter the monetary limits or coverage's herein specified from time to time during the term of this Agreement, and Company shall comply with all reasonable requests of the Executive Director with respect thereto.</p> <p>11.2.2 <b>Commercial General Liability.</b> Limits of commercial general liability insurance shall not be less than ONE MILLION AND NO/100 DOLLARS (\$ 1,000,000.00), combined single limit or its equivalent, per occurrence, with contractual liability coverage for Company's covenants to and indemnification of the Authority and the City under this Agreement with such deductible as may be acceptable to the Executive Director. The Executive Director shall have the right to</p>	<p><b>7.14 Maintenance of Concession Space by Concessionaire.</b></p> <p><b>Damage Caused to Other Property.</b> Any damage caused by Concessionaire to the Airport or any City property or operations, or the property of any other tenant, person or entity, either by act or omission, or as a result of the operations of Concessionaire, shall be the responsibility of Concessionaire. Concessionaire shall reimburse the City or the tenant or other party for any such damage within thirty (30) days of written demand by the City, plus a twenty percent (20%) administrative fee. If the same type of damage is caused by the Concessionaire more than once, such as a water leakage, electrical service interruption or other damage, then the City must review and approve Concessionaire's plan of repair and, if such plan is unsatisfactory in the sole determination of the City, the City shall have the right to require that Concessionaire allow the City to make the repair and then reimburse the City for the cost of such repair, plus a twenty percent (20%) administrative fee.</p> <p><b>12.01. Damage to or Destruction of Concession Space.</b> If Concessionaire's Improvements, or any portion thereof, are destroyed or damaged by fire, the elements or otherwise, the Concessionaire shall promptly remove all debris resulting from such damage to the Improvements and shall at its sole cost and expense repair and/or reconstruct the Improvements with due diligence whether or not the damage or destruction is covered by insurance in accordance with the plans and specifications for the</p>	<p><b>11.06 Damage to Property.</b> Concessionaire shall be responsible for any and all damage to property belonging to City and/or City's tenants and concessionaires to the extent caused by an act or omission of Concessionaire or any of their agents, employees or independent contractors. Concessionaire shall be responsible for repairing any damaged property to the Department's satisfaction and shall pay the costs thereof. Concessionaire shall promptly notify Department of any such property damage, or other potential claims or losses relating to such property.</p> <p><b>7.01 Indemnification.</b> Concessionaire agrees to indemnify, save harmless and defend City, its officers, agents, elected officials, volunteers and employees from and against all losses, claims, demands, actions, damages, costs, charges and causes of action of every kind or character, including without limitation attorneys' fees, to the extent they are caused by Concessionaire's action or inaction in connection with this Agreement. If City's tender of defense, based upon this indemnity provision, is rejected by Concessionaire and Concessionaire is later found by a court of competent jurisdiction to have been required to indemnify City, then in addition to any other remedies City may have, Concessionaire shall pay City's reasonable costs, expenses and attorneys' fees incurred in proving such indemnification, defending itself or enforcing this provision. Nothing herein shall be construed to require Concessionaire to indemnify City against City's sole negligence. The provisions of this Section 7.01 shall survive the termination of this Concession Agreement.</p> <p><b>7.02 Insurance.</b> Concessionaire, at its own cost and expense, shall secure and</p>	

## Ground Transportation Agreements

alter the monetary limits or coverage's herein specified from time to time during the term of this Agreement, and Company shall comply with all reasonable requests of the Executive Director with respect thereto.

11.2.3 Workers' Compensation Insurance. If the nature of Company's use of the Premises or business operations at the Premises are such as to place any or all of its employees under the coverage of workers' compensation or similar statutes, Company shall also purchase workers' compensation and employer's liability insurance or similar insurance with a company or companies acceptable to the Authority affording the required statutory coverage and containing the requisite statutory limits to be effective at least twenty (20) days prior to the Commencement Date or the commencement of any construction or installation on the Premises, whichever first occurs, and to be maintained by Company throughout the term of this Agreement. Employer's liability insurance limits shall be not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) for each of the "each accident," "disease policy limit," and "disease each employee" coverage's.

11.2.4 Standards. Such insurance shall provide that it is primary insurance as respects any other valid and collectible insurance Company may possess, as applicable, and that any other insurance the Company does possess shall be considered excess insurance only.

11.2.5 Evidence of Insurance. Company shall provide, upon execution of this Agreement, and at least thirty (30) days prior to the expiration of any insurance policy or policies theretofore provided hereunder, an original certificate or certificates of insurance as evidence that all coverage required hereunder is in effect. Such certificate(s) provided by Company shall name the Authority, Company, the City and the members (including, without limitation, members of the governing Board of the Authority and the Orlando City Council, and members of the advisory committees of each), officers, employees and agents of each as additional insured to the extent applicable as described above, and shall provide

Concession Space as they existed prior to such damage or according to the current needs of the Concessionaire as approved by the City. If Concessionaire fails to repair or replace damaged Improvements in accordance with a schedule agreed to by the City and Concessionaire, and provided that this Agreement has not been canceled, the City may make such repairs or replacement and recover from Concessionaire the direct cost and expense of such repair or replacement, plus a twenty (20%) percent administrative overhead fee. If the Concession Space, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Concessionaire, the obligation of Concessionaire to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within 90 days after the destruction or damage which the City will promptly provide to Concessionaire. Concessionaire may then, at its option, cancel and terminate this Agreement.

**12.02. Cooperation in the Event of Loss.** If the City elects to rebuild, Concessionaire must replace all Concession Improvements at its sole cost and in accordance with the Required Minimum Investment in April 2014 dollars, subject to escalation according to the Engineering News Record Building Cost Index for the Denver, Colorado area, and performance standards as set forth in *Exhibit X*. City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

**12.03. Loss of Damage to Property.** The City shall not be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from operating the elevators, or electric lighting, or water, rain or snow,

maintain the following policies of insurance:

(a) Commercial General Liability Insurance. Concessionaire shall provide commercial general liability insurance coverage for injury to property and person to protect City from such claims and actions. Said insurance shall have limits of not less than two (2) million dollars per occurrence limit of liability and not less than two (2) million dollars aggregate. If the policy is issued on a claims-made basis, the policy shall be maintained for a period of one year following the completion of this Concession Agreement or contain a comparable "extended discovery" clause or "tail endorsement."

(b) Business Auto Coverage Form. The policy or policies shall provide coverage for owned, hired, and non-owned automobiles. The policy or policies shall provide for limits of at least one and a half (1.5) million dollars.

(c) Workers Compensation. Concessionaire shall furnish to City adequate evidence of compliance with Workers Compensation, Social Security, and unemployment compensation provisions to the extent such are applicable to Concessionaire's operations hereunder.

(d) Rating. All policies of insurance and bonds provided herein shall be issued by insurance companies listed on the current Department of the Treasury Fiscal Services List 570 or having a general policy holders rating of not less than "A-" in the most current available "Best's Insurance Reports," and be qualified to do business in the state of Utah.

(e) Policy Requirements and Certificate Information. Certificates evidencing such insurance coverage shall be filed with City upon execution of this Concession Agreement. Such certificates shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with City. If such insurance coverage is canceled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City of such

## Ground Transportation Agreements

that the policy or policies may not be canceled or modified nor the limits thereunder decreased without thirty (30) days' prior written notice thereof to the Authority. Company shall also provide the Authority with copies of such endorsements and other evidence of the coverage set forth in the certificate of insurance as the Authority may reasonably request.

11.3 **Property Insurance.** The Authority may, at its option, maintain property insurance on the Terminal Complex, but it is expressly understood that such insurance shall not cover Improvements, furnishings, trade fixtures, signs, equipment or other property of Company.

