

Exhibit B

Automated Retail License Agreement Between the City of Chicago (Department of Aviation) and Nuts on Clark, Inc.

"Nuts on Clark Agreement"

AUTOMATED RETAIL LICENSE AGREEMENT

BETWEEN

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

AND

Nuts on Clark, Inc.

FOR

AUTOMATED RETAIL, SERVICES AND FOOD CONCESSIONS

**AT
CHICAGO O'HARE INTERNATIONAL AIRPORT**



**LORI E. LIGHTFOOT
MAYOR**

**JAMIE L. RHEE
COMMISSIONER**

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: Lei E. Lightfoot 
Mayor

Date: 12/8/2022

RECOMMENDED BY: 
Commissioner of Aviation

APPROVED AS TO FORM AND LEGALITY:


Assistant Corporation Counsel

NUTS ON CLARK, INC.

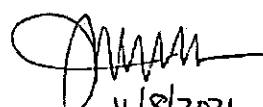
By: Estelle Kuncy

Its: President
[Title]

Date: 11-8-20-21

[Notary]




11/8/2021

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AUTOMATED RETAIL LICENCE AGREEMENT

This Automated Retail License Agreement ("**Agreement**") is entered into as of _____, 2021 ("**Effective Date**"). The Agreement is by and between Nuts on Clark, Inc. ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Aviation ("**CDA**" or "**Department**").

BACKGROUND

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

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

The City has selected Licensee to provide automated retail, services, and food facilities and/or kiosks in the Terminals. These automated facilities should utilize the latest in technology offering customers the ability to purchase branded food, beverage or retail products or provide interactive services via automated retail vending machines with touch screen or e-commerce technology.

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

Therefore, the City and Licensee agree as follows:

TERMS AND CONDITIONS

ARTICLE 1. CITY APPROVAL

This Agreement is subject to approval by the City Council of the City of Chicago. The City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Mayor of Chicago or the Mayor's proxy. As

provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner, the Commissioner's authorized representative or such other person as may be duly authorized by the City Council. As provided in Section 11.03, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Mayor or the Mayor's proxy. As further provided in Section 11.03, any amendment that would cause the Agreement to no longer substantially conform to that approved by City Council, will require approval by City Council.

ARTICLE 2. INCORPORATION OF BACKGROUND AND EXHIBITS

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

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

Exhibit 1	Licensed Spaces and Confirmation(s) of DBO
Exhibit 2	Fees
Exhibit 3	Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	ACDBE Special Conditions and Related Forms
Exhibit 8	MBE/WBE Special Conditions and Related Forms
Exhibit 9	Economic Disclosure Statements and Affidavits
Exhibit 10	Airport Concessions Program Handbook
Exhibit 11	Liquidated Damages
Exhibit 12	Utility Usage Fee

ARTICLE 3. DEFINITIONS

3.1 Definitions. In addition to terms defined in the background and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Additional Fees" means all sums due to the City from Licensee under this Agreement other than the Licensee Fee, Percentage Fee and Minimum Annual Guarantee.

"Additional Space" means space for Licensee to install additional automated retail vending machines or additional Storage Space that becomes part of the Licensed Space after the Effective Date pursuant to Section 5.03, but does not include Relocation Space.

"Additional Space Connection Fee" means a one-time, non-refundable fee allocated to an automated retail vending machine to be installed in Additional Space equal to the actual City costs, if any, required to install and/or upgrade the utilities such that the utilities are accessible to the automated retail vending machine within the Additional Space, plus the actual costs, if any, for changes necessary to the design elements of the applicable Vending Zone to maintain design

quality and consistency of such Vending Zone following the incorporation of the Additional Space, and any other additional costs incurred in connection with designing and constructing Additional Space in the Vending Zone.

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

"Airport Concession Disadvantaged Business Enterprise" or "ACDBE" has the meaning set forth on Exhibit 7.

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

"Agreement" means this Automated Retail License Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms, as may be amended, restated, modified or supplemented from time to time.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

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

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

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

"Concession" means Licensee's business of offering the Products identified in Exhibit 4 for sale to the public through automated retail vending machines and performing the Services pursuant to this Agreement.

"Concession Management Representative" or "CMR" means the entity retained by the City to assist in overseeing concessions at the Airport.

"Connection Fee" means a non-refundable fee, payable in two installments pursuant to

Section 6.02(c), allocated to each automated retail vending machine equal to the Vending Zone Improvement Costs of all Vending Zones divided by the aggregate number of automated retail machines located in the Vending Zones; provided, however, that regardless of the Vending Zone Improvement Costs, the Connection Fee with respect to a Vending Zone will not exceed \$2,500.

"Date of Beneficial Occupancy" or "DBO" means the date that is the earlier to occur of (A) or (B), as follows:

- A. the date that is one hundred eighty (180) days after the first Delivery Date of the Licensed Retail Space; provided, however, that this one hundred eighty (180) day date shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed from commencing retail sales in all Licensed Retail Spaces due to force majeure pursuant to Section 11.20; or
- B. the date Licensee commences retail sales in any portion of any of the Licensed Retail Spaces.

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

"Default Rate" means 12% per annum.

"Delivery Date" means, with respect to each Licensed Space, the date upon which the City grants Licensee permission to use such Licensed Space.

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

Plan" means Licensee's conceptual plans, budget and other design specifications for the Licensed Retail Spaces and Licensee's schedule for commencement of retail sales in each Licensed Retail Space. The Development Plan is attached hereto as Exhibit 3.

"Distribution Fee" means the amount, if any, payable pursuant to Section 4.07(f) for Licensee's use of a centralized distribution and storage facility.

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

political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

"EDS" means the City's Economic Disclosure Statement and Affidavit.

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

"Fees" means all amounts payable by Licensee in connection with this Agreement, including but not limited to the License Fee, Percentage Fee, Minimum Annual Guarantee, Additional Fees and any liquidated damages specified in the Agreement for non-compliance with the City's requirements for Concession operations.

"Gross Revenues" means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the costs of furnishing the automated retail vending machines or the Services, the costs of materials used, labor or service costs of any other expenses whatsoever. Without limiting the foregoing, Gross Revenues do not, however, include the following:

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

"License" means the privilege granted to Licensee under this Agreement to operate the Concession and conduct the Services in the Terminals.

"License Fee" means the Fee payable by Licensee for the License, equal to the greater of the Percentage Fee or Minimum Annual Guarantee, as set forth in Section 6.01 and Exhibit 2.

"License Year" means

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

Agreement is otherwise terminated.

"Licensed Retail Space" means each Licensed Space designated under this Agreement for Licensee to install and operate Licensee's automated retail vending machines.

"Licensed Space" means all Licensed Retail Spaces and Storage Spaces, if any, the City permits Licensee to use for the sole purpose of exercising the License pursuant to this Agreement, as identified in Exhibit 1, which such Exhibit may be modified from time to time as Licensed Space may be added, removed, or relocated in accordance with Article 5.

"Marketing Fee" means Licensee's contribution for promotions at the Airport, as set forth in Section 4.09(a).

"Minimum Annual Guarantee" or "MAG" means the minimum amount payable each License Year for the License Fee as set forth in Exhibit 2.

"Monthly Reports" has the meaning set forth in Section 6.04(1).

"Percentage Fee" means the percentage fee(s) set forth in Exhibit 2.

"Products" means the convenience merchandise, food and beverage menu items, Chicago oriented gift items, vending items and related merchandise that Licensee is permitted to sell in its Licensed Retail Space and maintain in inventory in its Storage Space, if any, under the terms of this Agreement, as set forth by category or item in Exhibit 4. Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4 unless otherwise agreed in writing by the Commissioner.

"Response" means the response to the RFP Licensee submitted to the City.

"Service Schedule" has the meaning set forth in Section 4.02(g).

"Services" means the services necessary to carry out the responsibilities of Licensee under this Agreement including but not limited to the installation, operation, maintenance, and repair of automated retail vending machines furnished by Licensee to a Licensed Retail Space for operation of the Concession in accordance with this Agreement.

"Storage Space" means a Licensed Space as may be designated by the Commissioner from time to time in the Commissioner's sole discretion for use by Licensee to store inventory and supplies.

"Subcontractor" means any person or entity with whom Licensee contracts with to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

"Term" means the period of time beginning on the Effective Date and ending at 11:59 p.m. on the fifth anniversary of the DBO, unless otherwise extended pursuant to Section 7.03 herein, or, unless this Agreement is terminated earlier in accordance with its terms.

"Utility Usage Fee" means the fee for utilities used by Licensee's automated retail

vending machines, calculated as set forth in in Exhibit 12.

"Value Pricing" has the meaning set forth in Section 4.04(a)(1).

"Vending Zone" means a designated location(s) within the Terminals defined by an official outline drawing where a grouping of one or more automated retail vending machines are located in close proximity. The size and/or location of a Vending Zone may change at the sole discretion of the City. The anticipated Vending Zones and automated retail vending machines to be located in each Vending Zone, as of the date of this Agreement, are listed in Exhibit 1, which may be updated from time to time, and such periodic updates shall not require an amendment to this Agreement.

"Vending Zone Improvement Costs" means, for each Vending Zone, the actual costs of the Vending Zone Improvements for that Vending Zone.

"Vending Zone Improvements" means:

- A. the construction required to install and/or upgrade any elements of the electrical systems to make such electrical system accessible within a Vending Zone to support the automated retail vending machines therein; provided, for the avoidance of doubt, any construction required to make any utility other than electricity accessible within a Vending Zone does not constitute a Vending Zone Improvement;
- B. the construction of any design elements related to a Vending Zone (including, but not limited to, shrouds to create semi-enclosed spaces around each Vending Zone); and
- C. any other work performed in connection with the initial design and construction of a given Vending Zone.

3.2 Interpretation.

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

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

(c) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders.

(f) Where the approval or consent of Licensee is required under this Agreement, it

means the approval or consent of Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

(g) All references to a number of days mean calendar days, unless expressly indicated otherwise.

ARTICLE 4. LICENSE AND LICENSEE'S OBLIGATIONS

4.1 Concession License. As of the Effective Date, the City grants Licensee a License to operate the Concession in the Terminals. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement and in the Airport Concession Program Handbook. Licensee's obligation to provide the Services, including installation, operation, stocking, repair, and maintenance of the automated retail vending machines will be at Licensee's own expense, unless otherwise set forth herein. Licensee understands and agrees that the License will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Spaces, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject to all statutes, ordinances, rules and regulations from time to time enacted or established by the City, the FAA, the TSA or any other governmental agency or authority having jurisdiction. Licensee must not conduct the Concession in a manner that, in the judgment of the Commissioner:

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

4.2 No Assignment, Sublicense or Other Uses. Licensee understands and agrees that the locations of the Licensed Retail Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program and, as such, complements and does not conflict with other concessions in the vicinity of such Licensed Retail Space. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concessions in the Licensed Retail Spaces without right of sublicense or assignment and that any attempted sublicense, assignment or other use of the Licensed Retail Spaces without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default except as otherwise permitted pursuant to Section 10.5.

43 Products.

(a) General Products Requirements. Exhibit 4 to this Agreement lists, by general category or specific item, all Products that Licensee is allowed to sell under the License from Licensee's automated retail vending machines and the prices to be charged to the public. Products that Exhibit 4 indicates are mandatory, if any, must be offered for sale to the public by Licensee. If Exhibit 4 is stated in general terms, upon request, Licensee must provide the Commissioner with a complete list of all Products and prices within five (5) days of such request. The City's execution of this Agreement constitutes its approval of the sale of the products, services, and pricing reflected in Exhibit 4 on the Effective Date. Any changes to Exhibit 4 are subject to the Commissioner's prior written approval. Upon such approval, Exhibit 4 may be amended without need for formal amendment of this Agreement pursuant to Section 11.03.

(b) Product Inventory Obligations. Products offered from the automatic retail vending machines must be new, fresh and of top quality. Licensee must store, out of sight of customers, Products in excess of the amount needed to stock displays. Licensee must stock and store a sufficient amount of each Product so as to maximize Gross Revenues, subject to and consistent with Licensee's and the City's desire to accommodate the convenience and needs of the Airport's patrons. Each automated retail vending machine must remain stocked at or above ninety (90%) percent of menu availability at all times and must be restocked within 48-hours, or upon the written a written request by Licensee, such other period of time approved by the Commissioner, which such approval shall not be unreasonably withheld, if inventory falls below sixty (60%) percent. If Licensee fails to timely restock an automated retail vending machine's inventory in accordance with this Section 4.03(b), then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and immediately following the 48-hour period in which inventory of the automated retail vending machine remained below sixty (60%) percent, Licensee may incur, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(c) Product Quality. At any time, the Commissioner or CMR may review the quality of the Products then being offered for sale by Licensee and require improvements in the quality of the Products or elimination of particular items that the Commissioner determines raise safety or security issues; provided, however, potential changes to the items as set forth in this section shall be required only if reasonably agreed to by Licensee; provided, further, changes to remedy safety or security issues are required at the Commissioner's sole discretion and do not require Licensee's approval. Following the Commissioner's written notice to Licensee, Licensee shall within five (5) days for perishable items and fifteen (15) days for nonperishable items to rectify or modify the quality of the Products or eliminate the particular items, as applicable. Failure to comply within five (5) days for perishable items and fifteen (15) days for nonperishable items will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day or fifteen-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

44 Pricing.

(a) Value Pricing.

(i) Licensee shall comply with the City's Value Pricing policy. The policy generally requires a retailer charge a price for a product or service at the Airport as the same price charged for the same product or service at similar locations in the City (each such store hereinafter referred to as a "**Benchmark Location**," and, such policy hereinafter referred to as "**Value Pricing**"). Licensee will propose Benchmark Locations subject to approval by the City. The following locations and areas shall be excluded when establishing Benchmark Locations: hotel restaurants or kiosks, bus and train transportation centers, entertainment centers, arenas, theaters, convention centers or similar venues unless expressly approved in writing by the City. Benchmark Location exclusions may change throughout the Term as determined necessary by the City. If Licensee or its Subcontractors currently operate the exact concession at other locations in the City of Chicago, then those locations may be designated Benchmark Locations. Otherwise, Benchmark Locations will be selected based on locations that offer automated retail comparable to the proposed concept.

(ii) Licensee must submit to CMR, within thirty (30) days after the end of each License Year, or as requested from time to time by the Commissioner or CMR, a pricing report demonstrating compliance by Licensee with the Value Price requirements. Any prices that the Commissioner or CMR determines to be inconsistent with the Value Price requirements must be adjusted accordingly. At any time, and from time to time, the Commissioner or CMR may review the prices of the Products then being offered for sale by Licensee and require adjustments in prices of the Products or particular items in order to comply with the Value Price requirement. Following the CMR's written notice to Licensee, Licensee shall promptly adjust the price of the Products or particular items, as applicable. Failure to comply within five (5) days will constitute an Event of Default. Licensee's failure to comply would cause the City damages, including loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other remedies for an Event of Default, for as long as non-compliance continues after the five-day cure period, the Commissioner will assess Licensee, as liquidated damages and not as a penalty, an amount as outlined in Exhibit 11.

(b) Approval of Price Increases. Licensee shall not increase the price of any Product from the price listed in Exhibit 4 without the prior written approval of the Commissioner as set forth in Section 4.03(a).

(c) Other Pricing Policy. The Commissioner may adopt other reasonable pricing policies, with which Licensee and Subcontractors shall comply, to restrict overcharging and price gouging, but in no event shall the Commissioner require prices lower than the established Value Pricing.

45 Automated Retail Vending Machine Standards.

(a) Appearance and Inspection. Licensee must supply, at its own expense, each automated retail vending machine, all equipment required to operate such automated retail vending machines and any other equipment required by this Agreement. All automated retail vending machines must be, new or like new, and of the highest quality. The Commissioner and CMR have

the right to inspect any automated retail vending machine installed in a Licensed Retail Space. Licensee must conduct the Concession operations in a first-class, businesslike, efficient, courteous, and accommodating manner consistent with the "Physical Inspection Standards" that appear in Appendix 1 of the Airport Concession Program

Handbook to the extent such standards are applicable to the vending services industry. The Commissioner and CMR have the right to make reasonable objections to an automated retail vending machine if the appearance or condition do not comply with the terms of this Agreement. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within fifteen (15) days following receipt of such written objection (or immediately upon receipt if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee's failure to timely cure the non-compliance identified by the Commissioner or CMR would cause the City damages that would be difficult or impossible to prove or quantify.

Accordingly, if Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the fifteen-day (15) cure period, Licensee must pay the City, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11.

(b) Right to Require Replacement. In addition to the foregoing, the City may require Licensee replace any automated retail vending machine at any time during this Agreement if: (i) Licensee does not timely cure any non-compliance identified pursuant to Section 4.05(a), or (ii) the automated retail vending machine is deficient in any of the ways set forth in Section 4.06(c), and after giving Licensee written notice of such deficiency and reasonable time to cure following such notice, Licensee has failed so cure.

