STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION

WI-FI SYSTEM CONCESSION

HONOLULU INTERNATIONAL AIRPORT
KAHULUI AIRPORT
KONA INTERNATIONAL AIRPORT AT KEAHOLE
LIHU'E AIRPORT
HILO INTERNATIONAL AIRPORT

NOTICE TO PROPOSERS ("NP")

REQUEST FOR PROPOSALS ("RFP")
WI-FI SYSTEM CONCESSION
AT
HONOLULU INTERNATIONAL AIRPORT, KAHULUI AIRPORT,
KONA INTERNATIONAL AIRPORT AT KEAHOLE, LIHU'E AIRPORT,
AND HILO INTERNATIONAL AIRPORT

The State of Hawai'i, Department of Transportation, Airports Division ("DOTA" or "STATE") is seeking proposals from experienced entities interested in operating a Wi-Fi System Concession at DOTA-operated airports in the State of Hawai'i ("Wi-Fi Concession"). Interested persons should have experience in operating Wi-Fi concessions at a commercial airport or other large venue.

The airports owned and operated by the DOTA include the following: Honolulu International Airport (HNL), Hilo International Airport (ITO), Kona International Airport at Keahole (KOA), Kahului Airport (OGG), Lihu'e Airport (LIH), Kapalua-West Maui Airport (JHM), Moloka'i Airport (MKK), Lana'i Airport (LNY), Kalaeloa Airport (JRF), Hana Airport (HNM), Waimea-Kohala Airport (MUE), Port Allen Airport (PAK), Kalaupapa Airport (LUP) and Upolu Airport (UPP). The DOT also operates Dillingham Airfield under a lease from the United States of America. Scheduled passenger air service is provided at HNL, OGG, KOA, LIH, ITO, JHM, LNY, MKK, JRF, HNM and MUE.

The five major Hawai'i airports - HNL, OGG, KOA, LIH, and ITO - will be the focus of the Wi-Fi Concession. In Fiscal Year 2014, the major Hawai'i airports, HNL, OGG, KOA, LIH, and ITO, handled in total 32,240,317 passengers.

This Wi-Fi Concession is issued pursuant to Chapter 102 of the Hawai'i Revised Statutes ("HRS") and Act 141, Session Laws of Hawai'i 2014. The DOTA is seeking to select a Wi-Fi Concessionaire through a four-step process that in general includes the following.

1. All proposers who are interested in providing the Wi-Fi Concession at HNL, OGG, KOA, LIH, and ITO ("Airports") shall submit a Proposal Intent Package.

2. After review of the Proposal Intent Packages, the DOTA will select those proposers who submitted a Proposal Intent Package determined to be reasonably likely to be selected for a contract award ("Prospective Proposers") to submit a Proposal Package for the Airports Wi-Fi Concession Agreement.

3. Following receipt and evaluation of the Proposal Packages from the Prospective Proposers, the DOTA will then enter into direct negotiations with two of the Prospective Proposers, who will then be referred to as "Invited Proposers". Each Invited Proposer with whom the DOTA negotiates with shall be accorded fair and

equal treatment with respect to any opportunity for discussion and revision of Proposal Packages.

4. Through direct negotiations, the DOTA shall select the Invited Proposer who submitted the Proposal Package that is determined to be the most advantageous to the STATE, including the agreement to abide by the DOTA's terms and conditions, and concession fee ("Successful Proposer").

The Concession RFP documents for the Concession will include (1) this Notice to Proposers, (2) Instructions to Proposers, (3) Proposal Intent Package including the Notice of Intention to Propose, (4) Proposal Package, (5) Concession Agreement, (6) Concession Bond form, and (7) all of the attachments thereto ("Wi-Fi Concession Documents"). The Wi-Fi Concession Documents may be examined or purchased at the State's Airports Division, located at Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i, or downloaded at no cost at: http://hidot.hawaii.gov/airports/doing-business/concession-notices (DOTA Website).

The Wi-Fi Concession Documents are subject to revision(s) at any time. Revisions, changes, or amendments to the Wi-Fi Concession Documents will be posted and available for download at the DOTA website.

A pre-proposal conference for the Prospective Proposers described in paragraph 2, above, will be conducted by the State on Tuesday, November 17, 2015, commencing at 9:00 a.m., to familiarize all Prospective Proposers with the nature of the Wi-Fi Concession Documents, including the Concession Agreement, and to preliminarily respond to questions proposers may have. All questions, including those for the pre-proposal conference, must be submitted in writing. However, the STATE will handle a limited number of oral questions at the pre-proposal conference for general information only and with no binding effect on the STATE.

The deadline for submitting all written questions for the pre-proposal conference is 4:30 p.m. Hawaii Standard Time (HST) Friday, November 6, 2015, and the STATE will thereafter provide final written responses to all questions properly submitted by 4:30 p.m. HST on Friday, November 6, 2015.

Persons needing special accommodations at the pre-proposal conference due to disabilities may notify the Department's Airports Division by calling (808) 838-8075, or by writing to the State of Hawai'i, Department of Transportation, Airports Division, c/o Property and Business Development Office, Honolulu International Airport, Inter-Island Terminal, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880, or by facsimile at (808) 838-8753.

All proposers interested in providing the Wi-Fi Concession will be required to fill out and complete a Proposal Intent Package. The Proposal Intent Package includes the following: (1)

Notice of Intent to Propose (Appendix A-Attachment 1); (2) the Qualification Questionnaire (Appendix A, Attachment 2); (3) Tax Clearance Certificates (Appendix A, Attachment 3); and (4) Technical Questionnaire (Appendix A, Attachment 4).

Only parties meeting the minimum qualifications set forth in Section 5 of the Instructions to Proposers should submit a Proposal Intent Package. Meeting the minimum qualifications does not guarantee that any proposer will be invited to submit a Proposal Package.

In order to be considered, the Proposal Intent Package must be submitted in a sealed envelope, by certified mail return receipt requested, by express delivery, or by hand-delivery, and marked "Proposal Intent Package for the Wi-Fi System Concession" to the address below before the deadline of 4:30 p.m. HST, on Friday, October 16, 2015.

State of Hawai'i
Department of Transportation
Airports Division
400 Rodgers Boulevard, Suite 700
Honolulu HI 96819-1880
Telephone (808) 838-8604
Attention: Sidney Hayakawa

Any Proposal Intent Package submitted after the deadline will not be accepted.

The questionnaires included as part of the Proposal Intent Package will be considered confidential and will not be made available for inspection by the general public.

Each Proposal Intent Package will be evaluated by an Evaluation Committee made up senior DOTA officials. The Evaluation Committee shall evaluate the proposers' financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. However, when it appears to the STATE that any proposer is not fully qualified or able to fully perform and complete the terms and conditions of the Concession Agreement, the Proposer's Proposal Intent Package shall be rejected, provided that the State shall afford the proposer an opportunity to be heard. If the STATE is still of the opinion that the proposer is not fully qualified to fully perform and complete the terms and conditions of the Concession Agreement, the STATE may refuse to receive or consider any proposal submitted by such proposer.

Following the evaluation of Proposal Intent Packages, the Evaluation Committee will invite Proposal Packages from proposers that have demonstrated that they possess the requisite competence and experience to fulfill all of the requirements of the Concession Agreement throughout its term ("Prospective Proposers").

No other parties may submit Proposal Packages other than the Prospective Proposers allowed to participate in this process. Meeting the minimum qualifications does not guarantee that a proposer will be invited to submit a proposal.

The Evaluation Committee will then evaluate the Proposal Packages from the Prospective Proposers and determine the two Proposers that are, in the opinion of the Evaluation Committee, most qualified ("Invited Proposers"). These two Invited Proposers will be invited to negotiate with the State to determine which Invited Proposer is best qualified to operate the Concession and enter into the Concession Agreement.

The State of Hawai'i reserves the right to reject any or all Proposal Intent Packages or Proposal Packages, and to waive any defects in any Proposal Intent Package or Proposal Packages in the best interest of the STATE.

FORD N. FUCHIGAMI
Director of Transportation

INSTRUCTIONS TO PROPOSERS ("IP")

Pertaining to the Wi-Fi System Concession
Honolulu International Airport, Kahului Airport, Kona International Airport at Keahole, Lihu'e Airport and Hilo International Airport ("Airports")

1. PURPOSE

Pursuant to Act 141, Session Laws of Hawai'i 2014, the State of Hawai'i, Department of Transportation, Airports Division ("STATE" or "DOTA") is seeking an experienced entity, firm, partnership, corporation, organization, or individual ("person") to install and operate a Wi-Fi System at all of the major airports in the State of Hawai'i Airport System. The major airports include Honolulu International Airport, Kahului Airport, Kona International Airport at Keahole, Lihu'e Airport and Hilo International Airport ("Airports").