11.3.1 Company shall, without expense to the Authority, obtain and maintain in effect throughout the term of this Agreement, for the benefit of Company, the Authority and the trustee of certain of the Authority's outstanding Airport revenue bonds, as their interests may appear, property insurance on the MI insurable value of all Improvements, furnishings, trade fixtures, signs and equipment hereafter installed on the Premises by Company, on a replacement cost basis, in such form and with such company or companies as the Executive Director shall approve. Such insurance shall be effective at least twenty (20) days prior to the Commencement Date or the commencement of any construction or installation on the Premises, whichever first occurs, and shall be maintained by Company throughout the term of this Agreement.

11.3.2 Upon execution of this Agreement or at least twenty (20) days prior to commencement of any construction or installation on the Premises, whichever first occurs, and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided by Company under this Article 11.3, Company shall cause one or more original certificates of insurance to be furnished to the Executive Director evidencing such coverage, and such certificates shall name the Authority, Company and the trustee of certain of the Authority's outstanding Airport revenue bonds as loss payees as their

which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Concessionaire agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

**12.04. Mutual Waiver: Insurance Coverage.** City and Concessionaire each waive any and every claim for recovery from the other for any and all loss of or damage to the Concession Space or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Concessionaire agrees to give to each insurance company which has issued, or may issue, to the Concessionaire policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

**Concessionaire Caused Damage.** If Concessionaire caused the damage described in this Section 12, Concessionaire shall pay for all of the full rebuilding costs, except to the extent of the waiver of subrogation set forth in this Section and Rent shall not be reduced.

**Limits of the City's Obligations Defined.** It is understood that, in the application of this Section 12, the City's obligations shall be limited to the repair or reconstruction of the Concession Space to a condition with utilities stubbed to the Concession Space suitable for Concessionaire to re-build. Redecoration, Improvements, Trade Fixtures, inventory and replacement of all of Concessionaire's furniture, equipment, inventory and supplies shall be the sole

cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through an insurance company or companies qualifying under subparagraph B hereof. All insurance policies, with the exception of Workers Compensation, shall name and certificates shall show City as an additional insured.

(f) Failure to Provide. In the event that Concessionaire shall at any time fail to furnish City the certificate or certificates required, City, upon written notice to Concessionaire of its intention to do so, shall have the right to secure the required insurance, at the cost and expense of Concessionaire, and Concessionaire agrees to reimburse City promptly for the cost thereof and ten percent (10%) for cost of administration.

## Ground Transportation Agreements

<p>interests may appear, and shall provide that the policy or policies will not be cancelled or reduced without thirty (30) days<sup>5</sup> prior written notice thereof to the Authority.</p> <p>11.3.3 Company, on behalf of itself and its insurance carrier, hereby waives any and all rights of recovery which it may have against the Authority or the City for any loss of or damage to property it may suffer as a result of any fire or other peril normally insured against under a policy of property insurance. The Authority, on behalf of itself and its insurance carrier(s), hereby waives any and all rights of recovery which it may have against Company for any loss of or damage to property it may suffer as the result of any fire or other peril to the extent such fire or other peril arises as a result of any act or omission of Company's licensees or invitees and the Authority is compensated for such loss or damage from the proceeds of any applicable policy of property insurance carried by the Authority; provided, however, that such waiver shall not apply with respect to the acts or omissions of Company's officers, partners, employees, agents, contractors or subcontractors, and shall apply only to the extent permitted by such applicable insurance policy without loss of any insurance coverage.</p>	<p>responsibility of Concessionaire and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed under the terms of this Agreement.</p> <p><b>No Duty to Protect.</b> Protection against loss by fire or other casualty to any of the contents of the Concession Space shall not, at any time, be an obligation of the City.</p> <p><b>12.05. Release.</b> Concessionaire agrees that the City shall not be liable to Concessionaire for any injury to or death of any of the Concessionaire's agents, representatives or employees or of any other person or for any damage to any of Concessionaire's property or loss of revenue caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport, whether such injury, death or damage is due to negligence or otherwise.</p>	
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**RISK: PERFORMANCE**

Talking Points:

- Provide for and perform an audit of performance and payment at the discretion of the Airport, as fees based on self-reporting of trips and dwell time may be difficult to track.
- Require ground transportation providers to obtain a payment bond with a third-party surety that will pay in the event of default.

Source:

**Orlando International Airport**

**Denver International Airport**

**Salt Lake City International Airport**

**Article 10 Contract Bond or Letter of Credit.** Company shall provide to the Authority on the execution of this Agreement, a Contract Bond or, at the option of Company (and subject to certain additional requirements as described below), an irrevocable standby Letter of Credit ("Letter of Credit") in the form attached hereto as Item III-A and Item III-B. Such Contract Bond or Letter of Credit shall be effective as of the Commencement Date hereof and shall be maintained by Company throughout the Term of this Agreement in an amount equal to fifty percent (50%) of the initial Minimum Annual Concession Fee during the Initial Period, fifty percent (50%) of the initial Minimum Annual Concession Fee during the next Agreement Period, and during each subsequent Agreement Period, fifty percent (50%) of the Minimum Annual Concession Fee of the immediately preceding Agreement Period (in each event the amount of the Contract Bond or Letter of Credit shall be rounded to the nearest One Thousand Dollars (\$1,000.00). Such Contract Bond or Letter of Credit shall guarantee the faithful performance by Company of all of its obligations under this Agreement, including, without limitation, the payment by Company of all Concession Fees, Privilege Fees, Dwell Time Fees and other amounts due hereunder. Such Contract Bond or Letter of Credit shall be on a form provided by the Authority. Any Contract Bond shall be on a form to be provided by the Authority and shall be written by a company licensed to do business in the State of Florida, which is acceptable to the Executive Director. Any Letter of Credit provided hereunder shall be on a form provided by the Authority and shall be issued by a bank, acceptable to the Executive Director, which is located within Orange County, Florida (unless the

**9.03 Performance Guarantee.** Upon execution of this Agreement, Concessionaire shall deliver to the Manager, and maintain in effect at all times throughout the Term and for six months after the expiration or termination of this Agreement, an irrevocable letter of credit or such other acceptable surety as first approved in writing by City, in the amount of Fifty Thousand and Three Hundred Dollars and No Cents (\$50,000.00) (EXHIBIT F) which amount is subject to increase by the Manager. Such guarantee shall be payable without condition to the City and guarantee to the City full and faithful performance of (i) all of the terms and provisions of this Agreement by Concessionaire, as said Agreement may be amended, substituted, supplemented or extended, and (ii) all obligations and duties under all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport as amended or supplemented. All irrevocable letters of credit shall be in a form, and issued by a bank, acceptable to the City. Notwithstanding the foregoing, if at any time during the term hereof, the Manager deems the amount of the surety insufficient to properly protect the City from loss hereunder because Concessionaire is or has been in arrears with respect to such obligations or because Concessionaire has, in the opinion of the Manager, violated other terms of this Agreement, Concessionaire agrees that it will, after receipt of notice, increase the surety to an amount required by the Manager; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with

**7.03 Security for Performance and Payment.** Prior to execution of this Concession Agreement, Concessionaire shall provide City a letter of credit in an amount equal to the first year's MAG payable to City. Thereafter, Concessionaire shall at all times maintain such letter or other security in an amount equal to the amount of the Minimum Annual Guarantee applicable to each Contract Year. Said letter of credit or other security shall be conditioned to ensure the faithful and full performance by Concessionaire of all covenants, terms, and conditions of this Concession Agreement and to stand as security for payment by Concessionaire of all valid claims by City against Concessionaire. Such guarantee will serve as a surety or security for the full and faithful performance of all terms, covenants, and conditions of this Concession Agreement, including but not limited to the Concession Fees, and any other amounts due City for any reason. City may draw upon such Letter of Credit at City's discretion, to cover defaults in payment of any amounts due City. The form of all required letters of credit or other security and their surety company must be satisfactory to City Attorney's Office.