(c) Operating Instructions; Refunds; Licensee must provide visible, easily accessible and understood operating instructions for customers at each Licensed Retail Space for each automated retail vending machine therein. Licensee must provide customers with an explicit explanation of where and how malfunction issues and refund requests may be made for each automated retail vending machine.

(d) Forms of Payment. Each of Licensee's automated retail vending machines must accept at least three nationally recognized credit cards, including but not limited to, American Express, Visa, MasterCard and Discover, as suitable payment for the sale of all Products. Licensee's failure to accept the required forms of payment at an automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to accept the required forms of payment detailed herein and has not cured such failure within 72 hours of actual knowledge of such breach.

4.6. Installation, Repairs and Maintenance.

(a) Installation, Operation and Maintenance Standards. Licensee must install, operate and maintain each automated retail vending machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable standards of the Airport Concession Program Handbook; (iii) applicable written standards of the City's Department of Buildings; (iv) any requirements set forth in the RFP or the Response; (v) applicable manufacturer's specifications; (vi) Licensee's standard operating practices and procedures; and

(vii) all other provisions of this Section 4.05. Installations and maintenance conducted by Licensee must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments. To the extent that these standards are inconsistent, the strictest standard will apply, or, in the case of a conflict, the Commissioner will determine which standard applies. Licensee must take all necessary safety precautions to prevent accidents or injury to persons on, about or adjacent to any Licensed Retail Space where installation of one of Licensee's automated retail vending machines is performed and must not install an automated retail vending machine on or over the boundaries of the Licensed Retail Space.

(b) Installation and Maintenance Costs. Except as otherwise expressly set forth in this Agreement, Licensee must pay all direct and indirect costs of installing and conducting maintenance on Licensee's automated retail vending machines.

(c) Approval Prior to Installation. No automated retail vending machine or related equipment may be installed in, removed from or relocated within, any Licensed Retail Space without prior written approval of either the Commissioner or CMR and the issuance of the required permits, if any. The Commissioner and CMR may inspect any automated retail vending machine prior to installation of such automated retail vending machine. Licensee must submit to the Commissioner and CMR all manufacturer's documents including the energy usage specifications, the energy efficiency specifications, standards and procedures for installation and operating manuals as well as the proposed Service Schedule for such automated retail vending machine for review and approval prior to installation. The Commissioner or CMR may reject any automated retail vending machines considered for approval pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting an automated retail vending machine prior to installation include, but are not limited to, the following: (1) the automated retail vending machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of the automated vending retail machine is outdated or is not of the highest standard of quality; or (3) the automated retail vending machine does not meet another requirement set forth in this Agreement.

(d) Maintenance Service Schedule. Prior to the installation of an automated retail vending machine, Licensee shall establish an initial servicing schedule for such automated retail vending machine with service scheduled at least once per week, or such greater amount as Licensee determines necessary based upon projected usage and sales (the "**Service Schedule**"). Once an automated retail vending machine has been installed, the City and Licensee will review the related Service Schedule, when determined necessary by the City, in its sole discretion, and shall make any adjustments to such Service Schedule needed based upon sales and/or product usage. Any adjustments to the Service Schedule shall be mutually agreed upon by the City and Licensee. In no case shall an automated retail vending machine be serviced less than once per week unless agreed to in writing by the Commissioner. Licensee will provide the City a copy of the initial Service Schedule for each automated retail vending machine prior to installation of such automated retail vending machine and an updated Service Schedule following any adjustments thereto.

(e) Repairs and Replacement.

(i) If any automated retail vending machine is damaged or is inoperable or for any reason, Licensee must repair or replace such automated retail vending machine, in a manner acceptable to the Commissioner, as promptly as possible; provided, all repairs must be performed within 48-hours of when Licensee became aware of such damage or inoperability unless additional time is granted in writing by the Commissioner. Alternatively, Licensee may replace such automated retail vending machine; provided, such replacement automated retail vending machines must be installed by Licensee and fully operable within five (5) days of when Licensee became aware of the damage or inoperability. The replacement automated retail vending machine must new or like new, carry the same Products as the damaged automated retail vending machine, and meet all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. Licensee's failure to timely repair or replace the applicable automated retail vending machine would cause the City damages including, among other things, loss of goodwill, which would be difficult or impossible to prove or quantify. As such, and in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee will incur, as liquidated damages and not as a penalty, the amounts outlined in Exhibit 11 upon failure to complete any replacement or repairs required under this Section within the applicable cure period.

(ii) The City, in its sole discretion, reserves the right to require Licensee to replace any automated retail vending machine that requires significant refurbishment, is frequently in need of repairs, has repeated malfunctions or which is otherwise deemed to not adequately serve the public.

(iii) Any repair person dispatched by Licensee must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. Licensee must ensure that all repair persons carry photo identification whenever making a service call to an automated retail vending machine.

(f) Reporting Damage. Licensee must immediately report any damage arising out of Licensee's performance under this Agreement to the City. Any damage to City or third-party property due to Licensee's installation or maintenance work under this Agreement must, at Licensee's expense, be repaired, replaced or restored by Licensee to at least an equivalent condition as before such damage occurred.

(g) Sanitation, Disposal of Refuse and Cleanings.

(i) Licensee must take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the Licensed Retail Spaces to the extent such action is consistent with vending services industry standards. Licensee's commitment to the maintenance of a clean and attractive environment in the Licensed Retail Spaces is consistent with vending services industry standards. Immediately following any installation of or maintenance to an automated retail vending machine, Licensee must clean up and properly dispose of all refuse and waste materials resulting from such installation or maintenance.

(ii) Licensee must thoroughly clean (inside and out) all automated retail

vending machines as often as is reasonably necessary, but at least twice per calendar year. If Licensee becomes aware that an automated retail vending machine requires cleaning outside of those regularly scheduled, Licensee must clean such automated retail vending machine as promptly as possible, but in any event within seven (7) days of discovering such need. Licensee shall schedule cleanings primarily before 5:30 a.m. or after 10:30 p.m. when passenger traffic is light, or as otherwise approved by the City.

4.7 Operation of Concession.

(a) Hours of Operation.

(i) Licensee must begin conducting its Concession operations in each Licensed Retail Space within ninety (90) days of the Delivery Date applicable to that Licensed Retail Space and continue operations uninterrupted after that date during all required hours of operation. Each automated retail vending machine shall be operable and available to the public twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. In no event shall the hours of operation be curtailed by Licensee to an extent that the Services conducted pursuant to the License are diminished unless otherwise approved by the Commissioner or CMR in writing. An automated retail vending machine in a Licensed Retail Space is permitted to be temporarily unavailable periodically for restocking, cleaning, maintenance and repair. To the extent possible, such temporary unavailability shall not be during peak passenger times as per published flight schedules. Licensee is required to allow access to its automated retail vending machines to the City twenty-four (24) hours per day.

(ii) Except as otherwise permitted under this Agreement, it is an Event of Default if Licensee fails to operate its Concession from any Licensed Retail Space during all times Licensee is required to do so under Section 4.7(a)(i) and such failure continues for more than three (3) days after the City provides notice of the failure to Licensee. Licensee acknowledges that failure to provide the Concession to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City, as liquidated damages and not as a penalty, in connection with such loss of goodwill, the amounts as outlined in Exhibit 11 on the first day after expiry of the three-day cure period. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Licensed Retail Space re-opens for business; or (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Licensed Retail Space.

(b) Personnel.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must designate a general manager, experienced in management

and supervision, who has sufficient authority and responsibility to administer and manage the Concession. The general manager (or authorized representative) must be immediately available to the Department during normal business hours. The Commissioner may request removal of the general manager if the Commissioner reasonably determines, in the Commissioner's sole discretion, that the general manager is not performing up to standards consistent with the fulfillment of Licensee's obligations and Licensee agrees to comply with the Commissioner's request; provided that such request is in writing, does not contravene applicable laws, and Licensee is first given an opportunity to respond and address such issues consistent with this Agreement. Licensee's obligation to comply with any such request shall also be subject to restrictions imposed upon it by any collective bargaining agreement or other contract affecting such personnel.

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

(c) Trade Name. Unless otherwise approved by the Commissioner in writing, Licensee must operate the Concession only in Licensee's trade name identified in the Response.

(d) Records and Audit. Licensee must maintain books and records of the operations of the automated retail vending machines and Services, including cash and non-cash revenues generated and unit sales of each Product sold on a monthly basis, with a separate account for each automated retail vending machine and each Vending Zone. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

(e) Licenses and Permits. Licensee must, in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained, at its expense, any permits, licenses, authorizations and approvals necessary under federal, state or local law for Licensee and Subcontractor to operate the Concession; operate, use and maintain the Licensed Spaces; and otherwise comply with the terms of this Agreement and the privileges granted under this Agreement. Issuance of any required permit by the City as to the installation or maintenance of an automated retail vending machine pursuant does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and Licensee must comply with such other requirements. Licensee must promptly provide copies of any required licenses and permits to the Commissioner and CMR. If Licensee fails to timely cure non-compliance, then, in addition to all other remedies the City may have at law, in equity or under this Agreement, Licensee must pay the City, as liquidated damages in connection with the loss of

good will among visitors to the Terminals and not as a penalty, the amounts outlined in Exhibit 11.

(f) Distribution and Deliveries. Concession deliveries must be made only within the times and at the locations authorized by the Commissioner and otherwise in accordance with the terms of this Agreement. All deliveries that require access to the aircraft operations area ("AOA") must be made by vehicles and drivers qualified and permitted to drive over AOA roadways. There is currently no central distribution and storage facility at the Airport; however, the City intends to implement such a facility during the Term of this Agreement. Thereafter, at the option of the Commissioner, after first giving reasonable notice to Licensee, the Commissioner may require Licensee to arrange for all deliveries to the central distribution and storage facility, except where delivery to a third party is prohibited by law, such as delivery of liquor, or as otherwise approved by the Commissioner in writing. At the Commissioner's sole discretion, the central distribution and storage facility, if implemented, may be operated by a third-party licensee selected or approved by the Commissioner. If the central distribution and storage facility is implemented, Licensee must pay the City, or the third-party operator, Licensee's proportional share of the cost for deliveries to and distribution from the facility ("Distribution Fee") as determined by the Commissioner. Such Distribution Fee will be intended to cover the costs of delivery as well as development, utility, operation and maintenance costs and other costs associated with the opening and/or operation of the central distribution and storage facility and is considered to be an Additional Fee. Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the central distribution and storage facility at the Airport, including lost profits, consequential damages or any other losses or damages whatsoever.

(g) Collections. Licensee is responsible for all collections of Gross Revenues. Collections of Gross Revenues from automated retail vending machines must be accomplished in a prompt and timely manner and may not interfere with use and access of the automated retail vending machines.

(h) Payment Card Industry Compliance. Licensee's Concessions must be and remain compliant with Payment Card Industry Security Standards ("PCI Standards") at all times as the PCI Standards are in effect at such time. Any breach of compliance with the PCI Standards, then in effect and related to the Concessions at the Airport, must be reported to the City within forty-eight (48) hours of Licensee's knowledge of such event. Licensee's failure to be in compliance with the PCI Standards on numerous occurrences (more than one) constitutes an Event of Default under this Agreement.

4.8 Utilities and Utilities Access.

(a) Utility Usage Fee. The City shall charge Licensee the Utility Usage Fee for utilities based on a reasonable estimate of usage for each automated retail vending machine as further defined in Exhibit 12; provided, however, Licensee, may at its sole cost and upon written notification to the City, elect to have the utilities separately metered and the City shall calculate the Utility Usage Fee based on the metered reading of utilities furnished to the automated retail vending machines. Notwithstanding the foregoing, the City, after written notice to the Licensee, may select any other reasonable method for calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.

(b) Utilities Access. To the extent Licensee cannot use existing piping, wiring or other existing facilities to access utilities in a Vending Zone for its automated retail vending machines, the City will construct new, different or additional piping or wiring at such Vending Zone to provide utilities access for Licensee's automated retail vending machine. To the extent such construction relates to an automated retail vending machine's ability to access or utilize:

(i) the electrical system, such construction will be a Vending Zone Improvement, and the cost incurred by the City for such Vending Zone Improvement will be covered by collection of the Connection Fee pursuant to Section 6.01;

(ii) any utility other than the electric system, Licensee will be responsible for the actual costs of such construction, and if the related Licensed Space:

(1) is not Additional Space, such costs will be billed to Licensee as an Additional Fee; or,

(2) is Additional Space, such costs will be assessed as part of the Additional Space Connection Fee.

4.9 Marketing and Promotion.

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

(b) Logo. Licensee agrees to provide, at the sole cost of Licensee and if requested by the City, the City with one (1) logo sign per automated retail vending machine designed and constructed according to City's specifications. The logo sign must be removable. Any future updates and replacements of the logo sign shall be at the sole cost of Licensee at shall be at the sole discretion of the City.

4.10 MBE/WBE Compliance.

(a) As applicable, Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises ("MBE/WBE") in any design (including professional services) and any construction (including installations) of Licensee undertakes pursuant to this Agreement, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. However, in consideration of the anticipated costs of any such design and construction of the Concession, the City will accept a participation plan that meets a combined single Design and Construction goal of 26%

MBE and 6% WBE participation, which participation may be achieved with any combination of construction and design contracts. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 8 and should be used by Licensee's Subcontractors. Licensee must submit to CMR completed Schedules C's and D's from its design and construction Subcontractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to CMR, in a form and frequency determined by the Commissioner, documenting its Subcontractors' compliance with their commitments.

ARTICLE 5. LICENSED SPACES

5.1 Location of Automated Retail Vending Machines. Licensee's automated retail vending machines must be located in a Licensed Retail Space identified in Exhibit 1 (or portions thereof as shall be indicated by the City) or other locations pursuant to the terms set forth herein as specified solely by the City. Exhibit 1 may be updated by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space or Relocation Space without the need to amend this Agreement. As of the Effective Date, the square footage identified in Exhibit 1 is approximate, and is subject to correction in accordance with field measurements to be taken after completion of the Vending Zone Improvements. All such measurements relating to the Licensed Spaces will be made from the manufacturers dimensions and drawings as identified on Exhibit 1. City is allowing access to the Licensed Spaces for the sole purpose of Licensee exercising the License granted, and no other purpose shall be valid unless otherwise approved in writing by the Commissioner. Licensee must confine Concession operations to Licensed Spaces. Any operation by Licensee of an automated retail vending machine outside of Licensed Retail Spaces is an Event of Default.

5.2 Storage Space. Licensee shall have access to the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies in order to facilitate use of the License. No Storage Space shall be used for purposes other than supporting Licensee's use of the License. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to supporting Licensee's use of the License, the Commissioner may unilaterally delete the Storage Space from the Licensed Spaces. If the Commissioner determines that the size of the Storage Space exceeds the needs of Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

5.3 Additional Space

(a) Commissioner Offer of Additional Space. During the Term, the Commissioner may from time to time, at the Commissioner's sole discretion, make Additional Space available in the Terminals for Licensee's use of the License. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- (i) size and location of the Additional Space being offered;
- (ii) whether the Additional Space is being offered as Licensed Retail Space or Storage Space; and

(iii) the amount of the Additional Space Connection Fee, if any.

(b) Licensee Response to Offer. Within thirty (30) days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space will be Licensed Retail Space, the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Licensee to the Commissioner that Licensee accepts Additional Space to be used as Licensed Retail Space and acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, Exhibits 1 and 2 shall be modified accordingly without the need for an amendment. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within thirty (30) days whether it accepts the Additional Space, the offer will terminate, and the Commissioner may offer the Additional Space to others.

(c) Additional Space Connection Fee. With respect to each automated retail vending machine to be installed on accepted Additional Space, Licensee agrees to pay the Additional Space Connection Fee, if any, applicable prior to installation of such automated retail vending machine in the Additional Space.

No Obligation to Provide Additional Space. Nothing in Section 5.03(a) or Section 5.05 requires the Commissioner to offer any Additional Space to Licensee or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the Airport to enhance Airport revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole and absolute discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE AND COMMISSONER IS UNDER NO OBLIGATION TO ACCEPT ANY LICENSEE PROPOSAL TO ACQUIRE ADDITIONAL SPACE.**

5.4 Relocation Space. The Commissioner may at any time during the Term require Licensee to relocate all or portion of the Licensed Spaces to another location within the Airport and revoke Licensee's permission to access the portion of the Licensed Spaces being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for other Airport purposes or is in the best interest of the City. In such an event, the Commissioner will notify Licensee in writing within a reasonable period of time prior to the relocation. Such notice will be not less than ninety (90) days in advance of the relocation but, in any event, is not required more than one hundred eighty (180) days in advance. The City is responsible for reasonable costs incurred in any such relocation, including the cost of moving Licensee's automated retail vending machine and inventory.