Responses are invited from all interested and qualified persons capable of providing high quality Wi-Fi services to passengers, visitors, tenants, employees and the general public from the Airports. A high degree of experience, expertise, competence and management capability will be needed to administer, install, manage, and operate the Wi-Fi Concession.

The Concession will be operated in accordance with the Concession Agreement (Appendix C of the Wi-Fi Concession Documents). Award of the Concession Agreement will require the successful proposer to execute the Concession Agreement and comply with and satisfy all the terms and conditions therein, including, without limitation, improving, furnishing and operating the Concession spaces. The Concession will be operated at all of the Airports.

2. OBTAINING PROPOSAL MATERIALS

Copies of the Wi-Fi Concession Documents, including the Concession Agreement, describing the term and conditions of the Concession, may be examined and/or obtained from the Administrative Office, Airports Division, Honolulu International Airport, Inter-Island Terminal, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819. The Wi-Fi Concession Documents may be purchased upon tender to the State of the nonrefundable sum of $20.00 in United States currency or certified check. The Wi-Fi Concession Documents may also be downloaded without charge from the DOTA Website at:

http://hidot.hawaii.gov/airports/doing-business/concession-notices/

The Wi-Fi Concession Documents are subject to revision at any time prior to the proposal due date. Any revisions, changes, or amendments to the Wi-Fi Concession Documents will be posted and available for download from the DOTA Website address shown above.

The Wi-Fi Concession Documents include the Notice to Proposers, these Instructions to Proposers, the Proposal Intent Package, the Proposal Package, the Concession Agreement, the Concession Bond, and all attachments thereto.

3. SCOPE OF THE CONCESSION

The STATE envisions a public Wi-Fi system available to passengers and visitors that provides free Internet access suitable for web browsing and email application and supported by advertising or sponsorship, and a faster service offered on a fee basis capable of supporting such applications as streaming video.

The free Wi-Fi service must be available to all users offering connect speed of 5 megabits per second (Mbps), and with a free connect time of one hour. The free service must also be renewable for two additional one-hour periods.

The Concessionaire's cost of providing the free service may be offset by revenue earned for each separate log-on from the sale of sponsorships, by advertising revenue on the initial screen after log-in, or by requiring the user to watch a video advertisement of no longer than 30 seconds. No pop-up advertising will be allowed. The Concessionaire may offer one or two additional higher-speed service tiers on a paid basis at speeds and rates generally consistent with those charged at other large hub U.S. airports subject to the approval of the STATE.

The Concessionaire may require users to agree to reasonable terms and conditions, but it may not require users to submit personal information such as email addresses, phone numbers, nationality, passport numbers or any other information, except for the minimum information required to process payments for faster paid tiers of service.

The Concessionaire may provide service to its roaming partners without advertising, provided that a fee for roaming is charged and payable as a Gross Revenue of the Concession (as defined in the Concession Agreement) at rates to be approved by the STATE.

The STATE is considering allowing the Concessionaire to operate a Distributed Antenna System ("DAS") capable of providing improved, seamless wireless voice and data service within the terminal buildings with connectivity to wireless carriers and others through roaming agreements. The STATE is seeking comments on whether to include DAS within the Concession through the Questionnaire required in the Proposal Intent Package as described in Section 4 of this IP.

4. PROPOSAL INTENT PACKAGE: NOTICE OF INTENTION TO PROPOSE, QUALIFICATIONS QUESTIONNAIRE, TAX CLEARANCE CERTIFICATES AND TECHNICAL QUESTIONNAIRE

Proposers who wish to submit a Proposal Intent Package are required by State of Hawai'i statute to submit a fully completed Proposal Intent Package (Appendix A and all attachments). A proposer's failure to submit its fully completed Proposal Intent Package, by the deadline date and time specified in this IP, shall disqualify the proposer from submitting a Proposal Package. The deadline for submission of the Proposal Intent Package may be modified via written notice from the STATE via the DOTA Website.

Any and all questions or requests for clarification concerning the Wi-Fi Concession Documents should be submitted in writing. In particular, all proposers should review carefully the Concession Agreement. The STATE will respond to all questions in writing via the DOTA Website. If changes or modifications to the Wi-Fi Concession Documents are required, such changes will be made by written Addenda and posted on the DOTA Website.

Questions or proposed changes to the form of Concession Agreement must be received prior to the deadline for questions indicated below.

No questions will be accepted after 4 pm Honolulu time on August 24, 2015, which is approximately one week before the deadline for submitting the Proposal Intent Package.

5. MINIMUM QUALIFICATION OF PROPOSERS

The STATE intends to invite proposers that have submitted a Proposal Intent Package determined to be reasonably likely to be selected for a contract award to submit Proposal Packages ("Prospective Proposer"). A Prospective Proposer must, at the time its Proposal Intent Package is submitted, be capable of performing all of the terms and conditions of the Concession Agreement. Before any Prospective Proposer shall be invited to submit a Proposal Package for the Concession, the STATE shall be satisfied that each Prospective Proposer has the financial ability, experience, and competence to satisfactorily perform and complete the terms and conditions of the Concession Agreement.

In order to be invited to submit a Proposal Package, a Proposer must demonstrate through the Proposal Intent Package, that it meets the following minimum qualifications:

a. Have completed a minimum of three (3) design, installations, integrations and implementations of systems for Wi-Fi services in the past five (5) years at commercial airports or other large public venues.

b. Have operated a Wi-Fi system at a commercial airport or other large public venue for at least four of the past five years.

c. Demonstrated that it has the financial capability to finance the installation of the Wi-Fi System in all of the Airports described above.

If a proposer is a joint venture, at least one joint venture partner representing a majority interest in the joint venture must meet the minimum qualifications.

6. EVALUATION COMMITTEE AND PROCESS

After the closing date and time set by the STATE for the submission of Proposal Intent Packages, each Proposal Intent Package will be individually evaluated for the proposer's financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded.

The submitted Proposal Intent Package may contain any additional information considered pertinent by the proposer with respect to its qualifications to propose on and operate the Concession and its proposed method of Concession operation.

The Proposal Intent Packages will be evaluated by an Evaluation Committee, made up senior DOTA officials whose titles are as follows: Property & Business Development Manager, Administrative Services Officer, Operations Branch Officer, and Information Technology Officer.

The Evaluation Committee may, in the Evaluation Committee's discretion, require proposers to submit, under oath and in writing, answers to or clarifications of the information contained in the completed Qualifications Questionnaire (Appendix A – Attachment 2). Whenever it appears to the STATE, from answers to the questionnaire or otherwise, that any proposer is not fully qualified and able to carry out the terms and conditions of the contract that may be awarded, the STATE shall, after affording the prospective proposer an opportunity to be heard, and if the STATE is still of the opinion that the proposer is not fully qualified to carry out the terms and conditions of the contract that may be awarded, refuse to invite it to submit a proposal or consider any proposal offered by the proposer.

All information contained in the Qualifications Questionnaire shall remain confidential as required by Section 102-3, Hawai'i Revised Statutes ("HRS"). Questionnaires submitted by an unsuccessful Proposer shall be returned after the Concession Agreement has been awarded.

Following the evaluation of the Proposal Intent Packages, the Evaluation Committee will invite Proposal Packages from persons that have demonstrated that they possess the requisite competence and experience to fulfill all of the requirements of the Concession Agreement throughout its term ("Prospective Proposers"). Meeting the minimum

qualifications does not guarantee that a prospective proposer will be invited to submit a proposal.

Proposal Packages will be considered only from the Prospective Proposers invited to participate in this process. No other parties may submit Proposal Packages.

7. PRE-PROPOSAL CONFERENCE

A pre-proposal conference to explain the objectives and requirements for the Concession and to preliminarily respond to questions from Prospective Proposers will be held on 8 a.m. HST Tuesday, November 17, 2015 at:

Department of Transportation
Honolulu International Airport
Inter-Island Terminal, Conference Room E
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i
96819-1880

All prospective proposers should attend this conference. However, attendance is not mandatory. Reservations are not necessary but may be made by contacting:

Sidney A. Hayakawa
Administrative Services Officer (AIR-A)
DOT/Airports Division
Office 808-838-8704
Fax: 808-838-8067
Email: sidney.a.hayakawa@hawaii.gov

Any and all questions or requests for clarification concerning the Wi-Fi Concession Documents should be submitted in writing before 4:30 pm HST on November 6, 2015. In particular, prospective proposers should review carefully the Concession Agreement. A limited number of oral questions may be entertained at the pre-proposal conference. The STATE will respond to all questions in writing via the DOT Website. If changes or modifications to the Wi-Fi Concession Documents are required, such changes will be made by written Addenda and posted on the DOTA Website.