**Ground Transportation Agreements**

<p>Executive Director waives such requirement in writing). In the event that any Contract Bond or Letter of Credit provided under this Article 10 shall be for a period of less than the full Term of this Agreement, or in the event the amount of the Contract Bond or Letter of Credit is to be increased or decreased, Company shall provide a renewal or replacement Contract Bond or Letter of Credit which complies with the requirements of this Article 10 at least one hundred eighty (180) days prior to the date on which the previous Contract Bond or Letter of Credit expires. The Letter of Credit must contain a condition that it shall be deemed automatically extended without amendment for one (1) year from the expiration date herein, or any future expiration date, unless ninety (90) days prior to any expiration date the Bank on which the Letter of Credit is drawn, shall notify the Authority by Registered Mail that such Bank elects not to consider the Letter of Credit renewed for any such additional period. Company's failure to timely provide a replacement Contract Bond or Letter of Credit hereunder shall constitute a default under this Agreement and the Authority shall be entitled to any remedies provided hereunder, and may, without limitation, proceed to recover under Company's existing Contract Bond or draw on the full amount of its existing Letter of Credit. If Company provides the Authority with a Letter of Credit or Contract Bond, Company shall maintain such Letter of Credit or Contract Bond in effect for at least one (1) year after the expiration or earlier termination of the Term hereof in the amount required for the last Agreement Period. However, the Authority shall release any existing Letter of Credit or Contract Bond provided by Company upon the Authority's receipt of a replacement Letter of Credit or Contract Bond that complies with the requirements of this Article 10.</p>	<p>respect to Concessionaire's Minimum Annual Guarantees in effect under this Agreement. Whether in the form of a surety bond or Irrevocable Letter of Credit, the surety may be issued for a one (1) year period, provided, however, that evidence of renewal or replacement of the surety must be submitted annually by Concessionaire to the City at least sixty (60) days prior to the Expiration Date of the instrument. The surety shall contain language that the surety company shall notify the City in writing within forty-five (45) days of a determination that the surety is to be terminated, or is not going to be renewed. The surety bond must be executed by Concessionaire and by a surety meeting the qualifications set forth below. If, following an Event of Default, the City chooses to draw upon the performance surety; it shall be the obligation of Concessionaire to replenish the performance surety to the originally</p>	
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**RISK: PERFORMANCE**

Talking Points:

- Be careful to prepare a clear scope and specifications.
- Require vendors to obtain a performance bond with a third-party surety or provide a letter of credit that will secure payment in the event of default.
- Consider a bid bond to discourage bidders from underbidding jobs and withdrawing if they decide the job is not profitable.

Source:

Orlando International Airport	Salt Lake City International Airport	Denver International Airport
<p><b>6. SURETY BONDS/LETTERS OF CREDIT/LIABILITY INSURANCE:</b></p> <p>6.1 Prior to Authority’s execution of the Contract and within ten (10) calendar days of the award, the Contractor shall furnish to Authority a Performance Bond, and a Payment Bond if required by these Bid or Proposal Documents, completed on the Authority’s forms provided in the Contract Documents. Such Performance Bond shall be current and in compliance at all times during the initial term of the Contract in a penal sum equal to Seven Hundred Fifty Thousand Dollars (\$750,000.00).</p> <p>6.2 The Contractor may elect to provide Authority, in lieu of the required Performance Bond (but not the Payment Bond if required by general law), a letter of credit in an amount equal to Seven Hundred Fifty Thousand Dollars (\$750,000.00), and issued on Authority’s form of irrevocable standby letter of credit (“Letter of Credit”). The Contractor shall provide Authority with a Letter of Credit that remains in effect for at least one year after the expiration or earlier termination of the term of the Contract including any renewal or other extended term. If the Contractor fails to perform any obligation required of it under the terms of the Contract including, but not limited to, providing Authority with an acceptable renewal or replacement letter of credit within the required time limits, the Authority shall be entitled, in addition to any other remedies, to draw the full amount of the funds available under any Letter of Credit provided by Contractor to Authority and to hold such funds until such time as the Authority in its discretion shall determine the</p>	<p><b>7.03 Security for Performance and Payment.</b> Prior to execution of this Concession Lease, Concessionaire Tenant shall provide City a Performance Bond or Letter of Credit acceptable to the City Attorney’s Office, in an amount equal to the first years MAG, payable to City. Thereafter, Concessionaire Tenant shall at all times maintain such letter or other security in an amount equal to the amount of the Minimum Annual Guarantee applicable to each Contract Year. Said letter of credit or other security shall be conditioned to ensure the faithful and full performance by Concessionaire Tenant of all covenants, terms, and conditions of this Concession Lease and to stand as security for payment by Concessionaire Tenant of all valid claims by City against Concessionaire Tenant. Such guarantee will serve as a surety or security for the full and faithful performance of all terms, covenants, and conditions of this Concession Lease including but not limited to the rentals, fees, and charges to be paid, throughout the entire term of this Concession Lease. The form of all required letters of credit or other security and their surety company must be satisfactory to City Attorney’s Office.</p>	<p><b>9.03. Performance Surety.</b> A. Standard Surety Requirements. On or before the Delivery Date as documented on <i>Exhibit D</i>, Concessionaire shall deliver to the City and maintain in effect at all times throughout the Term, including a period of six (6) months after expiration of the Term (or any extended term) or earlier termination of this Agreement, an irrevocable letter of credit or such other acceptable surety (e.g., cash or bonds) as first approved in writing by the City, in an amount equal to six (6) months of the initial Monthly Guarantees (“Performance Surety”). Such an irrevocable letter of credit or other acceptable surety requirement may be increased by the Manager, shall be payable without condition to the City, and shall be issued by a surety with qualifications acceptable to and approved by the Manager. All irrevocable letters of credit shall be in a form and issued by a bank acceptable to the City and shall be subject to claim in full or in part by the City upon presentation of the letter of credit and a sight draft as provided herein. The Performance Surety shall guarantee to the City full and faithful performance of (i) all of the terms and provisions of this Agreement by Concessionaire, as said Agreement may be amended, supplemented, or extended, and (ii) all obligations and duties of Concessionaire under all general rules and regulations adopted by the City or the Manager for the management, operation, and control of the Airport as amended or supplemented. The Performance Surety may be issued for a one (1) year period, provided however, that evidence of renewal or replacement of the surety must be submitted annually by Concessionaire to the City at least sixty (60) days prior to the expiration date of the instrument. The surety shall contain language that the</p>