5.5 Licensee Proposal for Modification to Licensed Spaces. Licensee may submit a written proposal for Additional Space, to remove or otherwise modify Licensed Spaces, or to install additional or change the location of existing automated retail vending machines in Licensed Retail Spaces. Any such proposal must include written support for the change and, if applicable, indicate the amount by which Licensee proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. The

Commissioner has the sole authority to grant or deny such request.

5.6 Maximum Number of Automated Retail Vending Machines. The maximum aggregate number of automated retail vending machines that Licensee may operate pursuant to the License, including automated retail vending machines in Additional Space and Relocation Space, is thirty-five (35), unless otherwise increased by the Commissioner in writing, which such increase shall not require an amendment to this Agreement.

ARTICLE 6. FEES, PAYMENT TERMS AND REPORTS

6.1 Fees Payable. In consideration of Licensee's License and the associated rights and privileges granted in this Agreement, Licensee must pay the Fees incurred pursuant to this Agreement, without notice or demand, which include but are not limited to, the Fees specified below:

(a) License Fee. Beginning as of the Date of Beneficial Occupancy, an amount equal to the greater of (i) or (ii) below:

- (i) Percentage Fee. The "Percentage Fee" is an amount equal to a percentage of Gross Revenues as set forth in Exhibit 2.
- (ii) Minimum Annual Guarantee.

There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, but no less than the Minimum Annual Guarantee set for the second License Year.

(b) Connection Fee. The Licensee shall pay the "Connection Fee" applicable to each automated retail vending machine to cover the costs of the Vending Zone Improvements pursuant to 6.02(c) The Connection Fee shall not apply to automated retail vending machines installed on Additional Space.

(c) Additional Space Connection Fee. Before installing an automated retail vending machine on Additional Space, Licensee shall pay the "Additional Space Connection Fee," if any, applicable to such automated retail vending machine to cover the costs related to adding such automated retail vending machine to the applicable Vending Zone. The Additional Space Connection Fee shall be a one-time, non-refundable fee.

(d) Additional Fees. The "Additional Fees" are the Marketing Fee, Distribution Fee, Connection Fee, Additional Space Connection Fee, Utility Usage Fee and any other charges payable to the City under this Agreement that are identified as Additional Fees.

(e) Nonpayment of Fees; Obligation to Pay Fees. Failure by Licensee to pay the Fees, or any portion thereof, when due is an Event of Default. The payment of the Fees under this

Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

(f) Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Spaces (collectively, "**Impositions**"). Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

6.2 Time of Payments.

(a) Payment on the First of the Month. On or before the first day of each calendar month, prorated for any partial calendar month, beginning on the first day of the calendar month following the DBO and continuing throughout the Term, Licensee must pay to the City that portion of the Minimum Annual Guarantee as may be due.

(b) Payment on the Fifteenth of the Month. On or before the 15th day of each calendar month following the DBO, Licensee must pay the City:

- (i) the amount, if any, by which the Percentage Fee for the preceding month exceeds the Minimum Annual Guarantee payment that was made on the first day of the month;
- (ii) the Marketing Fee, Distribution Fee, Additional Space Connection Fee, Utility Usage Fee, and any other forms of Additional Fees, if any, based, as applicable, on the Gross Revenues of the preceding month or pre-determined amount; and
- (iii) any other charges payable to the City.

(c) Payment of the Connection Fee. On or before the 15th day of the calendar month following:

- i. the earliest Delivery Date of a Licensed Retail Space, Licensee must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed pursuant to this Agreement, in Vending Zones Licensee shall pay the City the first installment of the Connection Fee.
- ii. The amount of the first installment owed per automated retail vending machine will be based on an estimate of the total costs of the Vending Zone Improvements, allocated across all automated retail vending machines to be included in Vending Zone.
- iii. the DBO, Licensees must pay, with respect to each of Licensee's automated retail vending machines installed or anticipated to be installed in Vending

Zones pursuant to this Agreement, Licensee shall pay the City, the second installment of the Connection Fee. The amount of the second installment owed per automated retail vending machine will be based on the difference between the actual costs of the Vending Zone Improvements and the estimated costs used to determine the amount owed under the first installment, allocated across all automated retail vending machines to be included in Vending Zones.

In no case shall the Connection Fee exceed \$2,500. The City shall notify Licensee of the amounts owed pursuant to this Section on or before the first calendar day of the month such installments are owed.

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

6.3 Material Underpayment or Late Payments. Without waiving any other remedies available to the City, if Licensee underpaid Fees due in any calendar year by more than 5% or failed to make any Fee payment within five (5) days of the date due, then Licensee must pay, in addition to the amounts due to the City as Fees, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full and shall be considered an Additional Fee. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

6.4 Reports:

(a) Monthly Reports: Licensee must produce and provide to the City a report showing a summary for each monthly payment period by the 15th day of the calendar month succeeding the applicable monthly payment period (the "**Monthly Report**"). The Monthly Report shall be on a form approved by the City, which form may be updated from time to time. The Monthly Report must reflect Gross Revenues derived from each automated retail vending machine during the applicable payment period. Additionally, the Monthly Report must include, but shall not be limited to, the following, each for the applicable monthly payment period:

- (i) the aggregate quantity of each Product sold, and the quantity of each Product sold by date sold, time of day sold, Vending Zone and automated retail vending machine;
- (ii) the aggregate Gross Revenues, and Gross Revenues by Product, Vending Zone and automated retail vending machine; and the volume of sales in dollars generated by each type of retailed item (i.e., soda, candy, snacks etc.)

dispensed at each Vending Zone by each automated retail vending machine;
and

- (iii) the monthly Gross Revenues and Fees owed to the City by each Vending Zone and each automated retail vending machine.

(b) Additional Reports. In addition to the Monthly Reports, Licensee must, if reasonably requested by the City, produce and provide reports on a daily and/or weekly basis containing the same information as the Monthly Reports but covering such daily and/or weekly payment period.

(c) Annual Reports.

(i) Licensee must also furnish to Commissioner no later than March 1 of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this Agreement, a complete statement of revenues certified by an independent certified public accountant engaged by Licensee, showing in reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Concessions during the preceding License Year, copies of all returns and other information filed with respect to Illinois sales and use taxes, and as such other financial and statistical reports as the Commissioner may, from time to time, reasonably require by written notice to Licensee.

(ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

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

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

(d) Form of Reports; Right to Audit. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's

financial records directly and solely related to this Agreement and to prepare the statements at Licensee's expense based on reasonable costs. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Concessions in the form as may be reasonably required from time to time by the Commissioner.

(e) Cost of Reports. All reports produced pursuant to this Section 6.04 shall be at Licensee's sole cost and expense. All such reports and any related records must be made readily available to the City and maintained by Licensee for no less than two (2) years.

ARTICLE 7. TERM OF AGREEMENT

7.1 Term of Agreement. The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier and in accordance with its terms. The License is revocable in accordance with the terms of this Agreement and, in any event, shall be revoked upon termination or expiration of this Agreement.

72 Holding Over. Continued occupancy by Licensee without the written consent of the Commissioner of all or a portion of the Licensed Spaces after expiration or termination of this Agreement constitutes holding over and will create a month-to-month license on the same terms and conditions as this Agreement, including payment of License Fees, until terminated by the Commissioner upon not less than thirty (30) days prior written notice to Licensee of such termination. If Licensee continues to hold over after receipt of such written notice, Licensee must pay License Fees for the entire holdover following the termination date under the notice, at double the rates of the License Fees. No occupancy of the Licensed Spaces by Licensee after the expiration or other termination of this Agreement extends the Term of this Agreement. Also, in the event of any unauthorized and willful occupancy after expiration or termination of this Agreement, Licensee must indemnify the City against all damages arising out of the retention of occupancy, and all insurance policies and letters of credit required to be obtained and maintained by Licensee as set forth in this Agreement must continue in effect.

73 Extension Option. The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Licensee. If Licensee agrees to such extension, then after notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

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

75 Early Termination. Notwithstanding anything to the contrary set forth in this

Agreement, the Commissioner may terminate this Agreement with respect to any or all of the Licensed Space without cause for any reason, in the Commissioner's sole discretion, upon at least ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall surrender and vacate that portion of Licensed Space as to which this Agreement is being terminated as if the Agreement had expired on that date with respect to such Licensed Space. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to include the following: a sum equal to Gross Revenues earned by Licensee from the Licensed Space being terminated during the four (4)-month period immediately preceding the termination date, less the Fees payable to the City for that period. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

ARTICLE 8. INSURANCE, INDEMNIFICATION AND SECURITY

8.1 Indemnification.

(a) Indemnity. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. ("Anti-Indemnity Act"), Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from and against any and all Losses.

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

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

(d) Waiver of Indemnity Limits. To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Licensee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) Survival. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement

or as the result of or during Licensee's performance of Services beyond the Term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Licensee's duties under this Agreement, including the insurance requirements.

8.2 Insurance Requirements. Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Licensee is holding over or Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.3 Disclaimer by City. Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any and all liability for damage of any kind to the automated retail vending machines, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken automated retail vending machine, and all liability for damage to the automated retail vending machines shall be the responsibility of Licensee, except to the extent that such damage is caused by the grossly negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the automated retail vending machine occurs while such automated retail vending machine is in the Licensed Spaces, are in the process of being transported to or from one of the Licensed Spaces, or are in the process of being installed or removed from one of the Licensed Spaces.

8.4 Security.

(a) Form of Security.

(i) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal a) 25% of the estimated third full License Year MAG, based on projected Gross Revenues or other reasonable method mutually agreed upon by both parties (without consideration of any pro-rationing on account of either a License Year of less than 12 months or partial occupancy of the Licensed Space) and b) the Letter of Credit will be required to be adjusted, as the MAG increases or decreases throughout the term. The Letter of Credit must be in the form set forth in Exhibit 6 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The

original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least thirty (30) days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within five (5) days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

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

(c) No Excuse from Performance. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

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

ARTICLE 9. EVENTS OF DEFAULT, REMEDIES AND TERMINATION

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

- (a) Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.
- (b) Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five (5) days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five (5) days after the written notice more than three (3) times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.
- (c) Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, covenant, term, condition or other non-monetary obligation or duty of Licensee contained in this Agreement.
- (d) Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.
- (e) Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is nonmaterial, the failure to cure the Event of Default within twenty (20) days after the Commissioner gives written notice. The Commissioner, in the Commissioner's sole discretion, will determine if noncompliance is material.

- (f) Licensee's failure to conduct Concession operations in any Licensed Retail Space at all times Licensee is required to do so under this Agreement.
- (g) Licensee's failure to comply with the Value Pricing policy.
- (h) An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.
 - (i) Licensee does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:
 - (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time;
 - (ii) fails to pay its debts generally as they mature;
 - (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
 - (iv) makes a general assignment for the benefit of creditors;
 - (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
 - (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.
- (j) An order for relief is entered by or against Licensee under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within sixty (60) days following its issuance.
- (k) Licensee is dissolved.
- (l) A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.
- (m) Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.
- (n) Failure to provide an EDS when required.

92 Remedies. If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

- (a) Terminate this Agreement with respect to all or a portion of the Licensed Spaces and exclude Licensee from that using the License in the Licensed Space affected by

the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space or that part identified in the notice on the date specified in the notice, to be no less than five (5) days after the date of the notice, without any right on the part of Licensee after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. Licensee has up to 30 days following termination to remove Equipment. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Licensee under this Agreement, wholly ceases and expires and becomes void with respect to the Licensed Space identified in such notice in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Licensed Space identified in such notice.

- (b) Recover all Fees, including Additional Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include damages for the balance of the scheduled Term, based upon any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, or if this Agreement is terminated with respect to a portion of the Licensed Space, that portion of the Licensed Space affected by the termination, calculated as provided in this Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the Licensed Spaces. Should the City replace the Licensed Spaces, prior to the Term end date, with a comparable Licensee, the amount due will be through the relicensed date. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default. All amounts that would have been due and payable after termination for the balance of the Term with respect to all or a portion of the Licensed Space must be discounted to present value at the Default Rate existing as of the date of termination. The Commissioner may declare all amounts to be immediately due and payable.
- (c) Distrain upon and remove from all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others, abandoned or remaining in Licensed Space 30 days after termination, and to proceed without judicial decree, writ of execution or assistance or involvement of constables or the City's and Licensee's officers, to conduct a private sale, by auction or sealed bid without restriction. Licensee waives the benefit of all laws, whether now in force or later enacted, exempting any of Licensee's property on the Licensed Space or elsewhere from distraint, levy or sale in any legal proceedings taken by

the City to enforce any rights under this Agreement.

- (d) Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.
- (e) Seek and obtain money damages; including special, exemplary, incidental and consequential damages.
- (f) Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.
- (g) Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.
- (h) Require Licensee to terminate a Subcontract that is causing breaches of this Agreement.

93 Effect of Default and Remedies.

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

(b) Non-Exclusive Remedies. All rights and remedies of the City under this Agreement are separate and cumulative, and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or revocation of the License deprives the City of any of its remedies against Licensee for Fees, including Additional Fees or other amounts due or for damages for Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

ARTICLE 10. SPECIAL CONDITIONS

101 Warranties and Representations. In connection with the execution of this Agreement, Licensee warrants and represents statements (a) through (j) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do

so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.01 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontract, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontract is a partnership or joint venture, Licensee must also include provisions in its Subcontract ensuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

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

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

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

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

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

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

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

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

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

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

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

- (v) are not delinquent in the payment of any taxes due to the City; and
- (vi) will not make use of the Licensed Space in any manner that might interfere with the landing and taking off of aircraft at the Airport under current or future conditions or that might otherwise constitute a hazard to the operations of the Airport or to the public generally.

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

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

Business Documents, Disclosure of Ownership Interests and Maintenance of Existence

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

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

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

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

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

104 Transfer or Change of Ownership.

(a) Limits on Licensee's Transfers and Changes in Ownership.

(i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "Transfer") all or any part of its rights or interests in or to this Agreement, the License, the Licensed Space, the Term, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Transfers involving all of Licensee's interest in this Agreement require approval of the City Council. Transfers of less than all of Licensee's interest in this Agreement require approval of the Commissioner. Prior consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers that have the effect of granting a third party a security interest in this Agreement or pledge any portion of Gross Revenues or any automated retail vending machine in a Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee (including, if Licensee is a joint venture, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "Change in Ownership")), is subject to the consent of:

a. City Council, in its sole discretion, if the Change in Ownership involves

a 100% Change in Ownership of Licensee, or

- b. the Commissioner, in the Commissioner's reasonable discretion, if the Change in Ownership involves less than a 100% Change in Ownership of Licensee.

(iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. In that event, Licensee must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Licensee must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more or.

- (iv) Consent by the City to any Change in Ownership does not relieve

Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

(v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to Licensee's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Licensee's sole remedy is to terminate this Agreement without liability to either the City or Licensee.

(vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or Transfer of all or any portion of the Term, where the fees payable to Licensee exceed the Fees or pro rata portion of the Fees under this Agreement, as the case may be, for the License or Term, Licensee must pay the City monthly, as Additional Fees, at the same time as the monthly installments of other Fees under this Agreement that are payable in monthly installments, the excess of the fees payable to Licensee pursuant to the

Transfer over the Fees payable to the City under this Agreement.

(vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least sixty (60) days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least one hundred-twenty (120) days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed EDSs for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgement.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City as Additional Fee.

(c) Subcontractor Agreements. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and a Subcontractor.

105 Compliance with Laws. Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, "Laws"), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days

of receiving notice from a competent governmental authority that Licensee or any of its Subcontractor may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

(a) In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an EDS, which is attached to this Agreement as Exhibit 9 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the

conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

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

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

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

7-28-390 Dumping on public way—Violation—Penalty; 7-
28-440 Dumping on real estate without permit;
11-4-1410 Disposal in waters prohibited;
11-4-1420 Ballast tank, bilge tank or other discharge; 11-
4-1450 Gas manufacturing residue;
11-4-1500 Treatment and disposal of solid or liquid waste; 11-4-
1530 Compliance with rules and regulations required; 11-4-
1550 Operational requirements;
11-4-1560 Screening requirements; and
any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee's or any Subcontractor's

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

(e) Section 2-92-586 of the Municipal Code: The City encourages Licensee to use licensees and sublicensees that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

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

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

(ii) Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Licensee or the date Licensee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

Licensee agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

(iii) Licensee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive

Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

- (iv) Licensee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.
- (v) If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Licensee's bid.
- (vi) For purposes of this provision:
 - "Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to the Mayor's political fund-raising committee.
 - "Other Contract" means any other agreement with the City of Chicago to which Licensee is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.
 - "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.Individuals are "Domestic Partners" if they satisfy the following criteria:
 - a. they are each other's sole domestic partner, responsible for each other's common welfare; and
 - b. neither party is married; and
 - c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners; and
- f. the partners have been residing together for at least 12 months; and
- g. the partners have common or joint ownership of a residence; and
- h. the partners have at least two of the following arrangements:
 - 1) joint ownership of a motor vehicle; and
 - 2) a joint credit account; and
 - 3) a joint checking account; and
 - 4) a lease for a residence identifying both domestic partners as tenants.
- i. Each partner identifies the other partner as a primary beneficiary in a will. "Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

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

(h) Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (1) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (2) the authorized compensation paid to an official or employee for his office or employment; (3) any economic benefit provided equally to all

residents of the city; (4) a time or demand deposit in a financial institution; or (5) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

(i) Visual Rights Act.