Questions or proposed changes to the form of Concession Agreement must be received prior to the deadline for questions indicated below.

No questions will be accepted after 4:30 pm HST on November 6, 2015.

Written questions should be sent in writing via express delivery, fax or email (preferred) to the individual named below. All responses, including the original questions, will be

distributed to all Prospective Proposers via the DOTA Website regardless of whether they attend the pre-proposal conference. Written questions must be submitted to:

Sidney A. Hayakawa
Administrative Services Officer (AIR-A)
DOT/Airports Division
Office 808-838-8704
Fax: 808-838-8067
Email: sidney.a.hayakawa@hawaii.gov

A summary containing all written questions submitted by the deadline for questions, together with the STATE's final written responses, will be made available to Prospective Proposers.

Proposers should not rely on oral representations at any time and only rely on the written STATE responses to questions, which shall be entitled, "The STATE's Response to Written Concession Questions." This shall comprise the STATE's final response to the questions unless the STATE decides to amend or supplement the STATE'S responses.

As a result of the pre-proposal conference or otherwise, changes to the Wi-Fi Concession Documents which are deemed appropriate by the STATE may be made, and notice will be given to prospective proposers before the date schedule for receipt of the Proposal Packages.

The Proposal Package shall consist of: (1) the Proposal content requirements provided by the STATE (Section 18, below), particularly the Proposal forms contained therein (Appendix B); (2) properly completed and executed by the proposers whose signature must be witnessed, acknowledged and notarized in the presence of a notary public, and (3) submitted before the deadline and in the manner and form described in Section 17 of this IP.

Any and all questions or requests for clarification concerning the Wi-Fi Concession Documents should be submitted in writing. In particular, all proposers should review carefully the Concession Agreement. The STATE will respond to all questions in writing via the DOT Website. If changes or modifications to the Wi-Fi Concession Documents are required, such changes will be made by written Addenda and posted on the DOTA Website.

Questions or proposed changes to the form of Concession Agreement must be received prior to the deadline for questions indicated below.

No questions will be accepted after 4:30 pm HST on December 4, 2015, which is approximately three weeks before the deadline for submitting the Proposal Package.

8. SITE VISITS AND QUESTIONS

Persons invited to submit a Proposal Package will be invited to attend the Pre-Proposal Meeting described in Section 7 and offered an opportunity for site visits to the Airports and to

tour the terminal facilities at the sole cost and expense of the Prospective Proposers. The schedule for site visits will be arranged with each of the Prospective Proposers immediately following notification.

Written questions concerning this IP and the Concession Agreement should be sent in writing via express delivery, fax or e-mail or hand-delivered stamped received by the STATE, to the individual named below. The question should indicate the name of the Prospective Proposer, the name of the individual sending the questions, and contact information. All responses, including the original questions, will be distributed collectively to all Prospective Proposers via the DOTA Website through an Addendum to this IP.

Written questions must be submitted to:

Sidney A. Hayakawa
Administrative Services Officer (AIR-A)
DOT/Airports Division
Office 808-838-8704
Fax: 808-838-8067
Email: sidney.a.hayakawa@hawaii.gov

9. INVITED PROPOSERS AND NEGOTIATIONS TO REACH FINAL AGREEMENT

Following the review of the Proposal Packages, the STATE will negotiate with at least two Invited Proposers whose overall Proposal Packages best meet the STATE's objectives as described in this IP. The Evaluation Committee will resolve questions or issues related to the Proposal Packages. Furthermore, the Invited Proposers will be given an opportunity to improve their financial offers; and improve or clarify the technical plans, business plans, or other aspects of the Proposal Packages.

Following its negotiations with the two Invited Proposers, the Evaluation Committee shall forward its recommendation for award of the Concession to the Director of Transportation.

10. REJECTION OF PROPOSALS

The STATE may reject a Proposal Package for any of the following reasons:

a. If it shows any alterations, erasures, or irregularities of any kind or additions not called for;

b. If it is conditional or incomplete;

c. If more than one (1) Proposal is received from an individual, corporation, limited liability Company, partnership, joint venture, or any other legal entity under the same or different names and more than one (l) Proposal remains in the STATE's possession at proposal openings

d. If the proposer (whether an individual, corporation, limited liability company, partnership, joint venture, or other entity (including (l) any entity in which the proposer is an owner and (2) any stockholders, members, partners, or owners of the proposer)) is in arrears in any payment, or in default of any obligation, including taxes and special assessments, owing to the U.S. Internal Revenue Service and/or the State of Hawai'i or any of its political subdivisions (including default as a surety or failure to perform faithfully and diligently any previous lease, license, permit, or any other type of contract with the State of Hawai'i or any of its political subdivisions). A stockholder of a closely-held corporation, a member of a limited liability company, a partner in a partnership or joint venture and an owner of an entity is defined as the holder of at least a ten percent (10%) or more ownership interest in the corporation, limited liability company, partnership, joint venture or entity; or

e. If the proposer fails to submit to the STATE the required Tax Clearance Certificates from the U.S. Internal Revenue Service, the State of Hawai'i Department of Taxation, and the Counties of Hawai'i, Maui, Kaua'i and the City and County of Honolulu, as required by Appendix A, Attachment 3 of the Wi-Fi Concession Documents.

The STATE reserves the right to cancel or reschedule the Concession for any reason whatsoever. The STATE also reserves the right to reject any or all Proposals and waive any defects when, in the opinion of the State's Director of Transportation, such rejection or waiver will be in the best interest of the STATE.

If the Proposer to whom the Concession Agreement was awarded fails to enter into the Concession Agreement and furnish satisfactory security, the STATE may award the Concession Agreement to the responsible proposer who submitted the next highest and best proposal.

11. MINIMUM ALLOWABLE FINANCIAL PROPOSALS

For each year of the Concession Agreement term, the annual Concession Fee shall be the greater of the following:

a. Minimum Annual Guaranteed Fee. The minimum annual guaranteed fee (hereafter the "MAG") for the first year of the term of this Concession Agreement will be as offered by the Proposer on the Proposal Form (Appendix B – Attachment 1). The MAG for each succeeding agreement year shall be 85% of the actual annual fee paid and payable to the STATE (either MAG or percentage) for the preceding year; or

b. Percentage fee. The percentage fee for the term of the Concession Agreement shall be the percentage offered by the Proposer on the Proposal Form (Appendix B – Attachment 1).

The minimum annual guaranteed fee for the first year of the Concession Agreement shall not be less than ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000). The minimum annual guaranteed fee for each subsequent Concession Agreement year shall be 85% of the annual fee paid and payable to the STATE (the greater of the percentage fee or MAG) for the preceding Concession Agreement year.

Space rent will be charged separately for the initially allocated spaces at on a square-foot basis. The annual space rental rates are shown in the Concession Agreement. The space rental rates are subject to adjustment annually.

[Note: Details of rented space will be incorporated following negotiations.]

During the term of this Concession Agreement, the STATE may be constructing improvements to the airport terminal buildings in which a portion of the Concession spaces will be located. As a result of construction projects, the STATE, under the terms of the Concession Agreement may require the Concessionaire to close, consolidate, adjust, and modify its activities to permit the construction to proceed.

12. PROPOSAL DEPOSITS

The required minimum value of the proposal deposit shall be the same as the required minimum proposal deposit set by Section 102-6, HRS. Each Prospective Proposer shall submit a proposal deposit, which shall be in a sum of not less than five percent (5%) of the Minimum Annual Guaranteed Concession Fee for the first year of the Agreement, provided that when the amount proposed exceeds $50,000.00, the proposal deposit shall be a sum not less than $2,500.00 plus two percent (2%) of the proposal amount over $50,000.00. The proposal deposit must be submitted along with the Proposal (Appendix B).

The proposal deposit shall be in the form of legal tender, a surety bond conforming to the requirements of Section 102-6, HRS, or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum equal to that required, payable at sight or unconditionally assigned to the State's Director of Transportation.

If a surety bond is submitted, it shall: (1) be issued in accordance with Section 102-6, HRS; (2) name the State of Hawai'i, by its Director of Transportation, as obligee; (3) be on the Proposal Bond form provided (Appendix B – Attachment 3); (4) be executed by the Proposer as Principal, and by any bonding company listed in the United States Treasury List, as surety;

provided that the bond furnished by any surety listed shall not exceed the bonding capacity rating of that surety on the United States Treasury List; (5) be in a sum equal to that required; and (6) be conditioned upon the Proposer entering into the Concession Agreement and furnishing satisfactory security in the form of the Concession Bond (and other applicable requirements) within ten (10) business days after the proposer has received the Concession Agreement for execution or within such further time as the State's Director of Transportation may allow, in writing, if the Proposer is awarded the Agreement.