**Vendor/Purchasing Agreements**

**Appendix G-1**

<p>amount of damages, costs and expenses owing to it from the Contractor. The Authority shall retain from such funds an amount equal to its actual or anticipated damages, costs and expenses, and shall thereafter return the remaining amount of the funds, if any, to the Contractor.</p> <p>6.3 Prior to the commencement of any renewal or extended term of the Contract, Contractor, at its own expense, shall provide to the Authority an acceptable renewal or replacement Performance Bond or Letter of Credit, rider to an existing Performance Bond or Letter of Credit, or continuation amendment to an existing Performance Bond or Letter of Credit that complies with the requirements of this Section 6.</p> <p>6.4 Except as provided in this Section 6.4, the Authority will not accept any change or modification to the forms of Performance Bond or Letter of Credit attached to these Proposal Documents. The sole change to the forms of Performance Bond and Letter of Credit that the Authority will accept is that the Contractor may provide a Performance Bond or a Letter of Credit that is for a period of less than the full initial term of the Contract but which still has an effective term of not less than twelve (12) months. If the Contractor provides Authority an acceptable Performance Bond or Letter of Credit which has an effective period less than the full initial term of the Contract, the Contractor shall, at least sixty (60) calendar days prior to the date on which the then current Performance Bond or Letter of Credit expires, provide a renewal or replacement Performance Bond or Letter of Credit that complies with the requirements of the Contract. The Authority shall release any existing Letter of Credit provided by the Contractor upon the Authority's receipt and approval of a renewal or replacement Letter of Credit that complies with the requirements of this Contract.</p> <p>6.5 If the Contractor is required to provide any renewal or replacement Performance Bond or Letter of Credit, rider to an existing Performance Bond or Letter of Credit, or continuation amendment to an existing Performance</p>		<p>Performance Surety company shall notify the City in writing within forty-five (45) days of a determination that the surety is to be terminated or is not going to be renewed.</p> <p>B. Performance Surety Subject to Increase by City. Notwithstanding any provision herein to the contrary, if at any time during the Term (or any extended term), the Manager deems the amount of the Performance Surety insufficient to properly protect the City from loss hereunder because Concessionaire is or has been in arrears with respect to such monetary obligations or because Concessionaire has, in the opinion of the Manager, violated other terms of this Agreement, Concessionaire agrees that after receiving notice and an opportunity to cure, it will increase the surety to an amount required by the Manager, provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to Concessionaire's Compensation in effect under this Agreement.</p> <p>C. Replenishment Obligation. If the City chooses to draw upon the Performance Surety as provided in §11.02, it shall be the obligation of Concessionaire to replenish the Performance Surety to the originally contracted level within thirty (30) days of such draw down by the City. Failure to maintain or replenish the Performance Surety shall constitute a material breach of this Agreement.</p> <p>D. Alternative Surety Program. Alternatively, upon Concessionaire's request, the Manager may in his or her sole discretion permit Concessionaire temporarily to provide an Alternative Surety as defined below.</p> <ol style="list-style-type: none"><li>1. Payment of the Alternative Surety is due in advance upon notification by the Airport of the amount due.</li><li>2. The "Alternative Surety" shall be a fee ("Base Fee") paid to the City of two percent (2%) of the annual Rent due by Concessionaire in the prior calendar year or if a full year is unavailable, two percent (2%) of the annualized Rent due, as calculated by the City. If no Rent payment history is available or if the Manager in his/her sole discretion determines the existing Rent payment history is insufficient,</li></ol>
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**Vendor/Purchasing Agreements**

<p>Bond or Letter of Credit (collectively, the “Replacement”), Contractor shall calculate the penal sum/amount (the “Amount”) of any such Replacement as follows:</p> <p>6.5.1 If the Replacement is provided in connection with the expiration of an existing Performance Bond or Letter of Credit prior to expiration of the initial term of the Contract but not in connection with an amendment to the Contract where the compensation to be paid to Contractor is increased, the Replacement shall be in an Amount equal to the Amount of the then current Performance Bond or Letter of Credit.</p> <p>6.5.2 If the Replacement is provided in connection with an amendment of the Contract where the compensation to be paid to the Contractor during the period covered by the then current Performance Bond or Letter of Credit is increased for any reason, the Replacement shall be in an Amount equal to the Amount of the then current Performance Bond or Letter of Credit plus an amount that bears the same ratio to the increased compensation to be paid to the Contractor that the Amount of the then current Performance Bond or Letter of Credit bears to the total compensation to be paid to the Contractor prior to such amendment to the Contract.</p> <p>6.5.3 If the Replacement is provided in connection with the renewal or extension of the Contract and the required Amount of the Performance Bond or Letter of Credit for the initial term of the Contract is stated as a fixed Amount, the Replacement shall be in an Amount equal to the lesser of either (i) the Amount required during the initial term of the Contract; or (ii) an Amount that bears the same ratio to the total estimated compensation to be paid to the Contractor during the renewal term that the Amount required during the initial term of the Contract bore to the total estimated compensation to be paid to the Contractor during the initial term of the Contract.</p> <p>6.5.4 If the Replacement is provided in connection with the renewal or extension of the Contract and the required Amount of the Performance Bond or Letter of Credit for</p>		<p>the Base Fee shall be two percent (2%) of twelve times the Monthly Guarantee then in effect.</p> <p>3. Payment of the Base Fee as surety in no way reduces or offsets the Compensation or amounts due from Concessionaire to the Airport under this Agreement.</p> <p>4. The Alternative Surety will apply for one (1) year after all of the following have occurred (“Alternative Surety Period”): (i) Full execution of this Agreement, (ii) issuance of notice of Base Fee and Additional Fee (described below) under the terms of this subsection, and (iii) receipt of payment due of Base Fee and Additional Fee (described below) under the terms of this §9.03. At the end of the Alternative Surety Period, the Standard Surety requirements of this §9.03 shall automatically apply for the remainder of the Term (or any extended term) of the Concession Agreement, unless the Alternative Surety is extended by the Manager.</p> <p>5. The Alternative Surety may be extended by the Manager of Aviation, in the Manager’s sole discretion, for additional one (1) year periods through the Term (or any extended term) of this Agreement.</p> <p>6. The Base Fee shall be recalculated at the end of each Alternative Surety Period. The Base Fee may be adjusted by the Manager to account for the following:</p> <p>a. For every late Rent notice issued to Concessionaire, the Manager may in his/her discretion increase the Base Fee by one-half percent (0.5%) of the annual Rent due in the prior calendar year (“Additional Fee”); however, if no late Rent notices were issued to Concessionaire in the prior calendar year then the Manager may reduce any existing Additional Fee by one-half percent (0.5%) of annual Rent due.</p> <p>b. A factor consisting of some or all of the following: the Airport’s general risk due to local or national changes to the aviation industry, the Airport’s cost for administering the alternative surety, and the market cost of Letters of Credit, Revenue Surety instruments, or similar instruments.</p>
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## Vendor/Purchasing Agreements

## Appendix G-1

the initial term of the Contract is stated as a fraction or percentage of the Contract price, the Replacement shall be in an Amount equal to the same annualized percentage of the total estimated compensation (including any reimbursable expenses) to be paid to the Contractor during the renewal term (i.e., if the initial Performance Bond or Letter of Credit is 1/6 of the total three year Contract cost, then the Replacement will be one-half of the total estimated compensation to be paid to the Contractor during the renewal year).

6.6 Failure to timely submit an acceptable Performance Bond or Letter of Credit prior to commencement of the Contract in addition to all other rights available to the Authority under law, give the Authority the right to withdraw the Notice of Intent to Award, without the need for providing the Contractor advance notice or the opportunity to cure. Failure to timely submit any required renewal or replacement Performance Bond or Letter of Credit, rider to an existing Performance Bond or Letter of Credit, or continuation amendment to an existing Performance Bond or Letter of Credit that meets the requirements of this Section 6 constitutes a default under the terms of this Contract and, in addition to all other rights available to the Authority under law, shall give the Authority the right to immediately terminate the Contract without providing the Contractor advance notice or the opportunity to cure. In connection with any such default, the Authority shall have the right to claim against the Contractor's then current Performance Bond or Letter of Credit for all of Authority's losses, costs, damages or expenses. The provision of this Paragraph shall survive the expiration or earlier termination of the Contract.