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

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

106 Airport Security.

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

TSA and the FAA and in effect at the time of their submission.

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

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

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

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

10.7 Non-Discrimination.

(a) Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that: (i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or

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

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

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

(d) Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS

10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.(e) Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

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

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

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

(j) The City is committed to compliance with federal Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), and related FAA guidance. Licensee must cooperate with the City, and require its Subcontractors to cooperate, in updating and implementing the LEP access plan. This may include but is not limited to collecting demographic data and conducting surveys of LEP customers, providing multilingual signage and menus, and hiring multilingual staff.

(k) The Licensee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Licensee transfers its obligation to another, the transferee is obligated in the same manner as the Licensee.

This provision obligates the Licensee for the period during which the property is owned, used or possessed by the Licensee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

108 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts 26 and 23, as amended from time to time. Licensee must comply with the Special Conditions Regarding ACDBE participation attached hereto as Exhibit 7 and incorporated here by reference. Failure to comply with such Special Conditions shall be an Event of Default.

10.9 No Exclusive Rights. Nothing contained in this Agreement must be construed to grant or authorize the granting of an exclusive right, including an exclusive right to provide aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. It is clearly understood by Licensee that no right or privilege has been granted that would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including maintenance and repair) that it may choose to perform.

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

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

10.12 2014 Hiring Prohibitions.

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

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

(c) Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel associated with this Agreement, or offer employment to any individual to provide services associated with this Agreement, based upon or because of

any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

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

ARTICLE 11. GENERAL CONDITIONS

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

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

11.3 Amendments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement and signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), or excuses Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform to the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be

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

11.5 Covenants in Subcontracts. All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the automated retail vending machines and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

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

11.7 Entire Agreement. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three (3) days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from the City to Licensee will be addressed to the person identified as Licensee's contact person in Licensee's EDS, as attached as Exhibit 9. All notices or communications from Licensee to the City must be addressed to:

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

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

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

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

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

City of Chicago, Department of Law
Aviation, Environmental, Regulatory and Contracts Section 2
North LaSalle Street, Suite 540
Chicago, Illinois 60602
Attn: Deputy Corporation Counsel

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

11.8 Successors and Assigns; No Third-Party Beneficiaries. This Agreement inures to the exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

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

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

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

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

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

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

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner, an authorized representative of the Commissioner or such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

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

- A that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of the modifications and that the Agreement as modified is in full force and effect);
- A. the dates to which Fees, including Additional Fees, have been paid and the amounts

of the Fees most recently paid;

- B. that the requesting party is not in default under any provision of this Agreement, or, if in default, the nature of it in detail;
- C. in the case of the City's request under this Agreement, such further matters as may be requested by the City, it being intended that any such statement may be relied upon by third parties.

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

11.16 Limitation of City's Liability. Licensee and its Subcontractors must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement. All Licensee and Subcontractor personal property upon the Licensed Space or upon any other part of the Airport, is at the risk of Licensee or Subcontractor only, respectively, and the City is not liable for any loss or damage to it or theft of it or from it. The City is not liable or responsible to Licensee or Subcontractors, and Licensee waives, and will cause its Subcontractors likewise to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any occupants of the Airport, including the Terminals or the Licensed Space, or repair or alteration of any part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform, and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement, and the City is not liable for any deficiency except to the extent provided in this Agreement and to the extent that there are legally available Airport funds.

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

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

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

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

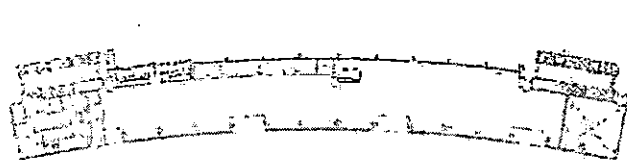
EXHIBIT 1
 LICENSED SPACE
 (INCLUDING CONFIRMATION OF DBO)

The Licensed Retail Spaces are located at Chicago O'Hare International Airport and include the Vending Zones in which Licensee's automated retail vending machines are located as per the following:

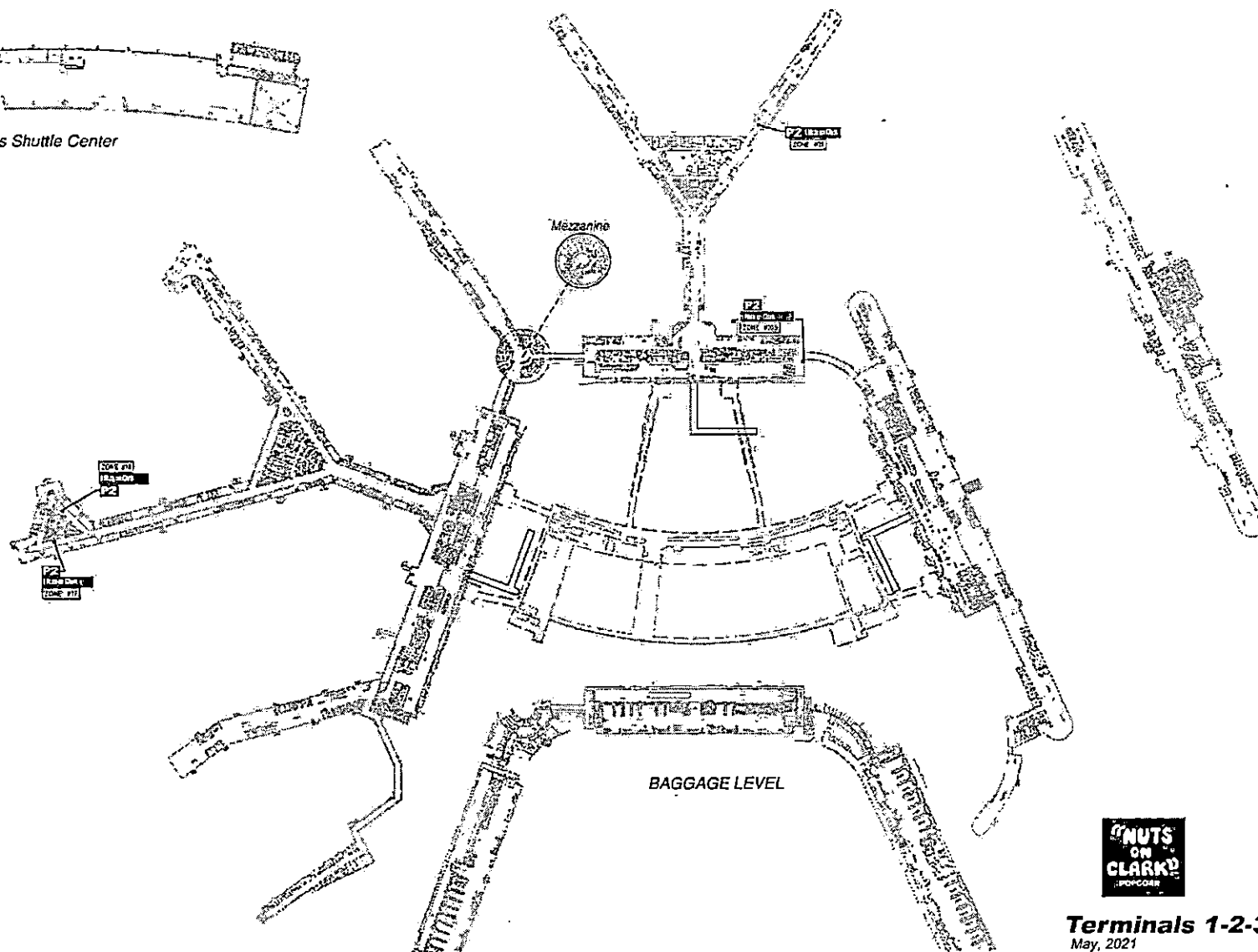
Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
1	n/a	T1B.U.107.B
2	n/a	T1B.U.12.B
3	n/a	T1B.U.73.M
4	n/a	T1B.L.94.O
5A	n/a	T1C.T.G.C
5B	n/a	T1B.THH.V
6	n/a	T2E.U.39.A
7	n/a	TEF.U.5L.L
8	n/a	T2F.U.45.E
9	Nuts on Clark	T2E.U.48.A
10	n/a	T2.L.40.6
11	n/a	T2EF.U.16.D
12	n/a	T2.U.45.J
13	n/a	T3.U.8C.D
14	n/a	T3G.U.33.C
15	n/a	T3H.U.30.E
16	Nuts On Clark	T3K.9Ma.A

17	Nuts on Clark	T3K.U.75.L
18A	n/a	T3.L.8Y.C
18B	n/a	T3.L.8Y.C
19	n/a	CTA Pedway
20A	n/a	T2.U.4A.D
20B	Nuts on Clark	T2.U.4C.E
21	n/a	T3.U.8AA.F
22	n/a	T3HK.U.9R.E
23	n/a	L Stinger.U.2.3.A
24A	n/a	T2 CTA Pedway
24B	n/a	T2 CTA Pedway
24C	n/a	T2 CTA Pedway
25	n/a	Bus Shelter Center

The Date of Beneficial Occupancy is: TBD



Bus Shuttle Center



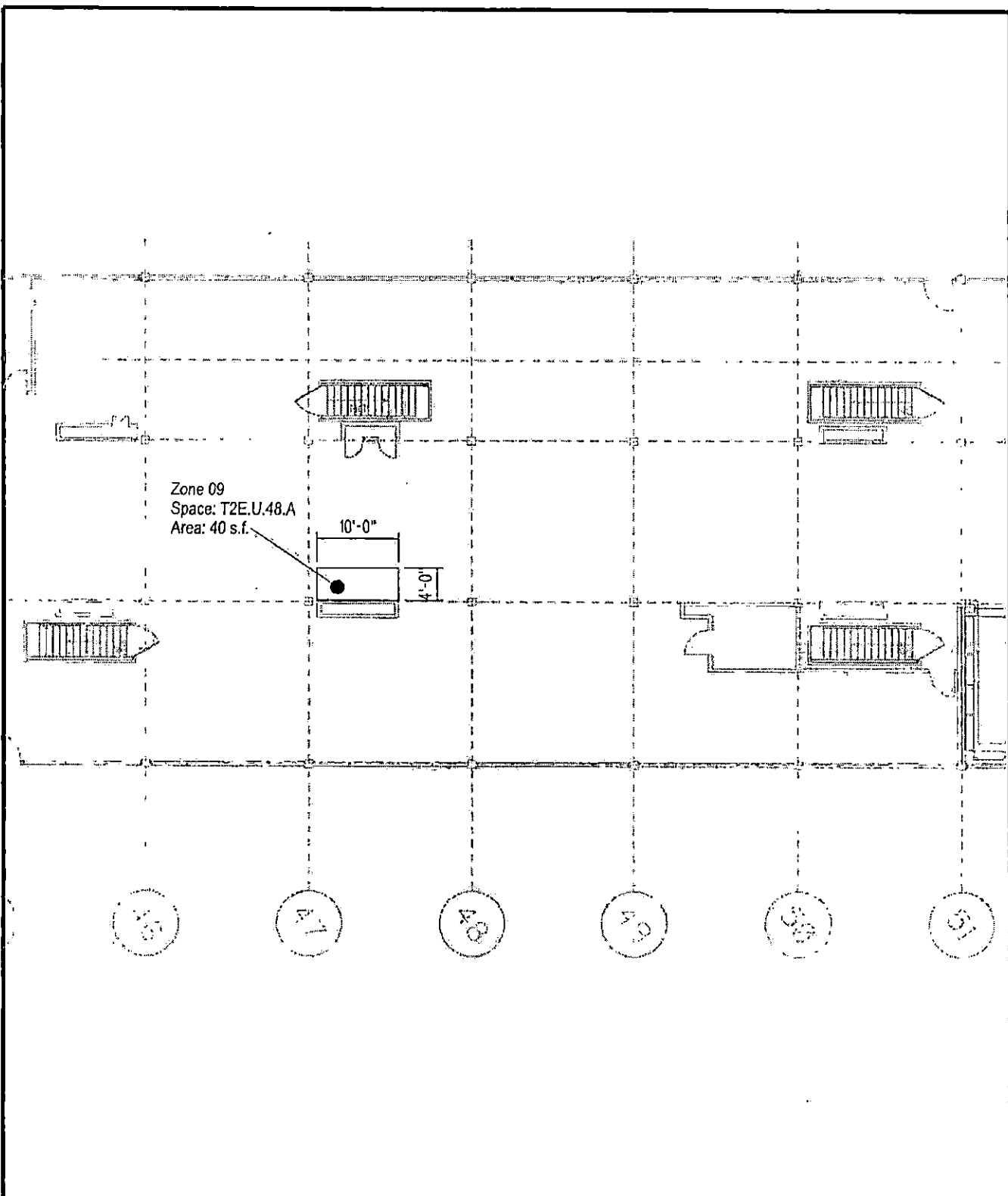
BAGGAGE LEVEL

Legend

P2 Vending



Terminals 1-2-3
May, 2021



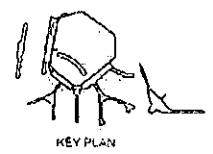
Chicago O'Hare International Airport
Mayor • Lori Lightfoot

Chicago Department of Aviation
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"
UNISON RETAIL MANAGEMENT

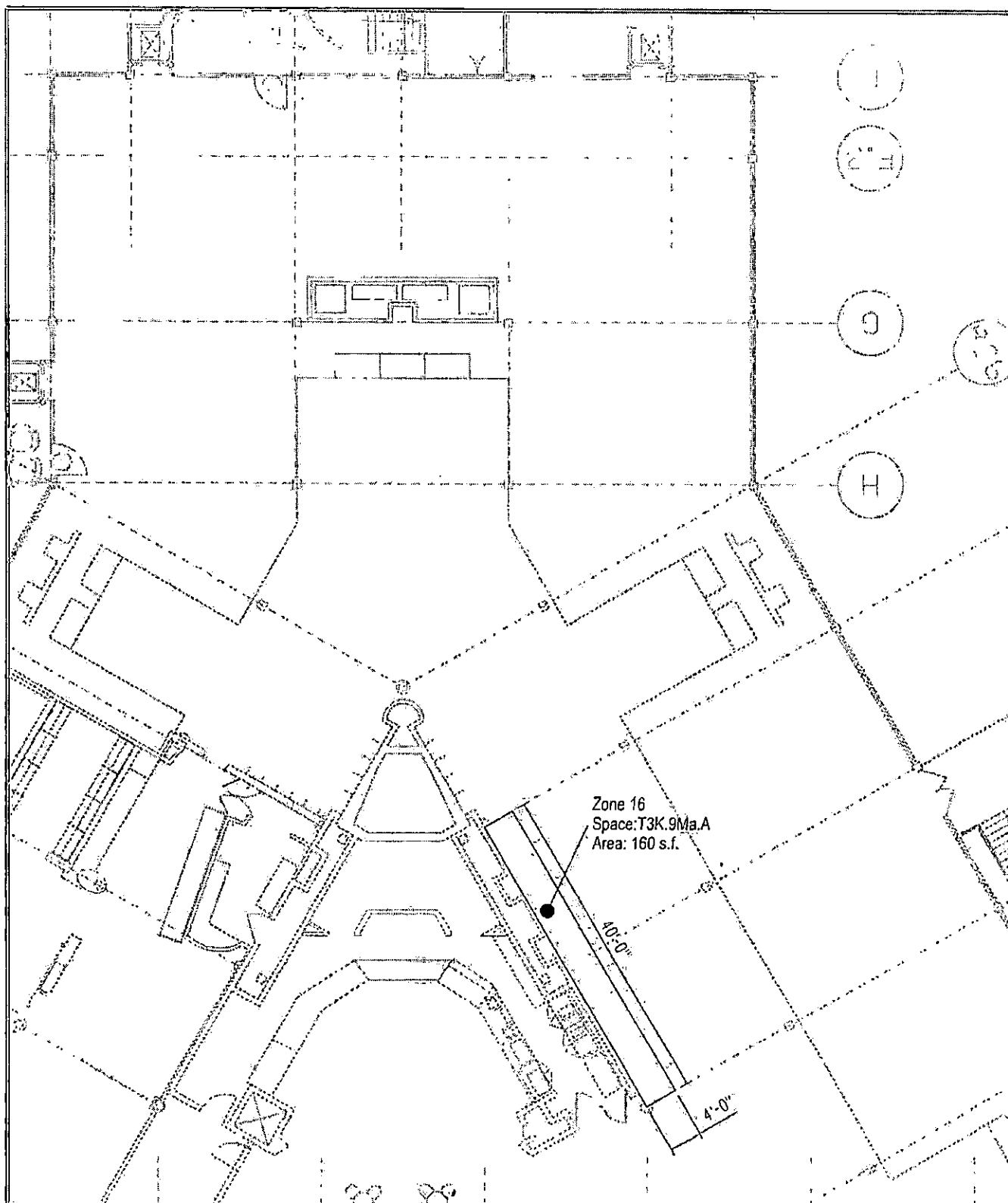
Terminal 2/Concourse EF Upper Level

Automated Retail
Zone #09 (T2E.U.48.A)