13. LATE SUBMISSIONS

It is the responsibility of each and every Proposer to ensure that the following are completed and submitted to the STATE by the stated applicable deadlines:

a. Final Written Concession Questions;
b. Proposal Intent Package
c. Proposal Package, including the Proposal Bond.

The STATE assumes no responsibility or liability for any Proposer's lateness in the submission of the (a) Final Written Concession Questions; (b) Proposal Intent Package; or (c) Proposal Package including the Proposal Bond to the State due to mail or other delivery service delays. If any or all of the foregoing required items is/are received by the State after the stated applicable deadline(s), it/they will not be considered and will be returned to the proposer without opening in accordance with Section 102-5, Hawai'i Revised Statutes ("HRS").

The STATE will not assume any responsibility or liability if the submission of the Proposer's Proposal Intent Package or Proposal Package is delayed beyond the specified deadline date and time. Any and all Proposal Intent Packages or Proposal Packages received by the State after the specified deadline date and time for submission of the same will not be considered, and will be returned (without opening) to each and every Proposer.

14. WITHDRAWAL OR MODIFICATION OF PROPOSAL INTENT PACKAGE, PROPOSAL PACKAGE AND PROPOSAL BOND

The Proposal Intent Package, or any part thereof, or the Proposal Package, in its entirety may be withdrawn by written notice by way of telegram or mailgram or certified letter which must be received by the STATE prior to the applicable dates and times stated herein for submission of the Proposal Intent Package and the Proposal Package, respectively. A substitute submittal of all or a part of the Proposal Intent Package or the Proposal Package will be accepted by the STATE so long as a written request to withdraw the previous Proposal Intent Package or Proposal Package, or part thereof, is received simultaneously with or prior to the substitute Proposal Intent Package or Proposal Package or part thereof and the substitute Proposal Intent Package or Proposal Package or part thereof is received prior to the applicable date and time deadline for submission of the Proposal Intent Packages or Proposal Packages.

A substitute submittal of the entire Proposal Package, in its entirety, will be accepted by the STATE so long as a written request to withdraw the previous Proposal Package is received simultaneously with or prior to the substitute Proposal Package and the substitute Proposal Package is received prior to the applicable date and time deadline for submission of the Proposal Packages.

Errata sheets for the Proposal Intent Package or Proposal Package may be submitted prior to the applicable date and time deadlines for submission of the Proposal Intent Package so long as the total of all corrections to a submittal does not exceed two typed 8.5" by 11" pages. Changes requiring more than two such pages require withdrawal of the Proposal Intent Package or Proposal Package and the subsequent submission of a substitute Proposal Intent Package or Proposal Package. This subsequent submission of a substitute Proposal Intent Package or Proposal Package must be: (1) received by the State prior to the applicable date and time deadline for submitting the Proposal Intent Packages and (2) submitted in a sealed envelope and properly marked as required for the Proposal Intent Package or Proposal Package and each page must clearly be labeled "Substitute Submittal #1" or "Substitute Submittal#2" as applicable.

15. CONCESSION IMPROVEMENTS – MINIMUM INVESTEMENT

The Concession Agreement contains specific terms and conditions regarding Concession Improvements, requirements, and schedules.

The Concessionaire shall be required to commit to investing a minimum amount in designing, procuring, installing and constructing the Wi-Fi System at each of the Airports, based on the capital improvement commitment included in its Proposal. The Concession Agreement shall be modified to include the minimum investment offered by the successful proposer as well as the specifications and technical attributes of its proposed installation.

16. FACILITY IMPROVEMENTS, EQUIPMENT INSTALLATION AND CONSTRUCTION

The successful proposer will be required to submit to the STATE the proposer's Improvements, as defined in the Concession Agreement, for the Premises for the STATE's prior written approval.

These plans and programs (Improvement Plan and construction schedules) will be due fifty (50) calendar days, or sooner, after the proposer receives written notice of award of the Concession Agreement regardless of whether the Concession Agreement has been signed by that time. Separate plans and programs will be required for each of the Airports.

17. PROPOSAL PACKAGE DUE DATE AND TIME

Prospective Proposers must provide one original and five (5) printed copies of the Prospective Proposer's written Proposal Package which shall describe in detail, how and what the Proposer intends to offer; and a description of how the Proposer intends to operate, manage, administer and maintain the Concession, and satisfy all of the covenants, terms and conditions contained in the form of Concession Agreement (Appendix C). One unofficial but complete electronic copy of the Proposal Package in PDF form must also be submitted with the printed Proposal Package on a CD, DVD, or thumb drive. Only the original signed written proposal shall constitute the Proposer's Proposal.

All the aforementioned Proposal items must be properly executed and notarized by a notary public if called for, addressed and submitted to:

Director of Transportation c/o Property and Business Development Staff,
Airports Division,
Department of Transportation
Honolulu International Airport
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i
96819-1880
Telephone (808)-838-8704
Attention: Sidney Hayakawa

Proposals are due at or before December 30, 2015 at 4:00 pm HST.

Each and every Proposal Package must be submitted to the State in a sealed envelope properly marked on the outside as follows:

"Proposal Package for the Operation of Wi-Fi System Concession at Honolulu International Airport, Kahului Airport, Kona International Airport at Keahole, Lihu'e Airport and Hilo International Airport"

18. REQUIRED CONTENT OF THE PROPOSAL PACKAGE

Prospective Proposers are required to submit to the STATE a fully and properly completed Proposal Package as specified below and including the following items in the specific form as shown on the Appendices to this IP:

a. Proposal Form (Appendix B - Attachment 1);

b. Affidavit of Non-Collusion (Appendix B-Attachment 2)

c. Proposal Bond (Appendix B – Attachment 3)

d. Additional Required Contents of Proposals

Additional Required Contents of Proposal Package

Responses to the requests in this section should be full and complete, numbered consecutively, and with all requested information enclosed. Each Prospective Proposer should provide as much information as it feels is necessary to properly convey its ideas, and when applicable, provide any relevant additional information. There are no page limits for any section. However, conciseness and clarity in the written materials are requested. Presentation of complex information or data in tabular form is preferred.

Proposals must consist of the following sections numbered in the sequence shown below. A set of tabs to identify each part of the proposal should be inserted to facilitate quick reference.

a. Cover / Transmittal Letter

The cover letter must include the Proposer's name, address, telephone number, facsimile number, email address, primary contact and any pertinent facts or details of the proposal that the Proposer desires to emphasize, subject to the page limitation.

b. Executive Summary

Proposer must include an executive summary that highlights the features of the Proposal, the strengths of the Proposer and explain the rationale for the specifics included in the Proposal relative to the STATE's objectives.

c. Ownership and Organization

The statements of qualifications and experience submitted with the Proposal Intent Package may be resubmitted.

d. Qualifications and Experience

The statements of qualifications and experience submitted with the Proposal Intent Package may be resubmitted. Any changes or additions should be noted at the beginning of this section.

e. Proposed Services

This section of the Proposer's response to this RFP should provide the State with an understanding of the Wi-Fi services the Proposer will provide to passengers.

The Proposer must provide:

1. Its plan for delivering the required services as described in the Concession Agreement.

2. Its plan to ensure that access to Wi-Fi is intuitive and easily accessible.
3. A description of how advertising or sponsorships will be incorporated into the complimentary Wi-Fi services, and how the Proposer anticipates such advertising or sponsorships working at the Airports.
4. How it will charge work with roaming providers to generate revenue for the Concession.

f. Management and Operations Plan

This section of the Proposer's response to this RFP should provide the State with an understanding of the Proposer's plans to successfully manage and operate the Concession at the Airports.

The Proposer must:

1. Describe the corporate structure accountable for management of the Concession, including an organizational chart, description of management staffing levels, and identification of where management staff will be located.
2. Demonstrate that managers and key personnel to be assigned to the project are experienced and fully qualified to manage and operate the Wi-Fi system of the size and complexity proposed for the Airports. Identify your overall on-site manager. Describe how maintain continuous operation of the System on each island.
3. Describe Proposer's operating standards, policies, and practices.
4. Describe how Proposer will provide, free of charge, 24-hour, 7-day a week customer service to assist users with all service and access needs to the Wi-Fi system, including responding to customer complaints within 24 hours of receiving a complaint and issuing refunds within 48 hours of receiving a complaint or valid request.
5. Describe Proposer's plan for immediately restoring service in the event connectivity is lost due to system failures or network outage.
6. Describe how the Proposer will manage access and collect revenue from higher-speed tiered services customers and track the number of sessions by the Proposer's subscription-based customers and roaming partners, as applicable.
7. How service will be provided to non-English speaking passengers, who are an important element of the Airports' passenger traffic, particularly at Honolulu International Airport.