6.7 Surety Bonds delivered to Authority in satisfaction of any requirement under this Contract must meet the following criteria:

6.7.1 Bid Bonds provided to the Authority in connection with Contracts shall be duly issued by an insurer or corporate surety (a) on a bond form provided by Authority, or on a form substantially the same as Authority's form; b) obligating the surety for at least

c. In no event shall the recalculated Base Fee be less than two percent (2%) of the greater of the following: the annual Rent due by Concessionaire in the prior calendar year; or if a full year is unavailable, the annualized Rent due, as calculated by the City; or if no Rent payment history is available or the Manager in his/her sole discretion determines the existing Rent payment history is insufficient, two percent (2%) of twelve times the Monthly Guarantee then in effect.

d. Concessionaire shall be notified of any recalculated Base Fee and Additional Fee in writing by the City at the time the Alternative Surety is extended.

e. If the Alternative Surety is extended and recalculated by the Manager but Concessionaire no longer desires to comply with the Alternate Surety Program, Concessionaire may instead submit the Standard Surety required in this §9.03.

7. The Alternative Surety may be terminated at any time at the discretion of the Manager or Concessionaire upon thirty (30) days written notice to the other Party. Upon such termination, the Standard Surety requirements of this §9.03 of this Agreement shall apply. Any unamortized portion of the Base Fee and Additional Fee for the Alternative Surety shall be refunded to Concessionaire upon Concessionaire's compliance with the Standard Surety requirements of this §9.03.

8. Alternative Surety fee payments do not reduce any liability or obligation of Concessionaire to the City. Payment of such fees merely substitute for the Standard Surety Requirements stated in §9.03A.

**9.04. Unconditional Guaranty.** If during the RFP process it is determined that a guarantee is required, Concessionaire agrees that upon execution of this Agreement, it shall deliver from individuals or entities acceptable to the City ("Guarantor(s)"), in a form acceptable to the City, an absolute unconditional irrevocable corporate or personal guaranty of payment and full performance and observance by Concessionaire of all covenants and conditions contained in the Agreement and all obligations, indebtedness, and

**Vendor/Purchasing Agreements**

<p>ninety (90) days following the date on which Bids are publicly opened; and (c) by an insurer or corporate surety that is authorized to conduct insurance business in the State of Florida.</p> <p>6.7.2 Performance and Payment Bonds provided to the Authority in connection with contracts having a value of \$500,000.00 or less shall be duly issued by an insurer or corporate surety which:</p> <p>6.7.2.1 Is authorized to conduct insurance business in the State of Florida;</p> <p>6.7.2.2 Currently holds a certificate of authority authorizing it to write surety bonds in the State of Florida; and</p> <p>6.7.2.3 Is otherwise in compliance with the provisions of the Florida Insurance Code.</p> <p>6.7.3 Performance and Payment Bonds provided to the Authority in connection with Contracts having a value in excess of \$500,000.00 shall be duly issued by an insurer or corporate surety which:</p> <p>6.7.3.1 Is authorized to conduct insurance business in the State of Florida;</p> <p>6.7.3.2 Holds a currently valid certificate of authority by the U.S. Department of Treasury pursuant to 31 U.S.C. ss 9304-9308; and</p> <p>6.7.3.3 Has no less than a "B+" Financial Rating and a Financial Size Category of "Class VI" or higher according to the most current edition of Best's Insurance Reports.</p> <p>6.7.3.4 Notwithstanding the provisions of (c) above, an insurer or corporate surety which is not rated by Best's Insurance Reports may be accepted by Authority, but only if approved by Authority's Risk Manager and Department Director following a review or investigation of the insurance company's financial and performance</p>		<p>liabilities of Concessionaire ("Unconditional Guarantee"). Such Unconditional Guarantee shall be given to the City by the Guarantor(s) acceptable to the City substantially in the form attached hereto as <i>Exhibit H, Absolute Unconditional Guarantee</i>. Such guarantee shall apply to any defaults under this Agreement, whether inchoate or matured, occurring, accruing, or with the passage of time would have occurred or accrued on or before the expiration of the Term (or any extended term) of this Agreement. Upon the occurrence of a money default, the City reserves the right, in addition to all of its other rights as stated herein, to immediately invoice and draw on the Unconditional Guarantee, based on the City's estimate of what is due. Any such partial draw against the Unconditional Guarantee by the City shall not release the Guarantors from their continuing obligation of guaranteeing to the City payment and full performance of all obligations, indebtedness, and liabilities of Concessionaire. Concessionaire acknowledges that the City may proceed upon the Guarantor(s) of any personal or corporate guaranty attached hereto without proceeding against Concessionaire, without proceeding against or exhausting any security now or hereafter held by City for the obligations hereby guaranteed, and without pursuing any other right or remedy available to City whatsoever.</p>
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**Vendor/Purchasing Agreements**

<p>standing, including without limitation, its capital adequacy, assets, earnings, of the insurance company's financial and performance standing, including without limitation, its capital adequacy, assets, earnings, liquidity and such other factors as the Authority's Risk Manager may deem appropriate.</p> <p>6.8 Liability Insurance Companies furnishing insurance coverages required by these General Conditions shall (a) be currently licensed to conduct insurance business in the State of Florida, and (b) must have no less than a "B+" Financial Rating and a Financial Size Category of "Class VI" or higher according to the most current edition of Best's Insurance Reports.</p> <p>6.9 In the event that Authority requests Contractor to purchase materials or as a condition to approval of a subcontractor in accordance with Section 8 of the General Conditions, the Authority shall have the right to require Contractor to provide a payment bond in accordance with Section 255.05, Florida Statutes.</p> <p>Letters of Credit shall be issued by a bank with an office located in the State of Florida and reasonably acceptable to the Authority's Executive Director.</p>		
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**RISK: FEDERAL SECURITY VIOLATIONS**

Talking Points:	<ul style="list-style-type: none"> <li>• Require vendors to provide written operating and security procedures for their operations, which should be subject to airport approval.</li> <li>• Require vendor and its officers, contractors, agents, and employees to comply with FAA regulations and to maintain authorized security status from the TSA.</li> <li>• Require vendors to indemnify the Airport for fines and costs arising out of a security violation by a vendor or its employee or contractor.</li> </ul>
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Source:

<b>Orlando International Airport</b>	<b>Salt Lake City International Airport</b>	<b>Denver International Airport</b>
<p><b>4. Contractor's Liability.</b> The Contractor shall be responsible for the prompt payment of any fines imposed on Authority or Contractor by the Transportation Security Administration (“TSA”) or any other federal, state or local governmental agency as a result of Contractor's, or its subcontractor's (or the officers’, directors’, employees’ or agents’ of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Contractor under this Section 4 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provisions of Section 5 hereof, and such liability shall survive the expiration or earlier termination of this Contract.</p> <p><b>15.12 General Provisions.</b> The Contractor shall be required, during the term of the Contract, at no additional cost to the Authority, to take such reasonable security precautions with respect to its operations at the Airport as the Authority in its discretion may from time to time prescribe. The Contractor shall comply with all regulations, rules and policies of any governmental authority, including the Authority, relating to security issues.</p>	<p><b>5.10 TSA Airport Security.</b> Concessionaire Tenant acknowledges that security is of primary importance at the Airport, and that security requirements are likely to change during the term of this Concession Lease. Concessionaire Tenant shall at all times comply with all federal, state and local security laws, regulations, policies, requirements and directives whether written or verbal, including, without limitation, 49 C.F.R. Part 1542 “Airport Security” or any amendment or successor thereto, and Concessionaire Tenant will work cooperatively with City in connection with the same. Concessionaire Tenant understands and agrees that the same may impact Concessionaire Tenant’s business operations and costs. Concessionaire Tenant further agrees that it shall be strictly liable for the payment of any civil penalties assessed against the Airport or Concessionaire Tenant relating to security, and shall be solely and fully responsible for any and all breaches of security and the consequences thereof resulting from the negligence or intentional acts of omission or commission of its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns, and suppliers.</p>	<p><b>14.19. Security.</b> A. Concessionaire’s Security Procedures. Concessionaire shall submit its written operating and security procedures for its operations hereunder to the City for review at least thirty (30) days prior to the Rent Commencement Date, or if Concessionaire Opens for Business earlier than the Required Opening Date, at least seven (7) days prior to the Required Opening Date. Concessionaire shall revise such operating and security procedures as necessary to obtain the City’s approval.</p> <p>B. Compliance. Concessionaire shall cause its officers, contractors, agents, and employees to comply with all existing and future security regulations adopted by the City pursuant to Part 107, Federal Air Regulations of the Federal Aviation Administration, as it may be amended from time to time. With respect to Airport security, it is a material requirement of this Agreement that Concessionaire shall comply with all rules, regulations, written policies, and authorized directives from the City and/or the Transportation Security Administration (“TSA”). Violation by Concessionaire or any of its employees of any rule, regulation, or authorized directive from the City or TSA with respect to Airport Security shall constitute a material breach of this Agreement. Any person who violates such rules may be subject to revocation of his/her access authorization. Concessionaire will fully reimburse the City for any fines or penalties levied against the City for security violations as a result of any actions on the part of Concessionaire, its agents, contractors, suppliers, guests, customers, or employees. Concessionaire will also fully reimburse the City for any</p>