Date: May, 2021

Created by: CAUS Systems



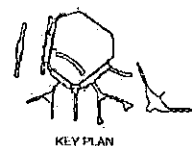
Chicago O'Hare International Airport
Mayor • Lori Lightfoot

Chicago Department of Aviation
Commissioner • Jamie Rhee

Scale 1" = 20'-0"
UNISON RETAIL MANAGEMENT

Terminal 3 / Concourse HK Upper Level

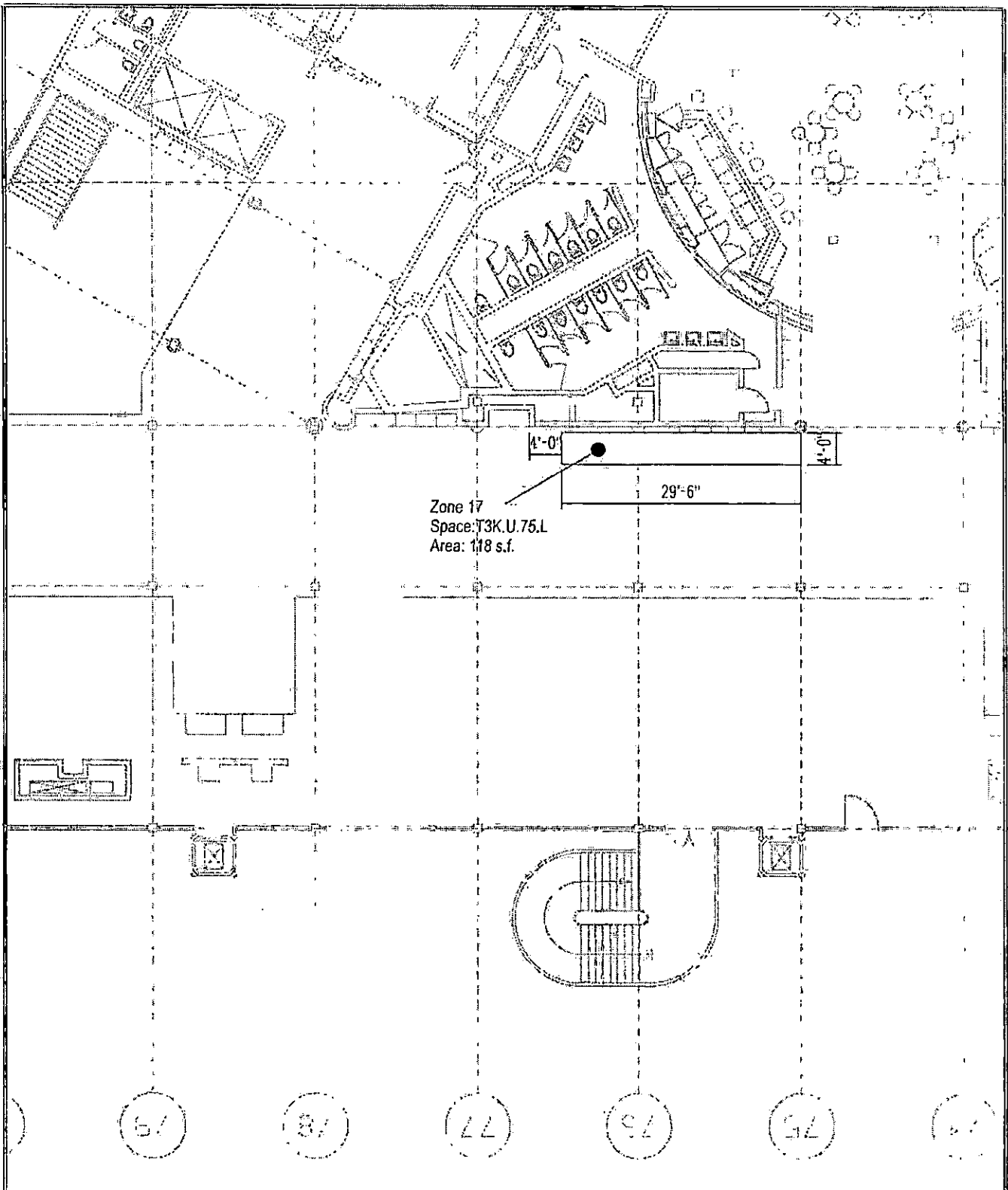
Automated Retail
Zone #16 (T3K.9Ma.A)



KEY PLAN

Date: May, 2021

Drawn by CAD Services



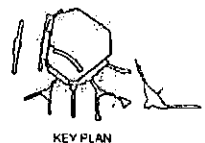
Chicago O'Hare International Airport
Mayor • Lori Lightfoot

Chicago Department of Aviation
Commissioner • Jamie Rhee

Scale: 1" = 20'-0"
UNISON RETAIL MANAGEMENT

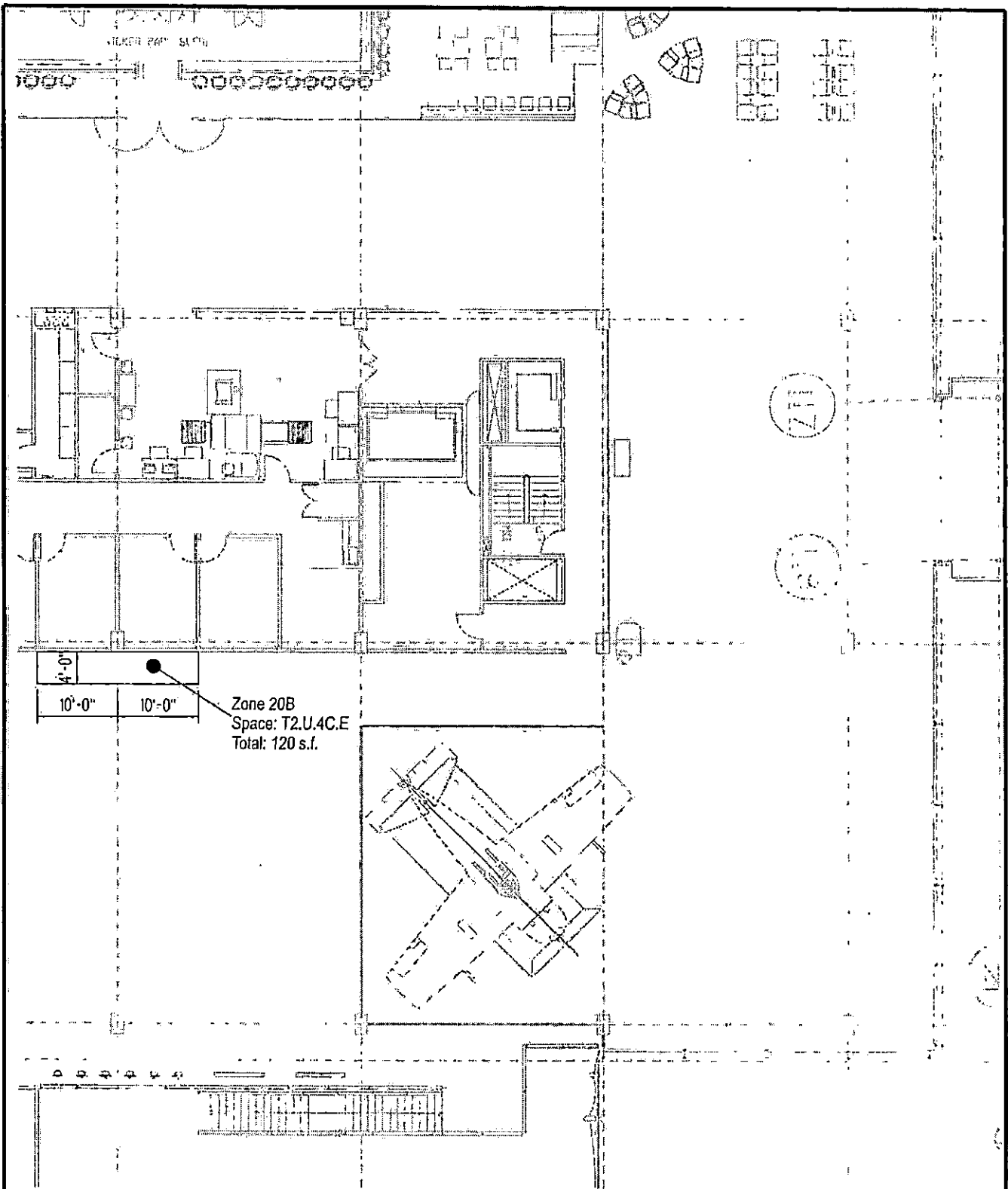
Terminal 3 / Concourse HK Upper Level

Automated Retail
Zone #17 (T3K.U.75.L)



Date: May, 2021

06/24/21 CAD/5/2021



Chicago O'Hare International Airport
Mayor • Lori Lightfoot

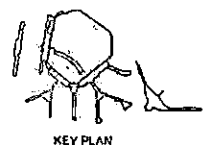
Chicago Department of Aviation
Commissioner • Jamie Rhee

UNISON RETAIL MANAGEMENT

Terminal 2 Upper Level

Automated Retail
Zone # 20B (T2.U.4C.E)

Scale: 1/16" = 1'-0"



KEY PLAN

Date: May, 2021

© 2021 UNISON RETAIL MANAGEMENT

EXHIBIT 1

TEMPORARY ADDITIONAL LEASED SPACE

Tenant is granted Temporary Additional Leased Space in accordance with the License and Lease Agreement, Section 5.3. Tenant must vacate the Temporary Additional Leased Space within ten (10) business days receipt of written notice from CDA.

Nuts on Clark, Inc.

Vending Zone	Automated Retail Vending Machine	LOD Space ID Number
Terminal 5 East	Chocolate/Nuts/Water	Gate M29/AC4

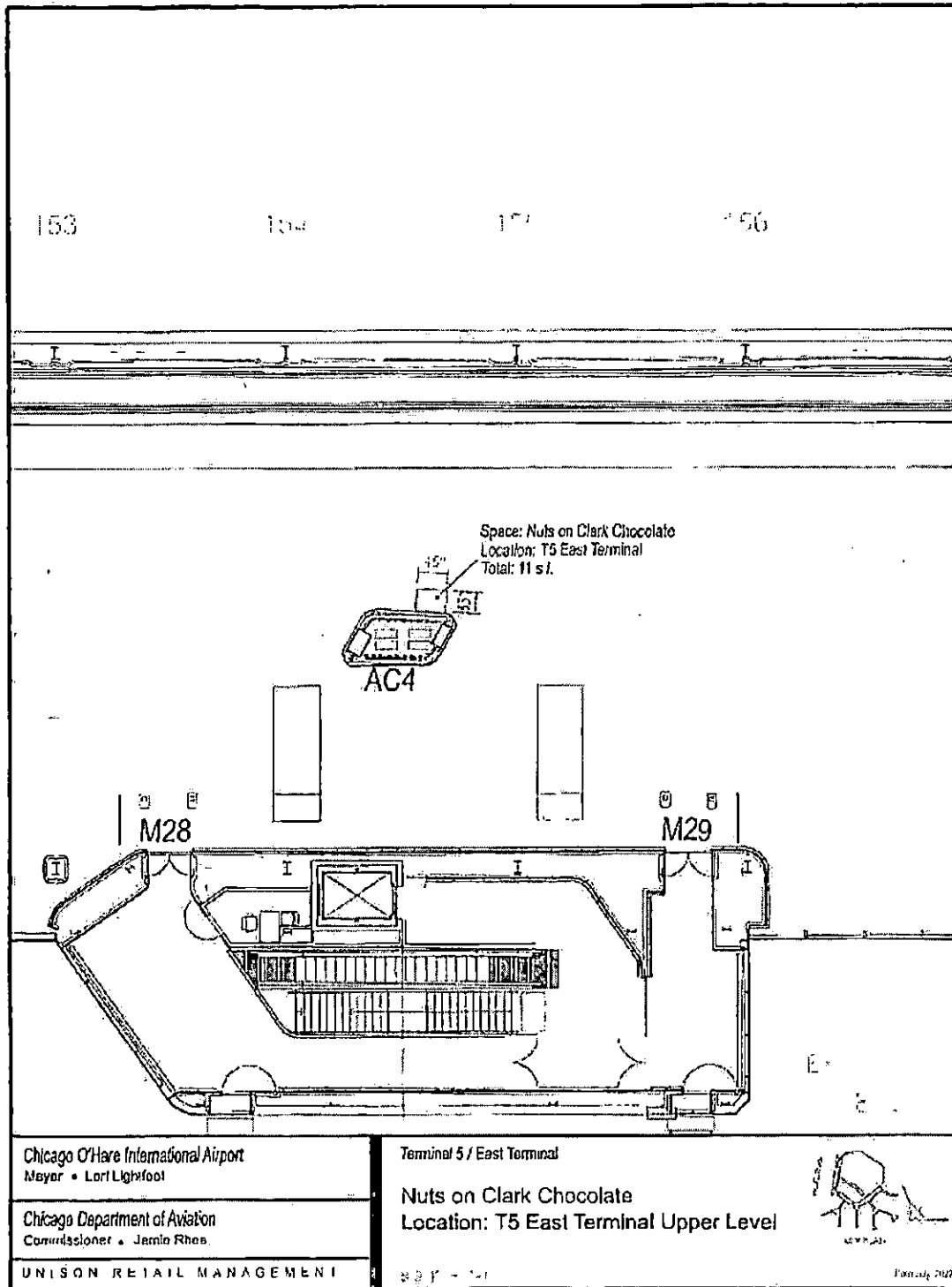


Exhibit 2

Fees

EXHIBIT 2

FEES

1. Percentage Fee: Nuts on Clark

Gross Revenues	Percentage Fee
\$0 - \$1,000,000	15.0%
\$1,000,000 - \$2,000,000	16.0%
Over \$2,000,000	17.0%

2. There is no "Minimum Annual Guarantee" or "MAG" for the first License Year of the Term. The Minimum Annual Guarantee for the second License Year is 85% of the Percentage Fee payable in the first License Year. Beginning with the third License Year, and for each License Year thereafter, the Minimum Annual Guarantee will equal the greater of 85% of the Percentage Fee payable for the preceding License Year, and the Minimum Annual Guarantee for the second License Year.

Exhibit 3

Development Plan

4. Concessions Development Plan

1. Concept/System and theme including why each component is best for ORD

The Nuts on Clark / Midway Airport, Inc. ("Nuts on Clark") Cashless Vending Machine is a state-of-the-art popcorn vending machine that was specifically designed and created for "Nuts on Clark" to serve popcorn at airports, sports venues, stadiums, and grocery stores throughout the country. "Nuts on Clark" is excited for the opportunity to roll-out this new machine for the first time at O'Hare Airport. While "Nuts on Clark" has offered vending machines in other locations before, the new Cashless Vending Machine improves upon those machines as it takes the versatility of two popcorn self-service station units and integrates it with an innovative touchscreen cashless payment system. "Nuts on Clark" designed this cashless vending machine to fulfill the promise of fresh-popped popcorn for customers to purchase throughout the airport without visiting a store location or to be in contact with an employee. The vending machine will be replenished with fresh batches of popcorn, popped fresh at our airport locations. The Cashless Vending Machine has a door that closes and locks from the inside of the machine after the popcorn is dispensed. The bags for the customers' popcorn will be dispensed from inside the unit, individually from the unit to each customer, only one bag will be permitted per transaction and customer. The Cashless Vending Machine only accepts payment by credit card and cannot accept cash.

There are many benefits to Cashless Vending Machine that will benefit O'Hare Airport and its passengers including but not limited to:

- Easy to use;
- Cashless;
- Consumer friendly touchscreen for ordering and transactions;
- Visual and audio prompts to instruct customers during transactions;
- Accepting of all mobile and NFC payment protocols;
- Swipe, and EMV chip cards, and a fully integrated "back-of-the house" telemetry that allows business data to be reviewed via a mobile app or through a web page.