The Proposer should provide sufficient information to demonstrate the following:

- The Proposer's strategy for meeting changing airport needs including response to changes in airline activity and passenger enplanements.
- The Proposer's response plan in the event of system failures and potential security threats.
- Proposer's plans for using new or emerging technology to continually provide the best Wi-Fi internet access service to customers.
- The ability to effectively and efficiently serve the international community including strategies for the use of multi-lingual platforms.

g. Capital Investment and Technology Plan

This section of the Proposer's response to this RFP should provide the State with an understanding of the Proposer's technology plan, capital investment, and financial commitment to provide the services listed in the previous section <u>for each of the Airports and for all of the Airports in total</u>.

The Proposer must:

1. Describe in detail the technical characteristics of the proposed Wi-Fi installation, and the rationale for the technical solution proposed. The rationale should be supported by examples and comparisons with other airport-based system which the Proposer has installed and operated. Include a rationale for each of the Airports. The descriptions and rationale for the technical solution should be presented for non-technical readers. Provide a schematic plan showing how coverage would be provided at each of the Airports.
2. Identify the square feet of communications room space requested at each airport. Proposers should assume that any special utilities, HVAC or other modifications will be at the Proposer's expense.
3. Identify the total amount of capital investment funding to which the Proposer will commit. Provide details of the Proposer's planned investment including initial installation necessary to achieve required service levels and incremental investment required to maintain these service levels throughout the term of the Concession Agreement.
4. State the sources of funds to upgrade and maintain the Wi-Fi system, including evidencing commitments made from any external funding sources cited in the proposal.
5. Provide a phasing plan and maintenance plan that specifically describes how the proposed improvements will be phased and maintained to ensure continuous service to passengers.

6. Identify potential transition issues and describe how the Proposer will deal with these issues.

h. Financial Capability

The information submitted with the Proposal Intent Package will be used to evaluate financial capability. No additional information is required.

i. Financial Return to the STATE

This section should provide the STATE with the basis of its financial offer and the Proposer's forecasted financial returns to the STATE.

The Proposer must provide five-year projections of Gross Revenues and expenses by source of revenue (i.e., direct sales, advertising/sponsorship, services provided to tenants, concessionaires, etc.) ("Projections") including a forecast of annual payments to the State for each payment source and expected returns and income to the Proposer (assume a commencement date of May 1, 2016). When preparing the five-year Projections, assume 2% annual growth in passengers and 2½ % annual inflation. Any other assumptions made in preparing the Projections should be specified.

The Percentage Fee and the first-year and subsequent Minimum Annual Guarantee used in the projections of Gross Revenues and expenses must precisely track the financial offer shown on the signed Proposal Form (Appendix B – Attachment 1) required in Section 11 above.

The Proposer should provide sufficient information to demonstrate the following:

- How the Proposer will maximize Wi-Fi system usage and therefore revenue to the State.
- The basis for projected results, including a discussion of the degree of confidence in the results demonstrated in the Projection and any benchmark data from other airports where the proposer operates used to support the Projections, including, but not limited to, statistics for Gross Revenues per enplaned passenger.
- Information that will support the forecasted capital expenditure requirement and cost of ongoing operations.
- The rationale for the Proposer's financial offer, and
- How the Proposer's experience at other airports assists the Proposer in enhancing the reliability of the Proposer's five-year Projections.

* * * *

The STATE reserves the right to cancel or reschedule the Proposal deadline for any reason whatsoever. The STATE also reserves the right to extend the deadline for receipt of

Proposals, to reject any or all proposals or to waive any defects when, in the opinion of the State's Director of Transportation, such rejection or waiver will be in the best interest of the STATE. The STATE reserves the right to reject a proposal offering the highest financial return if the proposer is not deemed responsible by the STATE. If the highest and best proposal or any other proposal is rejected, or if the proposer to whom the Concession Agreement was awarded fails to enter into the Concession Agreement and furnish satisfactory security, the State may, at its sole discretion, award the Concession Agreement to the responsible proposer who submitted the next highest and best proposal.

19. AWARD OF CONCESSION, EXECUTION OF CONCESSION AGREEMENT, AND CONCESSION PERFORMANCE BOND

The award of the Concession will be made within ninety (90) days after the Evaluation Committee submits its recommendation of a successful proposer to the Director of Transportation, provided that the award may be delayed for a reasonable additional time period to permit investigation by the STATE into the accuracy and truthfulness of the representations made by the successful Proposer in its Proposal. The STATE reserves the right to reject all Proposals if it is determined by Director in his sole discretion that such rejection is warranted and is in the best interest of the STATE and the general public. The award of the Concession is within the Director's sole discretion and shall be final.

The final Concession Agreement (Appendix C with modifications to incorporate the successful proposal) shall be executed by the successful Proposer, properly notarized by a notary public, and returned, together with a satisfactory Concession Performance Bond in the form of Appendix E, within thirty (30) calendar days after the successful Proposer has received the Concession Agreement for execution, or within such further time as the Director may allow in writing. Failure to execute the Concession Agreement (Appendix C, as modified) and to file an acceptable Concession Performance Bond (Appendix C – Attachment 7), as required, within ten (10) days after the successful Proposer has received the Concession Agreement for execution and proper notarization by a notary public, or within such further time as the Director may allow in writing, shall be just cause for the annulment of the award. If the successful Proposer refuses or fails to execute the Agreement, the STATE may negotiate with the next highest ranked Proposer.

The Concession Performance Bond shall be in the amount equal to three (3) months' minimum monthly guaranteed fee for the appropriate agreement year and shall be maintained in full force and effect by the successful Proposer (hereinafter referred to as the "Concessionaire") at all times from the commencement date of the Concession Agreement until ninety (90) days after the expiration or sooner termination of the Agreement. The Concession Performance Bond shall be maintained at all times in accordance with the provisions of the Concession Agreement.

If the surety or sureties on the bond shall be other than a surety company authorized to do business under the laws of the State of Hawai'i, the provisions of Section 102-12, HRS, shall apply.

If the STATE, in its sole discretion, permits the successful proposer to use one of the Concession Bond sureties who are not properly licensed and authorized to do business under the laws of the State of Hawai'i, such sureties must meet the requirements of all applicable laws, statutes, rules and regulations, particularly Section 102-12, HRS.

The successful proposer shall pay the STATE an administrative fee in the sum of ONE THOUSAND AND NO/100 DOLLARS ($1,000.00) in United States currency or certified check, which fee payment shall be delivered to the STATE, together with the executed and notarized Concession Agreement and satisfactory Concession Bond.

If the STATE receives a properly executed Concession Agreement, satisfactory Concession Bond, and the required administrative fee payment in the sum of ONE THOUSAND AND NO/100 DOLLARS ($1,000.00) within the required time, the Proposal Deposit shall be returned to the successful proposer that is awarded the Concession Agreement. The proposal deposits made by unsuccessful Proposers shall be returned to them after the Concession Agreement has been entered into or if the Concession Agreement is not awarded or entered into, after the determination by the State's Director of Transportation to publish another call for tenders.

20. SCHEDULE

The intended schedule for selecting and awarding the Concession Agreement is shown below, and is subject to change by written addendum to these Instructions to Proposers posted on the DOTA Website.

Wi-Fi Concession Key Dates (all dates are subject to change)	Date
Publication of the Notice to Proposers; Issuance of the Instructions to Proposers	September 15, 2015
Deadline for written questions concerning Wi-Fi Concession Documents & Proposal Intent Package	4:30 p.m. Hawaii Standard Time (HST) September 28, 2015
DOT issues responses to questions via Addendum	October 9, 2015
Deadline for submitting Proposal Intent Package	4:30 p.m. HST October 16, 2015
Evaluation Committee Reviews Proposal Intent Packages	October 17 thru November 2, 2015
Evaluation Committee issues written invitation to Prospective Proposers to submit Proposal Packages	November 3, 2015
Deadline for submitting questions on the Wi-Fi Concession Documents prior to Pre-Proposal Meeting	4:30 p.m. HST November 6, 2015
Pre-Proposal Conference	8 a.m. HST November 17, 2015
Airport site visits for Prospective Proposers	November 17, 2015 HNL walk-thru (after pre-bid) November 18, 2015 OGG and KOA walk-thru November 19, 2015 ITO and LIH walk-thru
Deadline for submittal of final questions concerning proposals, these Instructions to Proposers, and the Concession Agreement	4:30 p.m. HST December 4, 2015
DOT issues responses to questions via addendum	December 21, 2015
Deadline for Submitting Proposal Packages	4:30 p.m. HST December 30, 2015
Evaluation Committee reviews Proposal Packages	December 31, 2015 – January 19, 2016
Evaluation Committee selects Invited Proposers for negotiation	January 19, 2016
Negotiations with Invited Proposers	January 21, 2016
Recommendation to the Director of Transportation	February 4, 2016
Notification of the Successful Proposer Award	February 11, 2016
Execution of the final Concession Agreement	March 14, 2016
Concession begins	May 1, 2016

21. FUTURE/OTHER CONCESSIONS

While the State makes no guarantees regarding possible future actions, proposers should be aware that the State contemplates establishing other concessions or entering into agreements with airlines or others at the Airports that may result in incidental overlap of Wi-Fi services, such as airline CIP/VIP lounges. However, the State will not grant another Wi-Fi Concession to any other party during the term of the Concession Agreement in the terminal buildings at the Airport. It is understood and agreed that the State has no control over the provision of cellular data services from antennas located off of the Airports. There is no warranty expressed or implied that the Concession will not be subject to competition from alternative data services, such as cellular telephone providers, operating from locations not on the Airports.