		<p>attorney fees or related costs paid by the City as a result of any such violation.</p> <p>C. Changes in Security Status. Concessionaire understands and acknowledges that its ability to remain open and sell its authorized items under this Agreement is subject to changes in alert status as determined by TSA, which is subject to change without notice. If the security status of the Airport changes at any time during the Term (or any extended term) of this Agreement, Concessionaire shall take immediate steps to comply and assist its employees, agents, independent contractors, invitees, successors, and assigns in complying with security modifications that occur as a result of the changed status. At any time, Concessionaire may obtain current information from the Airport Security Office regarding the Airport's security status in relation to Concessionaire's operations at the Airport.</p> <p>D. Access Keys and Badges. Concessionaire shall return to the City all access keys or access badges issued to it for any area of the Airport, whether or not restricted once this Agreement expires or terminates or upon the City's demand. If Concessionaire fails to do so, Concessionaire shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to Concessionaire under this Agreement.</p>
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**RISK: PERSONAL INJURY**

Talking Points:		
<ul style="list-style-type: none"> <li>• Get indemnity from vendors for all operations, regardless of fault.</li> <li>• Require vendors to maintain appropriate insurance coverage naming the Airport as an additional insured to cover liability related to personal injury resulting from their operations on the airport premises.</li> </ul>		
Source:		
<b>Orlando International Airport</b>	<b>Salt Lake City International Airport</b>	<b>Denver International Airport</b>
<p><b>5.1 Indemnification and Insurance.</b> Contractor shall indemnify, defend and hold completely harmless the Authority and the City of Orlando, Florida ("City"), and the members (including, without limitation, members of the Authority's Board and the City's Council, and members of the citizens' advisory committees of each), officers, employees and agents of each, from and against any and all liabilities (including statutory liability and liability under Workers' Compensation Laws), losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to or destruction or loss of any property of Authority or the City, or any property of, injury to or death of any person resulting from or arising out of or in connection with the performance of this Contract, or the acts or omissions of Contractor's directors, officers, agents, employees, subcontractors, licensees or invitees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused solely by Authority's negligence or by the joint negligence of Authority and any person other than Contractor or Contractor's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ii) arising out of or in connection with the failure of Contractor to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by Contractor, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 5.4</p>	<p><b>5.11 Safety.</b> Concessionaire Tenant agrees to take necessary safety precautions within its reasonable control and comply with applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injury to any of its employees, agents, customers or others on, about or adjacent to the Premises or any parking areas. This safety requirement shall not relieve any contractor or consultant performing work for Concessionaire Tenant from complying with the safety requirements of its contract or applicable law. City may, but is not obligated to, stop Concessionaire Tenant's operations if safety laws or safe work practices are not being observed.</p> <p><b>7.01 Indemnity Provisions.</b> (a) Concessionaire Tenant shall, at its sole cost and expense, indemnify and hold City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns harmless from and against all losses, claims, demands, suits, actions, legal or administrative proceedings, damages, costs, charges and causes of action of every kind or character whatsoever, including, but not limited to, reasonable attorney's fees and other legal costs such as those for paralegal, investigative, legal support services and the actual costs incurred for expert witness testimony, (collectively "Claims") directly or indirectly arising from, related to or connected with, in whole or in part, Concessionaire Tenant's work under the Agreement, including but not limited to Claims directly or indirectly arising from, related to or connected with, in whole or in part: any act, omission, fraud, wrongful or</p>	<p><b>9.01. Indemnity.</b> Concessionaire hereby agrees to release, indemnify, and save harmless the City, its officers, agents, officials, and employees from and against any loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City. Concessionaire shall defend, indemnify, and save harmless the City, its officers, agents, officials, and employees from all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, its construction of the Concession Space, or its use or occupancy of any portion of the Airport. This includes acts and omissions of officers, employees, officials, representatives, suppliers, invitees, contractors, subcontractors, and agents of Concessionaire, provided that Concessionaire need not release, indemnify, or save harmless the City, its officers, officials, agents, and employees from damages resulting from the sole negligence of the City's officers, officials, agents, and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Concessionaire hereunder.</p>

**Vendor/Purchasing Agreements**

<p>below by or in favor of any person described in Section 5.5 below, or (iv) arising out of or in connection with any action by Contractor or its directors, officers, agents, employees, subcontractors, licensees or invitees. Authority agrees to give Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow Contractor or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, Contractor shall engage counsel reasonably acceptable to Authority. In any suit, action, proceeding, claim or demand brought in respect of which the Authority may pursue indemnity, the Authority shall have the right to retain its own counsel. The fees and expenses of such counsel shall be at the expense of the Authority unless the Contractor and the Authority shall have mutually agreed to another arrangement. In the event Contractor fails, within a reasonable time to retain counsel satisfactory to the Authority, the Authority may retain counsel and Contractor shall be responsible for such legal fees, costs and expenses. In the event, the Authority and the Contractor are both named parties in any such proceeding and, in the sole judgment of the Authority, representation of both the Authority and the Contractor by the same counsel would be inappropriate due to actual or potential differing interests between them then Authority shall obtain its own counsel and Contractor shall be responsible for such legal fees, costs and expenses. The indemnification provisions of this Section 5 shall survive the expiration or earlier termination of this Contract with respect to any acts or omissions occurring during the term of the Contract.</p>	<p>reckless conduct, fault or negligence by Concessionaire Tenant or its officers, directors, agents, employees, subcontractors or suppliers of any tier, or by any of their employees, agents or persons under their direction or control; violation by Concessionaire Tenant or Concessionaire Tenant's officers, directors, agents, subcontractors or suppliers of any tier, or by any of their employees, agents and persons under their direction or control, of any copyright, trademark or patent or federal, State or local law, rule, code, regulation, policy or ordinance; nonpayment to any of Concessionaire Tenant's subcontractors or suppliers of any tier, or if any officers, agents, consultants, employees or representatives of Concessionaire Tenant or its subcontractors or suppliers of any tier; and, any other act, omission, fault or negligence, whether active or passive, of Concessionaire Tenant or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Agreement (collectively "Acts and Omissions"). This indemnification obligation includes any penalties or fines assessed by the Federal Aviation Administration or Transportation Security Administration as well as any other costs to the City, such as investigation and security training, incurred as a result of any violation of federal security regulations, including the Airport security plan, by the Concessionaire Tenant, its subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.</p> <p>(h) The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or type of damages, compensation or benefits payable by or for the Concessionaire Tenant, a subconsultant or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.</p>	
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**RISK: PROPERTY DAMAGE**