2. Proposed menu of services and products and the approximate price range for each category.

The Cashless Vending Machine will offer the much-loved, world-renowned popcorn that has made "Nuts on Clark" famous to O'Hare Airport passengers. On offer will be the two original flavors of "Nuts on Clark" popcorn: our signature butter popcorn and our original "Nuts on Clark" caramelcorn and cheesecorn mix. There will be two available sizes priced at \$5.00 for a medium and \$8.00 for a Large.

3. Sources of merchandise, products, and supplies.

All merchandise, products, and supplies will be from "Nuts on Clark" locations within the airport (Terminal 1, Terminal 2, Terminal 3, and Terminal 5). Additionally, there will be products available from the "Nuts on Clark" domestic Terminal 1B storage area and Terminal 5 storage area.

4. Narrative description of the proposed capital improvements.

This Cashless Vending Machine will cost approximately \$11,000 for initial capital investment.

4. Concessions Development Plan

5. Narrative description of the respondent's sustainability initiatives incorporated in the design and construction of the proposed tenant improvements.

The "Nuts on Clark" Cashless Vending Machine is locally produced and is designed of recyclable materials. All "Nuts on Clark" popcorn is grown and contracted within the United States. "Nuts on Clark" exclusively uses eco-friendly, recyclable popcorn bags for all popcorn products.

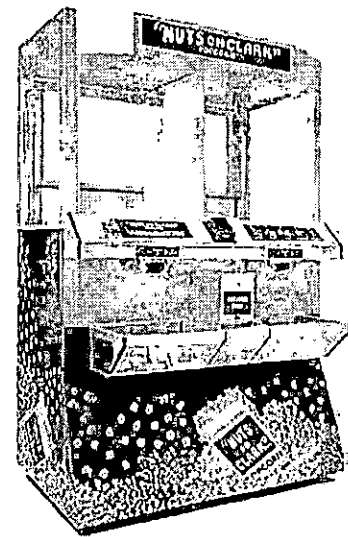
6. Preliminary plans in sufficient detail to allow evaluation of the quality and design of the proposed tenant improvements.

The "Nuts on Clark" Cashless Vending Machine is a state-of-the-art cashless popcorn vending machine. The specifications of the "Nuts on Clark" Cashless Vending Machine include:

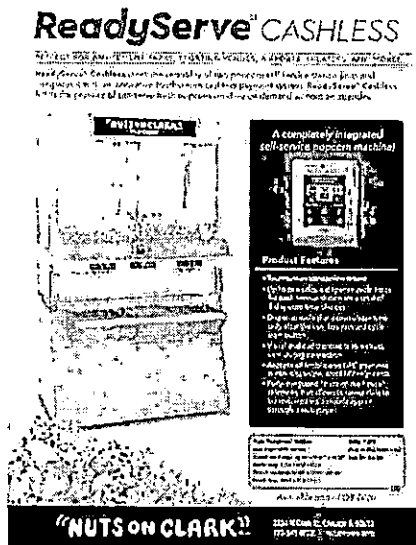
- On four legs: 48.66" Wide, 31.67" Deep, 54.12" High;
- On base: 48.66" Wide, 37.55" Deep, 80.89" High;
- Popcorn dispensing sections (2) measure 6" X 21.5";
- Uses 1,200 Watts;
- Plug: 15amp NEMA 5-15P.

The features of the Ready Serve© Cashless System include:

- Touchscreen transaction driven;
- Up to two unique dispense cycle times for each service station for a total of four dispense time choices;
- Dispense cycle that accumulates time only after the use has pressed cycle start button;
- Visual and audio prompts to instruct user during transaction;
- Accepts all mobile and NFC payment protocols, swipe and EMV chip cards



4. Concessions Development Plan

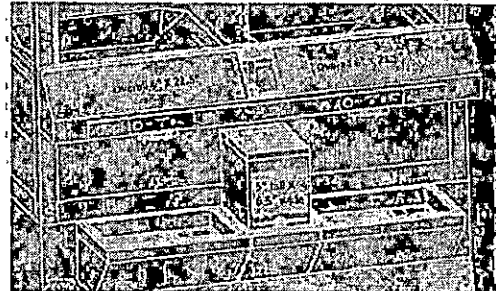


The "Nuts on Clark" Cashless Vending Machine will be serving two sizes and two flavors of "Nuts on Clark" popcorn. The vending machine will be replenished with fresh batches of popcorn, popped fresh at our airport locations. The Cashless Vending Machine has a door that closes and locks from the inside of the machine after the popcorn is dispensed. The bags for the customers' popcorn will be dispensed from inside the unit, individually from the unit to each customer, only one bag will be permitted per transaction and customer. The Cashless Vending Machine only accepts payment by credit card and cannot accept cash.

The "Nuts on Clark: Cashless Vending Machine will be marketed at all the "Nuts on Clark" locations as another option for purchasing popcorn. "Nuts on Clark" plans to work closely with the Chicago Department of Aviation and Unison's Marketing team to market the "Nut son Clark" Cashless

Vending Machine to passengers throughout the airport. Additionally, "Nuts on Clark" will be marketing the Cashless Vending Machine on all its social media platforms.

In order to educate the customers how to operate the "Nuts on Clark" Cashless Vending Machine, there will be instruction panels and step-by-step instructions at point of purchase, an audio and visual touchscreen credit card terminal, and an available "Nuts on Clark" ambassador nearby to assist with any questions or concerns. [How would an ambassador be altered to the fact the customer needs assistance?] The device is highly intuitive and we believe that the traveling public will easily understand how the machine is operated.



Proposed Project Schedule

The "Nut on Clark" Cashless Vending Machine is produced and available for operation and sales immediately. The testing and go live dates for the "Nuts on Clark" Cashless Vending Machine will be initiated as soon as the proposal is approved and locations are assigned. The installation, testing and go-live is a simple process that can be done in about a day. Once we are given the go-ahead to install the Cashless Vending Machine the machine can be live in the terminal very quickly.

Compensation to the City

See Form G.

4. Concessions Development Plan

Projected Sales, Net Income, and Cash Flow

See Form C.

Major assumptions used to prepare Form C:

- O'Hare Airport passenger traffic returns to 2019 levels;
- Vending machine is open from 7:00 AM CST – 9:00 PM CST, 365 days per year.

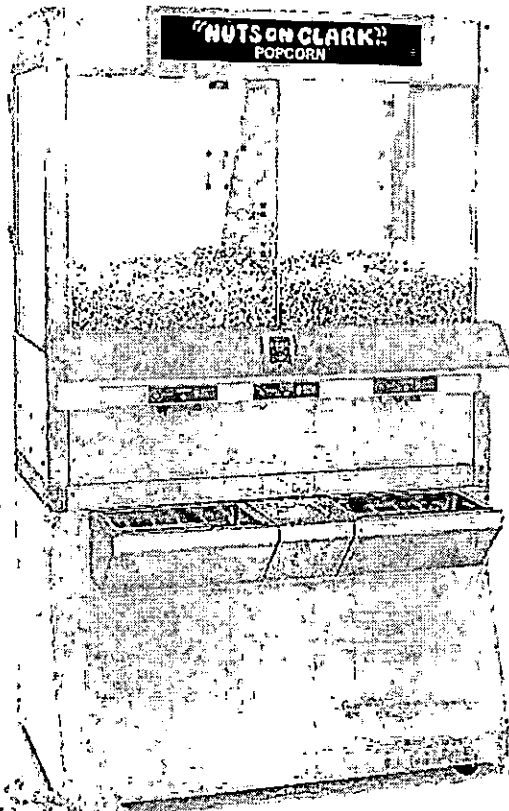
Capital Investment and Financing Plan

See Form D.

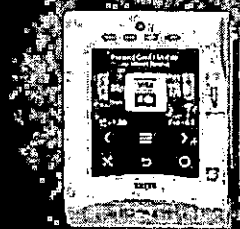
ReadyServe® CASHLESS

PERFECT FOR AMUSEMENT PARKS, SPORTING VENUES, AIRPORTS, THEATERS, AND MORE!

ReadyServe® Cashless takes the versatility of two popcorn self-service station units and integrates it with an innovative touchscreen cashless payment system. ReadyServe® Cashless fulfills the promise of self-serve fresh popcorn vending on demand without an attendee.



A completely integrated
self-service popcorn machine!



Product Features

- Touchscreen transaction driven
- Up to two unique dispense cycle times for each service station for a total of 4 dispense time choices
- Dispense cycle that accumulates time only after the user has pressed cycle start button
- Visual and audio prompts to instruct user during transaction
- Accepts all Mobile and NFC payment protocols, Swipe, and EMV chip cards
- Fully-integrated "back-of-the house" telemetry that allows business data to be reviewed via a mobile app or through a web page

Style: ReadyServe® Cashless Voltage: 1,200
Ideal Base: 2779-00-000 Plug: 15 amp NEMA 5-15P
WxDxH (on 4 legs): 48.66" x 31.67" x 54.12" Ship Wt: 326 lbs
Metric (cm): 123.6 x 80.5 x 137.5
WxDxH (on base): 48.66" x 37.55" x 80.89"
Metric (cm): 123.6 x 95.4 x 205.5

LED

Available end of Q3 2020

"NUTS ON CLARK" © TM

3830 N Clark St, Chicago IL 60613
773-549-6622 | nutsonclark.com

Proposal Form C

Projected Gross Receipts by Concession Type

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

Respondent:

Nuts on Clark / Midway Airport, Inc.

Proposed

Packages:

Package #3

Concession Type	Proposed Concept/Brand	Anticipated Opening Date							
			XX Months 2020	2021	2022	2023	2024	2025	2026
Package 1	Alternative Mobile Electronic Self-Ordering and Delivery Service								
Package 2	Automated Self-Checkout Micro Marts								
Package 3	Automated Retail, Services and Food	Q1 2020	\$350,000+	\$350,000+	\$350,000+	\$350,000+	\$350,000+	\$350,000+	\$350,000+

Chicago Department of Aviation
Proposal Form C

July 30, 2020

Proposal Form D

Capital Investment and Financing Sources Plan

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

Respondent:

Nuts on Clark / Midway Airport, Inc.

Packages

Proposed: Package #3 - Automated Retail, Services and Food

Concession Location ID	Proposed Capital Investment	Financing Sources (Investor and Debt or Equity) and Amount					
		Source 1	Amount 1	Source 2	Amount 2	Source 3	Amount 3
Alternative Mobile Self-Ordering and Delivery Service							
Automated Self-Checkout Micro Marts							
Automated Retail, Services and Food	\$11,000/Location	All funding will come directly from Nuts on Clark / Midway Airport, Inc. and its subsidiaries.					

Proposal Form G

Proposed Concession Fee Rates

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

Respondent: Nuts on Clark / Midway Airport, Inc.

1) Proposed Percentage Fee Rate:

Concession Category	Percentage Fee Rate Ranges (for product categories)	Sales Tiers	Proposed Percentage Fee Rate
Alternative Mobile Self-Ordering and Delivery Service	N/A	N/A	N/A
Automated Self-Checkout Micro Marts	N/A	N/A	N/A
Automated Retail, Services and Food	15% - 17%	\$0 - \$1 Million \$1,000,001- \$2Million \$2,000,001 & over	15% 16% 17%

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

Proposal Form B
Concept Plan
Package 3
(Automated Retail, Services and Food)

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

Respondent: Nuts on Clark / Midway Airport, Inc. ("Nuts on Clark")

Concession Location	Location Description	Concession Description	Proposed Equipment/Facility	Proposed Operator	Anticipated Opening Date
Terminal 1					
Location #1 - T1,B12	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #2 - T1,C11	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #4 - T1,LL Baggage	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #5 - T1,BL Tunnel	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Terminal 2					
Location #3 - T2,E1	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #6 - T2,E6	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #7 - T2 Adjacent to ATM	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #8 - T2,F12	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #9 - T2,E8	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #10 - T2,E1	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #11 - T2,H3	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #12 - T2-T3 Bridge	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Terminal 3					
Vacant Space T3HK,U.9,H,B	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location # 13 - T3,H1	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #14 - T3,G11	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #15 - T3,H3	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #16 - T3, K18	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location # 17 - T3, K19	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #18 - T3, LL Baggage	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Location #19 - T3,BL Passageway to CTA	Food & Beverage	Cashless Vending Machine	1/10amp. electrical	Nuts on Clark	Q1 2021
Add Additional Proposed Locations Below (insert additional rows as needed)					

Exhibit 4
Products and Price List

4. Concessions Development Plan

1. Concept/System and theme including why each component is best for ORD

The Nuts on Clark / Midway Airport, Inc. ("Nuts on Clark") Cashless Vending Machine is a state-of-the-art popcorn vending machine that was specifically designed and created for "Nuts on Clark" to serve popcorn at airports, sports venues, stadiums, and grocery stores throughout the country. "Nuts on Clark" is excited for the opportunity to roll-out this new machine for the first time at O'Hare Airport. While "Nuts on Clark" has offered vending machines in other locations before, the new Cashless Vending Machine improves upon those machines as it takes the versatility of two popcorn self-service station units and integrates it with an innovative touchscreen cashless payment system. "Nuts on Clark" designed this cashless vending machine to fulfill the promise of fresh-popped popcorn for customers to purchase throughout the airport without visiting a store location or to be in contact with an employee. The vending machine will be replenished with fresh batches of popcorn, popped fresh at our airport locations. The Cashless Vending Machine has a door that closes and locks from the inside of the machine after the popcorn is dispensed. The bags for the customers' popcorn will be dispensed from inside the unit, individually from the unit to each customer, only one bag will be permitted per transaction and customer. The Cashless Vending Machine only accepts payment by credit card and cannot accept cash.

There are many benefits to Cashless Vending Machine that will benefit O'Hare Airport and its passengers including but not limited to:

- Easy to use;
- Cashless;
- Consumer friendly touchscreen for ordering and transactions;
- Visual and audio prompts to instruct customers during transactions;
- Accepting of all mobile and NFC payment protocols;
- Swipe, and EMV chip cards, and a fully integrated "back-of-the house" telemetry that allows business data to be reviewed via a mobile app or through a web page.

2. Proposed menu of services and products and the approximate price range for each category.

The Cashless Vending Machine will offer the much-loved, world-renowned popcorn that has made "Nuts on Clark" famous to O'Hare Airport passengers. On offer will be the two original flavors of "Nuts on Clark" popcorn: our signature butter popcorn and our original "Nuts on Clark" caramelcorn and cheesecorn mix. There will be two available sizes priced at \$5.00 for a medium and \$8.00 for a Large.

3. Sources of merchandise, products, and supplies.

All merchandise, products, and supplies will be from "Nuts on Clark" locations within the airport (Terminal 1, Terminal 2, Terminal 3, and Terminal 5). Additionally, there will be products available from the "Nuts on Clark" domestic Terminal 18 storage area and Terminal 5 storage area.

4. Narrative description of the proposed capital improvements.

This Cashless Vending Machine will cost approximately \$11,000 for initial capital investment.

Exhibit 5
Form of Letter of Credit

SAMPLE FORM OF LETTER OF CREDIT

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

Irrevocable Standby Letter of Credit

Letter of Credit No. _____

Date: _____, 20____

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

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$_____ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on _____, 20____, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. _____."

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

By:

Name: _____

Title: _____

THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT
NO. _____

CERTIFICATE FOR DRAWING

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

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

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

(Name of Bank)

(City & State)

(ABA No.)

(Account Name)

(Account No.)

(Reference No., if any)

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

In witness hereof, the City has executed this certificate as of this _____ day of _____, 20____.

CITY OF CHICAGO

BY: _____
Its: Commissioner of Aviation

Exhibit 6
Insurance Requirements

EXHIBIT 6
INSURANCE REQUIREMENTS
Chicago Department of Aviation

Automated Retail License Agreement
Food, beverage, retail products gifts and vending merchandise at O'Hare
(Vending Machines)

A. INSURANCE REQUIRED

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

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

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

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

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

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

3) Automobile Liability (Primary and Umbrella)

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

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

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

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

5) Property

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

6) Cyber Liability

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

7) Commercial Crime Insurance

The Licensee must provide a Fidelity Bond or Commercial Crime coverage covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The

policy limit must be written to cover losses in the amount of maximum monies collected, received or on premises or in possession of Licensee at any given time. The City must be named as a loss payee as its interest may appear. Coverage must include, but not be limited to, third party fidelity coverage, including coverage for loss due to theft and must not contain a requirement for an arrest and/or conviction.