22. TAXES

The successful proposer shall pay: (l) all applicable taxes levied by the United States Government and the State of Hawai'i based on the revenues derived from the Concessions and (2) real property taxes, if any, levied by the respective counties in which each of the Airports is located.

23. GENERAL INFORMATION

Attachment 1 to the Instructions to Proposers (IP) provides information regarding past passenger activity at the each of the Airports for the years 2007 to 2014.

Attachment 2 to IP provides the Wi-Fi Concession gross receipts for HNL and OGG, the only two Airports where there is currently a Wi-Fi Concession.

These Attachments are for the general information of interested Proposers only, and form no part of the Agreement. The State does not guarantee nor warrant the accuracy of the information contained in the Attachments. Interested Proposers are further advised that the information pertaining to the number of inter-island/overseas passenger arrivals, departures and through, and Concession gross receipts in prior years are representations of historical activity and are not necessarily indicative of future trends or activity levels. Such passenger traffic may be subject to changes in airport activity, construction, or other events which may alter conditions.

Although interested Proposers should acquaint themselves with passenger traffic patterns and conditions existing at the Airport, it should be noted that such patterns or conditions are always subject to change, adjustment or alteration, and therefore, cannot be considered permanent. The successful Proposer selected will not be provided compensation or adjustments to the minimum monthly guaranteed fee owed to the State for the appropriate agreement year should future arriving passenger levels affect the Concession at the Airport.

The State is responsible for providing operational and functional airport facilities and in so doing will seek to provide reasonable and practical routing for passengers and users. Changes to security screening locations, departure gates, and concession areas may be required during the term of this Concession Agreement. Such changes will be made at the sole discretion of the State and will not provide the basis for any claim by the successful proposer for any compensation, rebate or rental adjustment, if passenger, visitor, user, or customer volume, access, or traffic patterns are altered or reduced.

24. OTHER REQUIREMENTS

Each interested Proposer should carefully examine all documents relating to this Concession and judge for itself all the circumstances and conditions affecting its Proposal Intent Package and Proposal Package. Failure on the part of any interested Proposer to make such examination and to investigate thoroughly shall not be grounds for any claim that the Proposer did not understand the conditions of its Proposal Intent Package or Proposal Package. Any and all interested Proposers shall have the burden to notify the Director, in writing, of any ambiguity, inconsistency or conflict in the Wi-Fi Concession Documents. Failure to so notify the Director in writing shall be deemed to be a waiver of that Proposer's right to claim any ambiguity, inconsistency or conflict in the Wi-Fi Concession Documents, including but not limited to the Concession Agreement, prior to the applicable deadlines for submission of the Proposal Packages. Failure to so notify the State's Director of Transportation, in writing, shall be deemed to be a waiver of that Proposer's right to claim any ambiguity, inconsistency, or conflict in the Wi-Fi Concession Documents, including but not limited to the Concession Agreement.

25. ATTACHMENTS TO IP

Attachment 1 – History of Passenger Traffic
Attachment 2 – History of Gross Receipts

26. APPENDICES

A. Proposal Intent Package
Appendix A, Attachment 1 (Notice of Intent to Propose)
Appendix A, Attachment 2 (Qualification Questionnaire)
Appendix A, Attachment 3 (Tax Clearance Certificates)
Appendix A, Attachment 4 (Technical Questionnaire)

B. Proposal Package
Appendix B, Attachment 1 (Proposal Form)
Appendix B, Attachment 2 (Affidavit of Non-Collusion)
Appendix B, Attachment 3 (Proposal Bond)

C. Concession Agreement
Appendix C, Attachment 1 (Terminal Plans)
Appendix C, Attachment 2 (Tenant Improvement Guidelines)
Appendix C, Attachment 3 (Environmental Preservation Guidelines)
Appendix C, Attachment 4 (Development Standards for Leased Airport property)
Appendix C, Attachment 5 (Department of Transportation Assignment of Lease Evaluation Policy)
Appendix C, Attachment 6 (Department of Transportation Sublease Evaluation Policy)
Appendix C, Attachment 7 (Performance Bond; Payment Bond)
Appendix C, Attachment 8 (Concessionaire's Listing of Hazardous Substances)
Appendix C, Attachment 9 (Concessionaire's Listing of Environmental Permits)

D. Concession Bond

ATTACHMENT 1
Passenger Traffic
State of Hawaii, Department of Transportation, Airports Division
(for Fiscal Years ending June 30; numbers in thousands)

	2007	2008	2009	2010	2011	2012	2013	Audited 2014
Enplaned Passengers								
Overseas								
Honolulu International	6,295	6,349	5,560	5,767	5,986	6,112	6,621	6,504
Hilo	36	25		-	3	52	49	26
Kona	467	474	457	468	538	540	570	561
Kahului	1,357	1,517	1,255	1,307	1,538	1,610	1,642	1,637
Lihue	195	343	364	375	417	494	543	545
All Other Airports	-	-		-	-	-	-	-
Interisland								
Honolulu International	4,118	4,030	3,339	3,351	3,176	3,154	3,232	3,196
Hilo	762	747	636	660	621	600	631	619
Kona	1,107	1,090	875	853	813	823	874	854
Kahului	1,615	1,583	1,288	1,280	1,210	1,246	1,389	1,372
Lihue	1,114	1,101	866	846	804	787	816	809
All Other Airports	236	241	202	173	177	175	176	173
Total Enplaned Passengers	17,300	17,501	14,842	15,079	15,282	15,593	16,543	16,295
Enplaned Passengers								
Overseas	8,349	8,709	7,635	7,916	8,482	8,808	9,424	9,273
Interisland	8,951	8,793	7,207	7,163	6,801	6,785	7,119	7,022
Total Enplaned Passengers	17,300	17,501	14,842	15,079	15,282	15,593	16,543	16,295
Growth Rate								
Overseas		4.3%	-12.3%	3.7%	7.1%	3.8%	7.0%	-1.6%
Interisland		-1.8%	-18.0%	-0.6%	-5.1%	-0.2%	4.9%	-1.4%
Total Enplaned Passengers		1.2%	-15.2%	1.6%	1.3%	2.0%	6.1%	-1.5%

ATTACHMENT 2

HISTORY OF GROSS RECEIPTS

HNL

	Internet Kiosks	Wi-Fi	Total
April – March 2009 - 2010	$153,488	$147,375	$300,823
April – March 2010 - 2011	$113,929	$ 98,424	$212,353
April – March 2012 - 2012	$ 95,712	$184,386	$280,098
April – March 2013 - 2014	$ 63,988	$206,147	$270,125
April – March 2014 – 2015	Not Separately Reported		$206,424

OGG

	Internet Kiosks	Wi-Fi	Total
August – March 2011 - 2012	Not Separately Reported		$37,225
April – March 2012 - 2013	Not Separately Reported		$51,509
April – March 2013 - 2014	Not Separately Reported		$52,058
April – March 2014 – 2015	Not Separately Reported		$34,885

APPENDIX A

PROPOSAL INTENT PACKAGE

APPENDIX A – ATTACHMENT 1

NOTICE OF INTENT TO PROPOSE

Date: _____

Director of Transportation
Department of Transportation
c/o Airports Division
Property and Business Development Office
Honolulu International Airport
Inter-lsland Terminal Building
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i 96819-1880

Dear Sir:

You are hereby notified that it is the intent of the undersigned to propose on the Wi-Fi Concession at Honolulu International Airport, Hilo International Airport, Kona International Airport at Keahole, Kahului Airport, and Lihu'e Airport, State of Hawai'i.

Attached hereto are the fully completed Qualification Questionnaire (Appendix A, Attachment 2), Tax Clearance Certificates (Appendix A. Attachment 3), and Technical Questionnaire (Appendix A, Attachment 4).