Talking Points:		
<ul style="list-style-type: none"> <li>• Get indemnity from ground transportation provider for all operations, regardless of fault.</li> <li>• Require airlines to maintain appropriate insurance coverage naming the Airport as an additional insured to cover liability related to property damage resulting from their operations on the Airport premises.</li> </ul>		
Source:		
<b>Orlando International Airport</b>	<b>Salt Lake City International Airport</b>	<b>Denver International Airport</b>
<p><b>15.3 General Provisions.</b> The Contractor shall, during the term of this Contract, repair any damage cause to real or personal property of the Authority and/or its tenants, wherever situated on the Airport, caused by the intentional, reckless, or negligent acts or omissions of the Contractor's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the Authority, the Contractor shall reimburse the Authority for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the Authority.</p>	<p><b>6.07 Damage or Destruction of Premises.</b> If the Premises or any portion thereof are damaged by fire or other casualty resulting from any cause whatsoever at any time during the term of this Concession Lease, City shall have the following rights:</p> <p>(a) If feasible, City may make temporary repairs and require Concessionaire Tenant to continue operations from the Premises until repairs are complete.</p> <p>(b) City may designate alternate Premises for Concessionaire Tenant's use until repairs can be completed to the Premises.</p> <p>(c) City may require Concessionaire Tenant to suspend operations at the Airport until repairs can be completed to the Premises.</p> <p>(d) City may determine not to repair the Premises, and this Concession Lease shall terminate effective as of the date of such casualty upon Concessionaire Tenant's receipt of City's written determination.</p> <p><b>11.06 Damage to Property.</b> Concessionaire Tenant shall be responsible for any and all damage to property belonging to City and/or City's tenants to the extent caused by an act or omission of Concessionaire Tenant or any of their agents or employees. Concessionaire Tenant shall be responsible for repairing any damaged property to the Department's satisfaction and shall pay the costs thereof. Concessionaire Tenant shall promptly notify Department of any such property damage, or other potential claims or losses relating to such property.</p>	<p><b>7.13. Damage Caused to Other Property.</b> Concessionaire shall be responsible for any damage caused by Concessionaire to the Airport, any City property or operations, or the property of any other concessionaire, person, or entity, either by act, omission, or as a result of the operations of Concessionaire. Subject to §12.04, and upon demand, Concessionaire agrees to reimburse the City, concessionaire, or other such person or entity for any such damage. If the same type of damage is caused by Concessionaire more than once in a twelve (12) month period, such as a water leakage, electrical service interruption, or other damage, Concessionaire shall submit a Remediation Plan, as set forth in Section 10; however, if the Parties cannot reach agreement on the Remediation Plan then the City shall repair the damage at the City's standard rates or the City may hire a contractor, and upon demand, Concessionaire agrees to reimburse and pay the cost thereof to the City plus an administrative fee of twenty percent (20%).</p> <p><b>12.01. Damage to or Destruction of Concession Space.</b> If the Concession Space, the Concourse in which the Concession Space is located, or any portion thereof is destroyed or damaged by fire or otherwise to an extent that renders it unusable, the City may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, Concessionaire's obligation to pay the Compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. At its option, Concessionaire may then terminate this Agreement effective</p>

		<p>as of the date of such event.</p> <p><b>12.02. Cooperation in the Event of Loss.</b> If the City elects to rebuild, Concessionaire must replace all Concession Improvements at its sole cost and in accordance with the Required Minimum Investment in 2012 dollars. Such replacements must be in accordance with the performance standards set forth in <i>Exhibit X</i>. The City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage.</p> <p><b>12.03. Loss or Damage to Property.</b> The City shall not be liable for the following: (i) any damage to property of Concessionaire or others located on the Concession Space or in the Airport; (ii) the loss of or damage to any property of Concessionaire or of others by theft or otherwise; (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow; (iv) leaks from any part of the Concession Space or Airport; from the pipes, appliances, or plumbing works; from the roof, street, subsurface, or from any other place; or from dampness or by any other cause of whatsoever nature; (v) any such damage caused by other Concessionaires, persons in the Concession Space, occupants of adjacent property, of the Airport, or of the public; (vi) damages caused by operations in construction of any private, public, or quasi-public work; (vii) any latent defect in the Concession Space or in the building of which they form a part; and (viii) all property of Concessionaire kept or stored on the Concession Space at the risk of Concessionaire only. Further, Concessionaire shall hold the City harmless from and hereby waives any claims arising out of damage to the same or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurance carrier. Concessionaire shall give immediate telephone notice to the City in case of fire, casualty, or accidents in the Concession Space or in the building of which the Concession Space is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notice in writing.</p> <p><b>12.04. Mutual Waiver Insurance Coverage.</b> The City and Concessionaire each waive any and every claim for recovery</p>
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		<p>from the other for any loss of or damage to the Concession Space or to the contents thereof that is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Concessionaire agrees to give to each insurance company, which has issued or may issue to Concessionaire's policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver. If necessary, Concessionaire agrees to have such insurance policies properly endorsed to prevent the invalidation of the insurance coverage by reason of this waiver.</p>
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**RISK: SYSTEM DOWNTIME**

Talking Points:

- Get indemnity from contractor for all loss, damages, and costs incurred by the airport as a result of system downtime, regardless of fault.
- Include uptime guarantees, coupled with downtime penalties, in the Agreement.
- Negotiate source code escrows and/or redundant host systems for Web-based hosted software.

Source:

**Salt Lake City International Airport**

**A.2. Source Code.** Consultant hereby grants to City a license to use all source code for the entire Software Program and PMSS (“Source Code”) for the purposes described in this Agreement. This Source Code will be placed in an agreed to escrow account with the City identified as beneficiary and be accessible to the City on the terms and conditions set forth in the Escrow Agreement (“Escrow Agreement”) and the beneficiary registration form (“Beneficiary Registration Form”), which shall be attached hereto and be part of this Agreement as Attachment 6 at such time as each is properly and fully executed. The Source Code shall be kept current with the latest release of the Software Program in use by the City.

a. City Access to Source Code. City may gain access to the Source Code by requesting the release of deposit materials (“Deposit Materials”) listed in Appendix 1 of the Beneficiary Registration Form. City will follow the release process set forth in the Escrow Agreement, and the release conditions as set forth in Appendix 1 of the Beneficiary Registration Form.

b. Adequacy of Deposit Materials. The escrow company acts as a depository only of the Deposit Materials. Consultant shall be responsible for, without limitation, the completeness, accuracy, suitability, state, format, quality content, correctness of the Deposit Materials. Consultant shall be responsible for any loss of Deposit Materials due to defective, outdated, unreliable storage media (e.g., CD ROMs, magnetic tape, disks, and other such media) and for the degradation of storage media. If the City is aware or believes that the Source Code or any Deposit Materials identified in Appendix 1 of the Beneficiary Registration Form are incomplete or inadequate Consultant shall resolve the matter as soon as reasonably practical to City’s satisfaction.

c. Verification of Deposit Materials. The escrow company providing the escrow services for Consultant under the Escrow Agreement will not be responsible for verifying the completeness, accuracy, suitability, state, format, safety, quality, or content of the Deposit Materials. However, at the request of the City, Consultant shall instruct and pay for the escrow company to conduct technical verifications of the Deposit Materials for the City in accordance with a technical verification addendum to the Beneficiary

**San Francisco International Airport**

**9. Scope of Service Coverage**

a. Contractor shall provide Support Services [and provide Upgrades] during the term of this Maintenance Agreement for the Software.

b. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1) Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.

2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit the City’s use of the Software.

3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

Registration Form and at the escrow company's then current fees plus expenses for the technical verifications.

d. Fees.