8) Builders Risk

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

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

B. Additional Requirements

Evidence of Insurance. Licensee must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 N. LaSalle Street, 60602, and Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Licensee must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Licensee must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Licensee for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

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

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

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

Waiver of Subrogation. Licensee hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance

herein for any loss arising from or relating to this Agreement. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Licensee's insurer(s).

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

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

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

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

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

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

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

Insurance required of Subcontractors. Licensee must name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Licensee. Licensee must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Licensee is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Licensee must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility.

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

Exhibit 7

ACDBE Special Conditions and Related Forms

City of Chicago Department of Aviation

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

I. POLICY AND PROGRAM

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

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

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

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

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

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

II. PROGRAM GOALS

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

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

A. All Concessions Except Rental Cars.

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

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

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

In 2012, the Rent-A-Car Concessions Voluntary M/W/DBE Program ("RAC Program")

was approved by City Council of Chicago, Illinois, as part of an amendment to the rental car concession license agreements at Chicago O'Hare and Midway International Airports. (*Coun. J. 12-12-2012, p. 43891.*) As part of the program, the on-airport rental car companies ("RACs") will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport RAC's operations at the Airports. The RACs agree that for fiscal year 2017 and thereafter, the goal of their outreach efforts will be to achieve, at a minimum, 30% of non-fleet expenditures with businesses owned by M/W/DBEs that are either certified or not certified but are owned by minority, women and/or disadvantaged persons.

III. CONCESSIONAIRE'S ACDBE COMMITMENT

A. INITIAL ACDBE COMMITMENT

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

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

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

B. CHANGES IN ACDBE PARTICIPATION

Pursuant to 49 CFR 23.25 and 49 CFR 26.53, Concessionaire must not make arbitrary changes to its ACDBE Commitment. Further, after entering into a joint venture agreement, sublicense or subcontract (collectively, "ACDBE agreement") with each approved ACDBE, Concessionaire must not terminate the ACDBE agreement, reduce the scope of the ACDBE's participation in the

concession, nor decrease the compensation to the ACDBE, as applicable, without in each instance receiving the prior written consent of the City. The City will not consent unless Concessionaire shows good cause. Concessionaire must promptly notify the Commissioner of any proposed change in an ACDBE agreement and submit a copy of the proposed amendment to the ACDBE agreement. Prior to requesting consent from the City to terminate or substitute an ACDBE, Concessionaire must give notice to the ACDBE, with a copy to the City, providing the ACDBE an opportunity to respond.

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

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

C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

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

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

satisfactorily); and an ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

D. ACDBE SUBSTITUTION AND ADDITIONAL ACDBEs

If Concessionaire identifies a substitute, replacement or additional ACDBE for the City's approval, Concessionaire's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the ACDBE agreement under which the ACDBE will participate; and a letter of intent signed by Concessionaire and the ACDBE to enter into such an ACDBE agreement upon approval by the City. Concessionaire must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of approving the request, requiring more information, or requiring an interview.

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

E. AGREEMENT EXTENSIONS, ASSIGNMENTS AND SUBLEASES

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

IV. COUNTING ACDBE PARTICIPATION

A. CONCESSIONS OTHER THAN RENTAL CAR

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

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

counted.

2. *Separate locations.* When an ACDBE performs as a sublicensee to Concessionaire with its own concession location or when Concessionaire is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. *Joint venture, no separate locations.* When Concessionaire is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Concessionaire's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Concessionaire to submit evidence to substantiate the value of the ACDBE's contribution. If the Concessionaire fails to submit satisfactory evidence, it is an event of default under the Agreement.
4. *Subcontractor participation.* When an ACDBE provides, as a subcontractor to Concessionaire, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
 - a. The entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
 - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
 - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
 - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

B. RENTAL CAR CONCESSIONS

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

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar

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

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

V. CERTIFICATION, RECORDS, REPORTS AND MONITORING

A. CERTIFICATION

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

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

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

B. RECORDKEEPING

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

representatives.

C. REPORTING

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

D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Concessionaire must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

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

VI. GOOD FAITH EFFORTS

A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions that the City may take into consideration in determining whether Concessionaire made good faith efforts:

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

responding to a solicitation.

4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.
5. NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference in comparison to non-ACDBEs is excessive or unreasonable.
6. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
7. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Concessionaire.
8. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

B. DOCUMENTATION

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

1. A listing of all ACDBE firms that were contacted that includes:
 - a) names, address and telephone numbers of ACDBE firms contacted;
 - b) date and time of contact;
 - c) method of contact (written, telephone, transmittal of facsimile documents, etc.);
 - d) name of the person contacted.

2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
 - a) concession identification and location;
 - b) descriptions/classification/commodity of work, services or goods for which quotations were sought; and
 - c) date, time and location for submittal of bids or proposals.
3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders\proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
6. Evidence that Concessionaire negotiated in good faith with interested ACDBEs.
7. Evidence that Concessionaire did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
9. Evidence that Concessionaire made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
10. Evidence that Concessionaire has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Concessionaire for verification of such notification.
11. Evidence that ACDBE participation is excessively costly. In order to establish that a ACDBE's quote is excessively costly, Concessionaire must provide the following information:
 - d) A detailed statement of the opportunity identified for ACDBE participation for which Concessionaire asserts the ACDBE quote(s) were excessively costly.
 - e) A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.
 - f) Prices quoted by all such potential business partners or subcontractors for that opportunity.
 - g) Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly.

C. ADMINISTRATIVE RECONSIDERATION

1. For the purposes of this Agreement, the City has delegated the responsibility for making

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

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

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

with copies to:

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

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

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

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

VII. NON-COMPLIANCE AND DAMAGES

A. NON-COMPLIANCE GENERALLY

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

B. NON-COMPLIANCE WITH ACDBE AGREEMENT

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

Exhibit 8
MBE/WBE Special Conditions and Related Forms

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

I. Policy and Terms

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

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

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

Contract Specific Goals and Bids

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

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

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

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

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

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

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

Contract Specific Goals and Contract Modifications

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
 - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
 - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

II. Definitions

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

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

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

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

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as

negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

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

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

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

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

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

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

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

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

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

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk

items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

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

III. Joint Ventures

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

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

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

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

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

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

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

C. Schedule B: MBE/WBE Affidavit of Joint Venture

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

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
4. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

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

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

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

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.

1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
 2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

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

- C. If the MBE or WBE performs the work itself:
1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE or WBE is a broker:
1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
 2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
 - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
 2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.

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

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

V. Procedure to Determine Bid Compliance

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

A. Schedule B: MBE/WBE Affidavit of Joint Venture

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

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

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

original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

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

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

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

D. Letters of Certification

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

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. Schedule F: Report of Subcontractor Solicitations

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

F. Schedule H: Documentation of Good Faith Efforts

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

2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
 - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
 - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
 - i. Names, addresses, emails and telephone numbers of firms solicited;
 - ii. Date and time of contact;
 - iii. Person contacted;
 - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
 - c. Evidence of contact, including:
 - i. Project identification and location;
 - ii. Classification/commodity of work items for which quotations were sought;
 - iii. Date, item, and location for acceptance of subcontractor bids;
 - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
 - v. Bids received from all subcontractors.
 - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

VI. Demonstration of Good Faith Efforts

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
 2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
 3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
 4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
 5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
 6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
 7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
 8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.

9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
 10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
 11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

VII. Changes to Compliance Plan

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
 2. Failure of performance;
 3. Financial incapacity;
 4. Refusal by the subcontractor to honor the bid or proposal price or scope;
 5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
 6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
 7. The subcontractor's withdrawal of its bid or proposal; or
 8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
 2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
 3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
 4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
 5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

VIII. Reporting and Record Keeping

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <http://chicago.mwdbe.com>

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

IX. Non-Compliance

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740

of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

X. Arbitration

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

XI. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

Exhibit 9
Economic Disclosure Statements and Affidavits

CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT
AND AFFIDAVIT

SECTION 1 – GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Nuts on Clark, Inc.

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: _____

OR

3. ☐ a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1)) State the legal name of the entity in which the Disclosing Party holds a right of control: _____

B. Business address of the Disclosing Party: Nuts on Clark, Inc.

C. Telephone: [REDACTED] Fax: 773-549-6164 Email: nutsonclark@nutsonclark.com

D. Name of contact person: Carla Kenney Phillips

E. Federal Employer Identification No. (if you have one): _____

F. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

OPD Automated Retail, Food and Service Vending Units RFP

G. Which City agency or department is requesting this EDS? Department of Aviation

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # _____ and Contract # _____

SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- | | |
|---|--|
| ☐ Person | ☐ Limited liability company |
| ☐ Publicly registered business corporation | ☐ Limited liability partnership |
| ☒ Privately held business corporation | ☐ Joint venture |
| ☐ Sole proprietorship | ☐ Not-for-profit corporation |
| ☐ General partnership | (Is the not-for-profit corporation also a 501(c)(3))? |
| ☐ Limited partnership | ☐ Yes ☐ No |
| ☐ Trust | ☐ Other (please specify) |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes

☐ No

☒ Organized in Illinois

B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name

Estelle Kenney

Title

President

Carla Kenney Phillips

Managing Director

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None."

NOTE: Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
Estelle Kenney	3830 N. Clark Street Chicago, IL 60613	80%
Carla Kenney Phillips	3830 N. Clark Street Chicago, IL 60613	20%

SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? ☐ Yes ☒ No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? ☐ Yes ☒ No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

N/A

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC")) in the Disclosing Party?

☐ Yes ☒ No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

NO

SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
--	------------------	--	---

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

SECTION V -- CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes ☒ No ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes ☐ No

B. FURTHER CERTIFICATIONS

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;
- d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any "controlling person" [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any "sister agency"; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management ("SAM").

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

	N/A NONE

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

	N/A NONE

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)
[] is ☒ is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here. (attach additional pages if necessary):

N/A NONE

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes

☒ No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest
N/A		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes ☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes ☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes ☐ No ☐ Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes ☐ No

If you checked "No" to question (1) or (2) above, please provide an explanation:

SECTION VII – FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at www.cityofchicago.org/Ethics, and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

Nuts on Clark, Inc.
(Print or type exact legal name of Disclosing Party)

By: Carla Kenney Phillips
(Sign here)

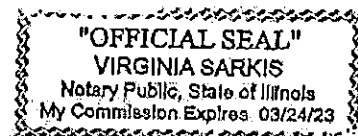
Carla Kenney Phillips
(Print or type name of person signing)

Managing Director
(Print or type title of person signing)

Signed and sworn to before me on (date) 05-18-2021

at COOK County, ILLINOIS (state).

Notary Public Virginia Sarkis
Notary Public



Commission expires: 03-24-2023

**CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS
AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

**CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT
APPENDIX B**

BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☒ No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

☐ Yes

☐ No

☒ The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

**CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT
APPENDIX C**

PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION

This Appendix is to be completed only by an Applicant that is completing this EDS as a "contractor" as defined in MCC Section 2-92-385. That section, which should be consulted (www.amlegal.com), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants' wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

☐ Yes

☐ No

☒ N/A – I am not an Applicant that is a "contractor" as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked "no" to the above, please explain.

Exhibit 10

Airport Concessions Program Handbook

All notices or communications from Licensor to the Licensee must be addressed to :

Company Name: _____

Attn: _____

Mailing Address: _____

Overight Address (if different) _____

With copies to:

Name: _____

Title: _____

Mailing Address: _____

Overnight Address (if different): _____

Note: It is the responsibility of the Licensee to notify Licensor of any changes or updates to the above.

AIRPORT CONCESSION PROGRAM HANDBOOK



CITY OF CHICAGO
DEPARTMENT OF AVIATION

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INTRODUCTION:

The City of Chicago ("City") and the Chicago Department of Aviation ("CDA") welcome you to the family of concessionaires operating at the City's airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

It should be noted that not all concessions are alike, and the following are designed to apply generally to all concessions. Some elements of the following may or may not apply to specific concessions and/or circumstances. CDA understands these differences and will work with each concession to address specifics of the following program, however, each concessionaire should adhere to all of the following that apply. Ultimately, it is at the City's sole discretion as to which do and do not apply and/or which can be modified with the mutual agreement of the Concessionaire to address all of the following.

THE CONCESSIONS PROGRAM:

The CDA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, CDA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, CDA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

CDA UNIT FUNCTIONS

Commissioner's Office Policy generation and resolution.

Managing Deputy Overall coordination of revenue, finance, bonding,
insurance,

Commissioner property management and concessions functions/issues including
merchandising plans, outreach, proposal generation
and evaluation, contract negotiation, and overall
coordination and processing.

Assistant Commissioner Assist in overseeing Concessions, the monitoring
program and general airport guidelines.

Concession Management Entity retained by the CDA to assist in overseeing
Representative ("CMR") Concessions, including construction of Improvements
at the airport.

Planning/Coordinating Architects Plan and design review; construction coordination and
monitoring.

Finance/Revenue Financial reporting, review and auditing.

Security Coordination of security identification and other related issues.

THE MONITORING PROGRAM:

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the CDA. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

THE PRE-MONITORING PROCESS:

After a prospective concession is selected by CDA there are five stages that precede the commencement of the Monitoring Program.

STAGE 1 - CITY COUNCIL APPROVAL

Upon completing lease negotiations with the concessionaire, CDA forwards the lease agreement ("Agreement"), signed by the Tenant, to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council. City Council sends the Agreement to the Aviation Committee for review. The Aviation Committee approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

STAGE 2 - LEASE AGREEMENT

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the CDA and the CMR Office. The Managing Deputy Commissioner of Concessions will oversee the processing of the Lease Agreement as well the Monitoring Program.

STAGE 3 - DESIGN APPROVAL

All concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit. The Planning and Architecture departments will review the concept, and if the approval is given, a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the CDA requirements and aesthetic appeal. Upon providing approval of the 100% plans, Architecture will send a letter to the concessionaire giving authority to apply to the City Buildings Department for building permits. In no case may construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the CMR for the purpose of providing the concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

Following the operations meeting, the CMR will schedule a pre-construction meeting with CDA. Prior to the meeting, the General Contractor for the project will submit all documents, permits and approvals to CDA for review. Construction may begin following approval at the pre-construction meeting.

STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the CMR during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in the Agreement.

KEY ELEMENTS OF THE MONITORING PROGRAM:

The Concessions Monitoring Program consists of three primary elements: operations reviews, audits and pricing reports. Operations reviews will be conducted on an ongoing basis by the CMR. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Financial and compliance audits will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

As specified in the Agreement, each concession shall submit an annual pricing report.

PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the CMR. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the CMR Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

FINANCIAL AUDITS

In accordance with the provisions of the standard Concession Lease Agreement, CDA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

COMPLIANCE AUDITS

On a regular basis, the CDA will review compliance with insurance coverage, financial commitments and financial reporting requirements. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation. Additionally, compliance with ACDBE Special Conditions will be audited.

SECRET SHOPPING

The CDA, from time to time, may hire an outside contractor to perform "secret shopping" and evaluate employee performance of each concession location. Such reviews shall be used to monitor customer service and cash handling procedures among other things.

SUMMARY:

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

APPENDIX 1

PHYSICAL INSPECTION STANDARDS:

FACILITY MAINTENANCE STANDARDS

ITEMS:

- Overall appearance
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control
- Pest control

STANDARD:

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

ACTION:

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
 - Report any damage to the premises to CDA and your insurance company (if applicable)
 - immediately.

ITEMS:

- Lease line maintenance
- "Pop-out" areas

STANDARD:

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only CDA approved fixtures may be placed in the pop-out area (if so designated in the Agreement) at the front of the space.

ACTION:

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved merchandising and fixtures.
- Obtain written approval from CDA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

ITEMS:

- Altering of layout
- Renovations/construction
- Signage/advertising

STANDARD:

Written approval, prior to action, by the Commissioner of Aviation.

ACTION:

- Consider areas for improving the concession location either from layout changes or renovation.
- Submit requested changes for approval with appropriate drawings, etc., to the CMR prior to initiation of the changes.
- All signs must be professionally produced.
- All signs and sign holders must be kept clean and in good repair.
- All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

ITEMS:

- Properly functioning equipment

STANDARD:

- Preventative maintenance program.
- Ongoing, reliable, licensed source for immediate repairs.

ACTION:

- Have employees' spot check all equipment for possible malfunction..
- Maintain a back-up/alternative plan.
- Repair equipment as soon as possible.

EMPLOYEE STANDARDS

ITEMS:

- Courteous and professional appearance
- Proper dress
- Proper identification including CDA security badge
- Customer Service
- Attend customer service meetings, as offered

STANDARD:

- Employees should be polite and courteous to the traveling public.
- Employees must wear clean and neat uniforms or approved attire.
- Employees must not eat while on duty.
- Employees must display a CDA issued security badge in addition to any other employee identification. Only badged employees may work in the secured portion of the airport.

Employees must be familiar with the Merchant Handbook.