Very truly yours,

_____
(Name of Firm or Individual)

By_____
(Signature)

Title: _____

_____
(Address)

_____
(City, State, Zip Code)

_____
(Telephone No.)

APPENDIX A, ATTACHMENT 2

QUALIFICATIONS QUESTIONNAIRE

All information requested in the Qualification Questionnaire (Appendix A, Attachment 1) must be furnished by each proposer, and must be submitted with the Proposal Intent Package. Statements must be complete and accurate and in the form requested. Omission, inaccuracy, or misstatement may be cause for finding the proposer not qualified to submit a Proposal for the Wi-Fi Concession.

(NOTE: The Qualification Questionnaire shall be kept confidential in accordance with Section 102-3, Hawai'i Revised Statutes)

1. Provide the name of the proposer exactly as it is to appear on the Concession Agreement:

_____

_____

2. Provide the mailing address and place of business (street address), telephone number, facsimile number and email address of the proposer:

_____

_____

_____

3. The proposer, if selected, intends to carry on the business as (select one):

Individual ( ), Partnership ( ), Joint Venture ( ), Corporation ( ), Limited Liability Company ( ), or Other ( ). If "Other", attach explanation.

4. Provide Federal Identification Number (Federal I.D. No.) and State of Hawai'i Department of Taxation Gross Excise Tax (G.E.T.) License Number for taxation purposes:

Federal I.D. No.: _____

Hawai'i Gross Excise Tax License No.: _____

5. If the proposer is a partnership or joint venture, attach a copy of the partnership agreement or joint venture agreement and answer the following:

A. Name, address, and percentage interest of each partner of the partnership or each member of the joint venture:

Name	Address	Percentage Interest

B. Date of Organization: _____

C. General or Limited Partnership (if applicable): _____

D. Where Recorded: _____
County State Date

E. Registered in Hawai'i: Yes / No

If yes, as of what date: _____

F. If proposer is part of a parent organization or larger partnership or joint venture of any form, provide an organization chart showing Registered Business Entity's position and position of general and limited partners and any other related or controlling entity.

6. If the proposer is a corporation or a limited liability company, answer the following:

A. When incorporated/formed: _____

B. In what state or country: _____

C. Authorized to do business in Hawai'i: Yes / No
If yes, as of what date: _____

D. How is the corporation held?

Publicly ( ) Privately ( ); if publicly held list how and where the corporation's stock is traded: _____

_____

E. Name, address, experience in the business, and shares of stock or membership interests held by the following officers:

Officer	**Name**	**Address**	**Shares of Stock or Membership Interests**	**% of Total**	**Experience in the Business**
President					
Vice President					
Secretary					
Treasurer					
Other					

F. Name, address, and shares of stock or membership interests held by each Member of the Board of Directors or Management Committee:

Name	**Address**	**Shares of Stock or Membership Interests**	**% of Total**

G. Name, address and shares of stock or membership interests held by other "principal" stockholders or members. (A "principal" stockholder or member is defined as a stockholder or member who holds or owns 10% or more of the outstanding stock or membership interests of the corporation or limited liability company, respectively.)

Name	**Address**	**Shares of Stock or Membership Interests**	**% of Total**

Total Capitalization: $_____

Shares of capital stock or membership interests subscribed: _____

Amount paid-in: $_____

H. Is the majority [i.e., more than fifty percent (50%)] ownership of the corporation or limited liability company held by a parent company?

Yes _____ No _____

If yes, please provide the information required by the preceding Items 6.A. through 6.G. for the parent company and the information required by the preceding Items 6.A. through 6.G. for all other majority-owned subsidiaries of the parent and indicate the percentage of ownership for each subsidiary.

I. Does the corporation or limited liability company have any majority-owned [i.e., more than fifty percent (50%) owned] subsidiary companies?

Yes _____ No _____

If yes, please provide the information required by the preceding Items 6.A. through 6.G. for all subsidiary companies and indicate the percentage of ownership in each subsidiary company.

J. If the proposer uses trade names, doing-business-as-names, or other names in its business to identify Registered Business Entity, list the names and connection with each entity or part of its business.

K. If the proposer is part of a parent company or subsidiary of a larger corporate structure or similar sub-entity of a larger organization, provide an organization chart showing the Registered Business Entity's position in the organization.

7. <u>If the proposer is a joint venture, provide all applicable information in response to all questions in the preceding Items 5 and 6 for each joint venture member.</u>

8. <u>Minimum Qualification Criteria</u>:

A proposer, at the time this fully and properly completed Qualification Questionnaire (Appendix A, Attachment 1) is submitted to the State, must be capable of performing all of the covenants, terms and conditions of the Concession Agreement (Appendix C). Before any proposer shall be entitled to submit the subsequent and required Proposal Package (Appendix B and all attachments) for the Concession, the State shall be satisfied with each prospective proposer's financial capability, experience, and competence to satisfactorily perform and complete all of the covenants, terms and conditions of the Concession Agreement (Appendix C).

In order for its proposal to be considered, a Proposer must demonstrate that it meets the Minimum Qualifications established in Section 5 of the Instructions to Proposers.

If a proposer is a joint venture, at least one joint venture partner representing a majority interest in the joint venture must meet the minimum qualifications.

All proposers must provide a detailed narrative of prior qualifying experience(s), duties and responsibilities, and scope of work performed, together with bona fide references to substantiate such qualifying experience(s). A completed Qualification Questionnaire may contain additional information considered pertinent by the intended proposer intended proposer with respect to its qualifications.

9. Summary of Experience:

A. Describe the Proposer's operations history and experience, including, but not limited to, the number of years of experience operating services similar to the opportunity described in the Instructions to Proposers either at a commercial airport or large public venue, or both. Use a tabular format where multiple airports or other venues are cited.

B. List references from airports or venues which the Proposer has provided Wi-Fi services during the past three years. References must include company name, contact person, title, address, telephone number, email address, and a brief statement of the business association. The State, in its sole discretion, reserves the right to request additional references, to contact and verify all references, and to request additional supporting information from the Proposer as the State deems necessary.

C. Demonstrate that the Proposer has the experience and capability to secure on a timely basis the licenses and permits required to provide Wi-Fi concession services at the State's airports.

D. Ownership and operational experience. Each proposer must provide evidence of ownership and operational experience for each of the qualifying years, which evidence must be reasonably satisfactory to the State. Without limiting the generality of the foregoing, each proposer must submit the following items:

(1) Organizational documents. Organizational documents, such as joint venture/partnership agreement, corporate articles/bylaws, share certificates.

(2) Audited financial statements/federal tax returns. A complete set of the entire Audited Financial Statements (Independent Auditor's Report, Balance Sheet, Statement of Revenues, Expenses and Changes to Retained Earnings, Statement of Cash Flows, Notes to the Financial Statements and all Supplementary Information) (hereinafter collectively referred to as the "Audited Financial Statements") of the intended proposer named in this Qualification Questionnaire for the most recent three (3) calendar years or fiscal years of operation. The Audited Financial Statements must be prepared and certified by a licensed independent certified public accountant. The Audited Financial Statements may not be prepared or submitted to the State on a condensed or similar summary basis. For example, the submission of a condensed statement of assets, liabilities, and partners' capital (regardless of

whether the same was submitted as part of a Federal or State tax return filing) will not be sufficient to satisfy the Registered Business Entity's obligation herein to submit Audited Financial Statements. If the proposer has not had Audited Financial Statements prepared for the most recent three (3) calendar or fiscal years, it may submit copies of its US federal tax returns for the three (3) full preceding tax years.

(a) Individual. If the proposer is an individual, submit audited personal financial statements (net worth) in accordance with this Section 9.C.(2).

(b) Proposer recently formed.

1) Proposer itself. If the proposer is a corporation, limited liability company, partnership, or joint venture that was formed within the last three (3) years, the proposer must submit Audited Financial Statements, as prescribed and set forth in the preceding Section 9.C.(2), for each year that the corporation, limited liability company, partnership, or joint venture existed; and

2) Interest holders. The Audited Financial Statements, as required pursuant to the preceding Section 9.C.(2), for the following: prior to the formation of the corporation, limited liability company, partnership, or joint venture, respectively, to assure that a minimum of three (3) consecutive years of audited financial statements are submitted for the Registered Business Entity:

a) For each principal stockholder if the proposer is a corporation (a principal stockholder is defined as a stockholder who owns or holds 10% or more of the outstanding stock of the corporation);

b) For each principal member if the proposer is a limited liability company (a principal member is defined as a member who owns or holds 10% or more of the outstanding membership interests in a limited liability company);

c) For each general partner, managing partner, and partner owning, having, or holding a

10% or more interest in the partnership, if the proposer is a partnership; or,

d) For each member if the proposer is a joint venture.

E. Expert Qualifications and Experience. The proposer must provide a narrative response describing the following:

(1) Experience in the collection of Wi-Fi fees and monetary fiscal and financial controls for collection of fees from other Wi-Fi providers (roaming) and cellular communications providers.