1) Beneficiary Fee. Consultant will be responsible for paying annual beneficiary fees. Consultant will pay the beneficiary fees to the escrow company on behalf of City in accordance with the terms and fee schedule attached to the Beneficiary Registration Form as Exhibit A.

2) Release Fee. In the event that City requests and is granted a release of the Deposit Materials, City shall pay to the escrow company the Release Fee as described in Section 16(c) of the Escrow Agreement. If the Deposit Materials are released to the City at the instruction of Consultant as described in Section 16(f) to the Escrow Agreement, the Consultant shall pay the release fee to the escrow company.

3) Release Costs. City shall pay the escrow company for reasonable costs incurred by the escrow company in releasing, copying and delivering the Deposit Materials to the City. All other out-of-pocket costs reasonably incurred by the escrow company in connection with the Escrow Agreement are reimbursable to the escrow company by, 1) the City if it requests the release or, 2) by Consultant if it instructs the escrow company to release the Deposit Materials.

e. In the event that Consultant changes its current escrow services provider to a different provider, Consultant will inform City in writing prior to such change. Consultant will be responsible for establishing an escrow service agreement acceptable to City.

f. In the Escrow Agreement this Agreement document is referred to as the "License Agreement." The Parties hereby agree that any reference to City's License Agreement in the Escrow Agreement and Beneficiary Registration Form will hereby mean this Agreement document.

g. Dispute resolution. Paragraph 20 of the Escrow Agreement states certain conditions for resolutions of disputes; however, Consultant agrees that all actions between City and Consultant in connection with the Escrow Agreement, including without limitation court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be initiated within Salt Lake County as stated under Article 34 of this Agreement, and that the provisions of Paragraph 20 of the Escrow Agreement are not applicable to any such actions between the City and Consultant.

2) Priority 2 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software major release.

**RISK: SYSTEM SECURITY**

Talking Points:

- Explicitly provide that any software installed and utilized by the airport must be compliant with all federal security standards.
- Allocate responsibility for damages incurred by the airport or third parties, of any kind, resulting from breaches of the software system to the vendor.

Source:

**Dallas/Fort Worth International Airport**

**I. Security Premises, Equipment, Data and Personnel.** Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data~") belonging to the Customer, Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

**San Francisco International Airport**

**28. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

**29. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**RISK: PERFORMANCE**

Talking Points:

- Ensure the scope of services and specifications are clearly delineated.
- Require the vendor to obtain a performance bond to insure satisfactory performance.
- Obtain a copy of the Source Code for all software programs.

Source:

**Dallas/Fort Worth International Airport**

**7. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**  
 7.1 Oracle warrants that a Program licensed to You will operate in all material respects as described in the applicable Program Documentation for a period of one year after delivery (I.e ., via physical shipment or electronic download). You must notify Oracle of any Program warranty deficiency within one year after delivery. Oracle also warrants that technical support services and Program-related Service Offerings (as referenced in section 6 above) ordered and provided under this Schedule P will be provided in a professional manner consistent with industry standards. You must notify Oracle of any technical support service or Program-related Service Offerings warranty deficiencies within 90 days from performance of the deficient technical support service or Program-related Service Offerings.

7.2 ORACLE DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS.

7.3 FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE ERRORS OF THE APPLICABLE PROGRAM LICENSE IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS.

7.4 TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**Salt Lake City International Airport**

**ARTICLE 12. LETTER OF CREDIT OR PERFORMANCE BOND**  
 Prior to execution of this Agreement, Consultant shall provide City a letter of credit or performance bond in an amount equal to \$500,000, payable to City. Thereafter, Consultant shall at all times maintain such letter of credit or performance bond in an amount equal to \$500,000 during the term of this Agreement. Said letter of credit or performance bond shall be conditioned to ensure the faithful and full performance by Consultant of all covenants, terms, and conditions of this Agreement and to stand as security for payment by Consultant of all valid claims by City against Consultant. Such guarantee will serve as a surety or security for the full and faithful performance of all terms, covenants, and conditions of this Agreement for the configuration, implementation including all required testing, training and related service requirements of Attachments 1 and 2 through the Final Acceptance Date, as such term is defined in Attachment 1. The form of the required letter of credit or performance bond and their surety company must be satisfactory to the City Attorney's Office. Letter of credit or performance bond is only required for the implementation phase (through the Final Acceptance Date) of the contract as defined in Attachment 1 and not required for the support and maintenance phase of the contract.

**RISK: OBSOLESCENCE**

Talking Points:

- Require the contractor to update the licensed software to cause it to operate under new versions or releases of the airport's operating system.
- Require the contractor to provide the airport with improvements, enhancements, extensions, and other changes to the licensed software as it is developed by the contractor.

Source:

**Salt Lake City International Airport**

**San Francisco International Airport**

**C. Scope of Maintenance and Update Services**

1. All upgrades and documentation, Patch and Release to the Software will be furnished on request or when released by CIPPlanner to users with a current Support, Maintenance and Update Services Agreement.

2. Upgrades and documentation, Patch and Release to the Software Program licensed under this Agreement are made available to the current version and the prior version, but only for a maximum of eighteen (18) months after release of the current Version. For example, assuming Versions 1.0 and 2.0 exist, as CIPPlanner announces Version 3.0, CIPPlanner would designate Version 1.0 End of Version (EOV), at which time Extended Support, if available, would apply to Version 1.0.

**D. Maintenance Services and Responses.** Consultant’s policy is to utilize the Internet for software distribution and installation support. Users requiring media will be responsible for the media and shipping costs and all applicable charges. If City requires onsite installation service by Consultant, City shall be responsible for the Consultant’s travel expenses and travel time subject to the Airport’s Travel and Expense Policy attached hereto. Consultant shall respond to various maintenance needs of City in accordance with the severity of the maintenance issue. Chart A sets forth the categories of maintenance service issues; Chart B sets forth required responses and resolutions by Consultant.

**E. Support, Maintenance and Update Services Limitations.** The following services are available at rates and on terms set forth in Exhibit A to this Attachment 3:

1. Services required due to misuse by City of Consultant-maintained Software Program products, which misuse is not a result of flaws or failures in Consultant’s training of City personnel;
2. Services required due to Software Program corrections, customizations, or modifications not developed or authorized by Consultant;

**10. Maintenance and Support.**

**a. Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section, Contractor will provide City with maintenance and support services for the Licensed Software as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City’s use, whatever improvements, enhancements, extensions and other changes to the Licensed Software Contractor may develop, and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in the Authorization Document so long as such updates are made generally available to Contractor’s other Licensees.

**b. Changes in Operating System.** If City desires to obtain a version of the Licensed Software that operates under an operating system not specified in the Authorization Document, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a 90-day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the 90-day trial period, City must elect one of the following three options: (i) City may retain and continue the old version of the Licensed Software, return the new version to Contractor and continue to pay the applicable rental or license fee and maintenance charges for the old version; (ii) City may retain and use the new version of the Licensed Software and return the old version to Contractor, provided City pays Contractor the applicable rental or license fee and maintenance charges for the new version of the Licensed Software; or (iii) City may retain and use both versions of the Products, provided City pays Contractor the applicable rental or license fee and maintenance charges for both versions of the Licensed Software. City will promptly issue the necessary Authorization Document(s) to accomplish the above.

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3. Services required due to City's use of software or hardware not authorized by Consultant.

4. Services required due to the City's needs for additional software features or enhancements not included in the original Software Program. Software enhancements that come with new versions will be made available to the City as part of the standard software support, maintenance and update services without additional charges.

**F. Exclusions**

Services outside the scope of this Attachment 3 SOFTWARE SUPPORT, MAINTENANCE AND UPDATE SERVICES are subject to availability of resources and shall be charged for separately at Consultant's then-current rates for those services.