Employees are to offer general public services:

- Making change
- Giving directions

ACTION:

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and available services.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain CDA security badges for all employees.

Supply employees with a company policies and procedures manual so that they know what is expected of them.

ITEMS:

Sanitary handling of foods/beverages

Proper cleaning and maintenance of food areas

STANDARD:

Employees must handle food in a safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

ACTION:

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

A Certified Food Manager must be on-site during food preparation.

A Safe Food Handling Certificate must be posted.

PRODUCT STANDARDS

ITEMS:

Selling of authorized products only

Adequate inventory level

Proper/professional approved signage

Merchandising

Product pricing

STANDARD:

Only authorized products can be sold as determined in the Lease Agreement.
Only use professionally produced or printed signage as approved by CDA.
Merchandising permitted only within the confines of the locations, unless as authorized in writing, by CDA.
Must adhere to Value Pricing as provided in the Lease Agreement.

ACTION:

Use professionally produced, approved signage only.
Consider innovative ways to merchandise your products/services.
Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.
Maintain adequate inventory levels.
Notify the Department when adding, deleting or changing merchandise or changing prices.
Maintain pricing as provided in the Lease Agreement.

AUXILIARY SPACE STANDARDS

ITEM:

Storage Area
Corridors, common areas
Pick-up, delivery and disposal

STANDARD:

Safe use of storage space.
Proper storage of potentially flammable items in accordance with fire codes.
Provide adequate ingress and egress within storage space.
Clear aisles and corridors.
Pick-ups and deliveries during designated hours at designated locations as determined by CDA.
Refuse disposal during designated hours at designated locations as determined by CDA.

ACTION:

Use storage space wisely.
Maintain a system providing for access by authorized personnel only.
Report any tampering with or malfunctioning of security locks, gates, etc.
Keep corridors and common areas free of debris, trash, carts and stock.
Provide pest control service on a regular basis.
Refrain from using luggage carts for deliveries.
Dispose of refuse during designated hours.

APPENDIX 2

CONCESSIONS INSPECTIONS ARE DOCUMENTED USING THE CHICAGO DEPARTMENT
OF AVIATION'S AIRPORTWARE RETAIL MANAGEMENT SYSTEM FOR AIRPORTS

F&B Storage

Dishwashing Area

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Documents/Logs

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

Equipment

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

Exterior

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

Interior

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

Merchandise/Product

Are Merchandise/Product Levels Adequate?

Pest Control

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

Safe Food Handling

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

Safety Requirements

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

Sinks/Plumbing/Drains

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water? .

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

Staff

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone? .

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

Monthly F&B

Dishwashing Area

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Documents/Logs

Are Maintenance Audits Posted and Filled Out?

Are Prices Prominently Marked or Signed?

Is the Business License on-site?

Is the Food Handlers' Certificate Log on-site?

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Health Department Inspection Report Posted?

Is the Pest Control Log on-site?

Equipment

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Are Soda and Condiment Stations Clean and Maintained?

- Needs detail cleaning

Is Cash Register Clean and Maintained?

Is Grill/Cook Line Equipment Clean?

- Equipment needs detail cleaning

Is Ice Machine Clean and in Good Repair?

- Leaking/needs repair
- Mold

Exterior

Are Blade, Facia, and Sign Holders in Good Condition?

Are Hours of Operation Posted?

Are Signs/Items Infringing on Corridor?

Is Façade Clean and Maintained?

Is the Exterior in Good Condition?

Interior

Are Ceilings/Walls/Floors Clean and Maintained?

Are Counters Clean and Maintained?

Are Fixtures and Furniture Clean and Maintained?

Are Light Fixtures and Lights Clean and Maintained?

Are Supplies/Product Raised off the Floor?

Are Trash Receptacles Clean and Maintained?

Is Bar Area Clean and Maintained?

Is Cash Wrap Clean, Free of Debris, and Maintained?

Is Front of House/Dining Area Clean and Maintained?

Is there Adequate Circulation Space for Passenger Traffic?

Merchandise/Product

Are Merchandise/Product Levels Adequate?

Pest Control

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

Safe Food Handling

Does all Food Appear to be Fresh?

Is Safe Food Handling Practiced?

- Food Product
- Personal

Is the Food Service Manager on-site?

Safety Requirements

Are CO2 Tanks Secured?

Are Cleaning Supplies Segregated from Merchandise/Product?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

Sinks/Plumbing/Drains

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Are Sinks draining properly?

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
- Clean Grease and debris around grease trap
- Grease trap needs cleaning
- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash.area
- Standing water in dishwash.area

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water

-Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

Staff

Are All Sales Being Rung Appropriately?

Are Cash Handling Employees working in the Food Prep Area?

Are Employee IDs Visible Above the Waist?

Are Employees Courteous, Informed, and Greeting Customers?

Are Employees Eating or on the Phone?

Are Employees Wearing Appropriate Attire?

Are Off-Shift Staff Affecting On-Shift Staff?

Retail

Documents/Logs

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
 - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

Equipment

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
 - Cooler needs repair
 - External Temp-gauges not working
 - Freezer needs repair
 - Inside of Cooler/Refrigerator/Freezer needs cleaning
 - Outside Doors of Refrigerator/Freezer needs cleaning
 - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

Exterior

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

Interior

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

Merchandise/Product

- Are Merchandise/Product Levels Adequate?

Pest Control

- Is there Pest Evidence?
 - Flies
 - Mice
 - Mouse Droppings
 - Roach Droppings
 - Roaches

Safety Requirements

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

Staff

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

Retail Storage

Documents/Logs

- Are Maintenance Audits Posted and Filled Out?
- Are Prices Prominently Marked or Signed?
- Is the Business License on-site?
- Is the Food Temp Log on-site?
 - Food Temps have not been taken/Temps okay
- Is the Pest Control Log on-site?

Equipment

- Are Refrigerator/Freezer Temps Okay and in Good Repair?
 - Cooler needs repair
 - External Temp gauges not working
 - Freezer needs repair
 - Inside of Cooler/Refrigerator/Freezer needs cleaning
 - Outside Doors of Refrigerator/Freezer needs cleaning
 - Refrigerator needs repair
- Is Cash Register Clean and Maintained?

Exterior

- Are Blade, Facia, and Sign Holders in Good Condition?
- Are Hours of Operation Posted?
- Are Signs/Items Infringing on Corridor?
- Is Façade Clean and Maintained?

Interior

- Are Ceilings/Walls/Floors Clean and Maintained?
- Are Counters Clean and Maintained?
- Are Fixtures and Furniture Clean and Maintained?
- Are Light Fixtures and Lights Clean and Maintained?
- Are Supplies/Product Raised off the Floor?
- Are Trash Receptacles Clean and Maintained?
- Is Cash Wrap Clean, Free of Debris, and Maintained?
- Is Front of House/Dining Area Clean and Maintained?
- Is there Adequate Circulation Space for Passenger Traffic?

Merchandise/Product

- Are Merchandise/Product Levels Adequate?

Pest Control

- Is there Pest Evidence?
 - Flies
 - Mice
 - Mouse Droppings
 - Roach Droppings
 - Roaches

Safety Requirements

- Are Cleaning Supplies Segregated from Merchandise/Product?
- Are Exit Sign in Good Condition?
- Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

Staff

- Are Employee IDs Visible Above the Waist?
- Are Employees Courteous, Informed, and Greeting Customers?
- Are Employees Eating or on the Phone?
- Are Employees Wearing Appropriate Attire?

Weekly F&B

Dishwashing Area

Is Dishwashing Area Dry and Clean?

- Debris on floor in dishwash area
- Standing water in dishwash area

Documents/Logs

Is the Food Temp Log on-site?

- Food Temps have not been taken/Temps okay

Is the Pest Control Log on-site?

Equipment

Are Refrigerator/Freezer Temps Okay and in Good Repair?

- Cooler needs repair
- External Temp gauges not working
- Freezer needs repair
- Inside of Cooler/Refrigerator/Freezer needs cleaning
- Outside Doors of Refrigerator/Freezer needs cleaning
- Refrigerator needs repair

Interior

Are Ceilings/Walls/Floors Clean and Maintained?

Is Bar Area Clean and Maintained?

Pest Control

Is there Pest Evidence?

- Flies
- Mice
- Mouse Droppings
- Roach Droppings
- Roaches

Safe Food Handling

Is the Food Service Manager on-site?

Safety Requirements

Are CO2 Tanks Secured?

Are Exit Sign in Good Condition?

Is Fire Safety Equipment tagged, marked, and unobstructed? (Fire Extinguisher, Ansul System, Sprinkler, Egress, Electrical)

Sinks/Plumbing/Drains

Are Floor Drains clean?

- Drains need cleaning
- Drains need cover/screen

Hot Water?

Is 3 Compartment Sink working properly?

- 3-Comp. Sink not draining properly
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- Grease trap needs to be sealed
- Leaking/needs to be sealed
- Standing water

Is Hand Sink working properly?

- Hand Sink not draining properly
- Leaking/needs to be sealed
- Standing water
- Water is not reaching Temp (110)

Is Mop Sink working properly?

- Leaking/needs to be sealed
- Mop Sink not draining properly
- Mops not hung properly
- Standing water

APPENDIX 3

FINANCIAL AUDIT STANDARDS:

In accordance with the provisions of most Concession Lease Agreements, CDA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

Lease Fees

Each concessionaire shall submit the rent and fees in accordance with its Agreement.

Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City.
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting principles.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Agreement.

Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Agreement:

- Worker's Compensation
- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of the Agreement.

APPENDIX 4

CONCESSIONS OPERATING STANDARDS:

General Airport Guidelines

The following guidelines are examples of the types of issues that will be reviewed with the City's CMR, who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by CDA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Agreement.
- Proper and improper use of signage.

Laws and Ordinances

- CDA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation at the Airport.
- Permits and Leases necessary for the operation of the concession areas must be obtained prior to the first day of operation, and renewed annually as needed.

Default Notices

The CDA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with the Agreement.

APPENDIX 5

KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Castalia Serna Deputy Commissioner of Concessions	(773) 894-3059
Glen Ryniewski Assistant Commissioner of Concessions	(773) 686-3730
Drew Homyk Projects Administrator / MDW	(773) 838-3992
Horatio Watson Projects Administrator	(773) 894-3321
Marc Wright Projects Administrator	(773) 894-5422
Russell Johnson Projects Administrator	(773) 686-4899
Michael Stein Projects Administrator	(312) 489-9080

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APPENDIX 6

KEY CONCESSION MANAGEMENT REPRESENTATIVE (CMR) PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Joseph Crump Managing Director	(773) 894-3905 (773) 307-9339 (cell)
Yolanda Woodruff Director of Retail Operations	(773) 894-5463 (773) 844-0821 (cell)
Dorine Litman Property Manager / ORD	(773) 894-3908 (773) 671-3908 (cell)
Patricia Grzyb Property Manager / MDW	(773) 838-0733 (312) 907-8820 (cell)
Sungjin Choi Construction and Design Manager	(773) 686-7606 (312) 301-1043 (cell)

APPENDIX 7

RULES AND REGULATIONS:

Lessee shall, at all times during the term of the Lease Agreement:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner. Keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed. Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises, without the prior written consent of the Commissioner.
7. Not use helium balloons and blinking lights.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or her designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or her designated representative. Handwritten signs of any kind are not permitted. Signage or other materials may not be taped to windows.
12. Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.
13. Keep all mechanical apparatus in good working order and free of vibration and noise.

14. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
15. Not use show windows on the Premises for any purpose other than display of merchandise for sale. Merchandise must be kept in a neat, professional and attractive manner.
16. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
17. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
18. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
19. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
20. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
21. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the CMR for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment, or any other physical portion of the Premises or project.

22. Keep from public view all personal property, cups, papers, cleaning and other supplies.
23. Not permit employees to eat, drink or sleep in public view.
24. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.

25. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
26. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
27. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
28. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
29. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
30. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
31. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
32. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post the Plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees. Train all employees regarding Lessee's Emergency Evacuation Plan and other emergency procedures.
33. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on Airport property or in its parking areas.
34. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City. Parking stickers or other forms of identification, if any, supplied by the City, shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for

damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

35. Follow all ID Badging procedures as may be required by the Commissioner or her designated representative.
36. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or her designated party.
37. Not use luggage carts for product deliveries.
38. Use only delivery carts and equipment as approved by the Commissioner or her designated party.
39. Use only designated elevators for deliveries.
40. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
41. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
42. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

Exhibit 11
Liquidated Damages

EXHIBIT 11 LIQUIDATED DAMAGES

Licensee acknowledges the City's objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, the City has established liquidated damages and not penalties, as set forth in the table below, that it may assess, in its reasonable discretion, for various violations of the provisions of this Agreement, the Airport Concession Program Handbook, and/or City Rules and Regulations. Licensee and the City agree that the fines set forth herein are reasonable, and Licensee further agrees to pay to the City in accordance with amounts specified herein upon each occurrence of the specified violation and upon written demand by the City.

Notwithstanding any other liquidated damages provisions provided for in this Agreement, the liquidated damages shown on the table below are intended to reflect the inconvenience to the public and adverse effects on the Airport's operation. Written notice of a violation hereunder shall be given by the City to Licensee pursuant to Section 11.7 of the Agreement. Payment of liquidated damages shall not relieve the Concessionaire of responsibility for damage, personal injury, or the harm caused by any of these violations. Licensee further acknowledges that the liquidated damages are not exclusive remedies, and the City may pursue other remedies as allowed for in this Agreement and at law, at the Commissioner's or CMR's sole discretion. The City's waiver of any liquidated damages provided for below shall not be construed as a waiver of the violation or Licensee's obligation to remedy the violation.

1. For the first violation of a requirement during any 12-month rolling year, the City will provide written notice to Licensee to correct the violation within the time specified in the notice, which such time period shall be consistent with any applicable time period proscribed in the Agreement or, if no time period is proscribed, reasonable.
2. For the second and third violation of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the City will provide written notice to Licensee to correct the violation within the time specified in the notice. If not corrected within the specified time period, liquidated damages shall be immediately assessed.
3. Further, after the third violation of the same requirement within any 12-month rolling year, the City reserves the right, in its sole discretion, to deem the repeated violations an Event of Default and to seek any other remedies available to it under this Agreement.

Notwithstanding the foregoing, any act or failure to act by the Licensee which such act or failure to act is an "Infraction" listed in the chart below shall not give rise to liability for liquidated damages hereunder provided that such failure was the direct result of the City's failure to perform an obligation hereunder or an force majeure event as set forth in Section 11.20 of the Agreement.

<u>Infraction</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>
Value Pricing, Article 4.04: Failure to comply with policy referenced	Written Warning	\$250/incident	\$500/incident
Operational Requirements, Article 4.05: Failure to comply with Physical Inspection Standards	Written Warning	\$250/incident	\$500/incident
Hours of Operation, Article 4.07: Failure to operate during minimum required hours of operation	Written Warning	\$250/incident	\$500/incident
Personnel Standards, Article 4.07: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Operation and Maintenance Standards, Article 4.06: Failure to comply with any of the Standards referenced	Written Warning	\$250/incident	\$500/incident
Reports, Article 6.0: Failure to provide sales and related reports.	Written Warning	\$500/incident	\$1,000/incident
Failure to comply with all state, federal, and security rules, regulations, and directives per Article 10.3.	Written Warning	\$500/incident	\$1,000/incident
Failure to accept payment types, Article 4.05: Automated Retail Vending Machine Standards	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to maintain product inventory consistently above 90% as per article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

Failure to refill product inventory when 60% or less within a 24-hour period as per Article 4.03.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to conduct repairs within 48 hours of written notification as per article 4.07.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance
Failure to address customer complaint(s) within 24 hours and receiving more than 6 customer complaints in a one-month period as per Article 4.04.	Written Warning	\$100/day of non-compliance	\$200/day of non-compliance

_____ (Initial Here)

Exhibit 12
Utility Usage Fee

EXHIBIT 12
UTILITY USAGE FEE

The Utility Usage Fee will be billed and payable as Additional Rent on a regular basis to compensate for utilities furnished to the Licensed Space. Unless the Licensee has elected to utilize meters, at Licensee's sole cost, pursuant to Section 4.08, Licensee shall provide the City with the manufacturer's official utility usage specifications upon installation of each automated retail vending machine. Licensee's Utility Usage Fee equals the sum of the estimated utility usage for the relevant billing period of each of Licensee's automated retail vending machines (or the actual metered usage, as applicable) multiplied by the then applicable utility rate. The utility rate is adjusted annually and shall be the rate in use by the energy company supplying service to the Airport on January 1 of each year such Utility Usage Fee is incurred. The City may at any time change and utilize any reasonable alternative method of calculating the Utility Usage Fee and such periodic updates shall not require an amendment to this Agreement.