(2) Expertise and experience in the development and implementation of technological applications in collection and reporting systems to ensure that Wi-Fi fees collected and paid to the State are properly and accurately counted in accordance with professional accounting principles and practices.

(3) Expertise and experience in Wi-Fi system design, installation, operation, and management.

F. Prior name. State if the intended proposer has ever operated under another name and/or ownership structure and if so, please identify all such names and describe the ownership structures.

10. References.

A. Non-affiliated businesses. Attach reference letters from at least three non-affiliated business references.

B. Prior landlords. Attach reference letters from previous landlords related to the operation of Wi-Fi services.

11. Other information. List and provide any other information the proposer may consider pertinent.

12. Affirmative Statement of Accuracy. The undersigned proposer represents and warrants to the State as follows: (a) the undersigned person(s) are duly authorized representatives of the proposer; and (b) all information submitted by the proposer in this Qualification Questionnaire and Proposal Intent Package is complete, accurate, and truthful.

NAME OF PROPOSER: _____

By_____ Title_____
Date_____

_____
Print Name

By_____ Title_____
Date_____

_____
Print Name

By_____ Title_____
Date_____

_____
Print Name

By_____ Title_____
Date_____

_____
Print Name

Subscribed and sworn to before me this _____
day of _____, 20___.

Notary Public, _____
State of _____
My Commission Expires: _____

APPENDIX A, ATTACHMENT 3

TAX CLEARANCE CERTIFICATES

The attached State of Hawai'i, Department of Taxation Tax Clearance Application (Form A-6, Rev. 2014) is a sample of the form to be completed by each proposer and submitted to the Hawai'i Department of Taxation for verification that all applicable State taxes and Federal income taxes of the Proposer's entity and all affiliated entities have been paid to the State of Hawai'i and the U.S. Government, respectively. "Affiliated entities" is defined as any entity having more than fifty percent (50%) interest in the proposing any company more than fifty percent (50%) owned by a company having more than fifty percent (50%) interest in the proposing entity and any entity in which the proposing entity has more than fifty percent (50%) interest. Each proposer shall be responsible for obtaining Tax Clearance Certificates from the Hawai'i Department of Taxation for itself and all affiliated entities.

Upon verifying that all applicable State taxes and Federal income taxes owed by the proposer and all affiliated entities have been paid to the State of Hawai'i and the U.S. Government (specifically the U.S. Internal Revenue Service), respectively, the Hawai'i Department of Taxation will issue the required Tax Clearance Certificate(s). The front page of the State of Hawai'i Tax Clearance Application, if properly endorsed with a State approval stamp and an Internal Revenue Service approval stamp, will become the Tax Clearance Certificate.

Further, each proposer shaft also apply for, obtain, and submit a tax clearance certificate issued by the Counties of Hawai'i, Maui, Kaua'i and the City and County of Honolulu, which certificate shall verify that all real property taxes, special assessments or other obligations of the proposer have been paid to the respective county.

All tax clearance certificates must be submitted with the completed Proposal Intent Package, including the Notice of Intention to Propose (Appendix A) and must be dated within three (3) months of the submission date of the Proposal Intent Package.

Clear Form

FORM A-6
(REV. 2014)

STATE OF HAWAII — DEPARTMENT OF TAXATION

TAX CLEARANCE APPLICATION

Form A-6 can be filed electronically. See Instructions.
A tax clearance may be obtained through Hawaii Compliance Express for all state, city, or county government contracts. See Instructions.
(NOTE: References to "married", "unmarried", and "spouse" also means "in a civil union", "not in a civil union", and "civil union partner", respectively.)

FOR OFFICE USE ONLY
BUSINESS START DATE IN HAWAII IF APPLICABLE / /
HAWAII RETURNS FILED IF APPLICABLE 20____ 20____ 20____
STATE APPROVAL STAMP **(Not valid unless stamped)**
*IRS APPROVAL STAMP
CERTIFIED COPY STAMP

1. APPLICANT INFORMATION: (PLEASE TYPE OR PRINT CLEARLY)

Applicant's Name _____

Address _____

City/State/Postal/Zip Code _____

DBA/Trade Name _____

2. TAX IDENTIFICATION NUMBER:

HAWAII TAX ID # W __ __ __ __ __ __ __ __ - __ __

FEDERAL EMPLOYER ID # (FEIN) __ __ - __ __ __ __ __ __ __

SOCIAL SECURITY # (SSN) __ __ __ - __ __ - __ __ __ __

3. APPLICANT IS A/AN: **(MUST CHECK ONE BOX)**

☐ CORPORATION ☐ S CORPORATION ☐ TAX EXEMPT ORGANIZATION
☐ INDIVIDUAL ☐ PARTNERSHIP ☐ ESTATE ☐ TRUST
☐ LIMITED LIABILITY COMPANY ☐ LIMITED LIABILITY PARTNERSHIP
☐ Single Member LLC disregarded as separate from owner; enter owner's FEIN/SSN_____
☐ Subsidiary Corporation; enter parent corporation's name and FEIN_____

4. THE TAX CLEARANCE IS REQUIRED FOR: **(MUST CHECK AT LEAST ONE BOX)**

☐ CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII *
☐ REAL ESTATE LICENSE ☐ CONTRACTOR LICENSE ☐ LIQUOR LICENSE *
☐ FINANCIAL CLOSING ☐ PROGRESS PAYMENT ☐ BULK SALES **
☐ HAWAII STATE RESIDENCY ☐ FEDERAL CONTRACT ☐ PERSONAL
☐ SUBCONTRACT ☐ LOAN
☐ OTHER _____

***** *IRS APPROVAL STAMP IS ONLY REQUIRED FOR PURPOSES INDICATED BY AN ASTERISK.*
****** *ATTACH FORM G-8A, REPORT OF BULK SALE OR TRANSFER*

5. NO. OF CERTIFIED COPIES REQUESTED: ☐

6. SIGNATURE:

SIGNATURE	DATE	TELEPHONE ( ) -	FAX ( ) -
PRINT NAME	PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor		

POWER OF ATTORNEY. If submitted by someone other than a Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, or Executor, a power of attorney (State of Hawaii, Department of Taxation, Form N-848) must be submitted with this application. **If a Tax Clearance is required from the Internal Revenue Service, IRS Form 8821, or IRS Form 2848 is also required.** Applications submitted without proper authorization will be sent to the address of record with the taxing authority. UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.
PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.
SEE PAGE 2 ON REVERSE & SEPARATE INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

FORM A-6
(REV. 2014)

APPLICANT'S NAME FROM PAGE 1 _____

7. **CITY, COUNTY, OR STATE GOVERNMENT CONTRACT:** ☐ Bid/Entering Into or Ongoing Contract ☐ Completion/Final Payment
For completion/final payment of contract, provide the name, agency, and telephone number of the contact person at the State or County Agency.
Name:_____ Agency:_____ Telephone Number:_____
8. **LIQUOR LICENSING:** ☐ Initial ☐ Renewal ☐ Transfer-Seller ☐ Transfer-Buyer ☐ Special Event
9. **CONTRACTOR LICENSING:** ☐ Initial ☐ Renewal
10. **STATE RESIDENCY:** DATE APPLICANT ARRIVED OR RETURNED TO HAWAII _____
11. **ACCOUNTING PERIOD:** ☐ Calendar year ☐ Fiscal year ending (MM/DD) _____
12. **TAX EXEMPT ORGANIZATION:**
A) Provide the Internal Revenue Code Section that applies to your exemption (e.g., 501(c)(3)). _____
B) Does your organization file federal Form 990-T, Exempt Organization Business Income Tax Return? ☐ YES ☐ NO
C) Is your organization required to file federal Form 990, Return of Organization Exempt From Income Tax, or federal Form 990-EZ, Short Form Return of Organization Exempt From Income Tax? ☐ YES ☐ NO
If "YES", your organization is required to obtain a general excise tax license. Go to line 13.
If "NO", go to line 12D.
D) Does your organization have fundraising income? ☐ YES ☐ NO
If "YES", your organization is required to obtain a general excise tax license.
13. **INDIVIDUAL:** Spouse's Name _____ SSN _____
14. **IF YOU DO NOT HAVE A GENERAL EXCISE TAX LICENSE AND REQUIRE A TAX CLEARANCE:**
A) Description of your firm's business_____
B) Has your firm had any business income in Hawaii? ☐ YES ☐ NO
C) Has your firm had an office, inventory, property, employees, or other representatives in the State of Hawaii? ☐ YES ☐ NO
D) Has your firm provided any services within the State of Hawaii (e.g., servicing computers, training sessions, etc.)? ☐ YES ☐ NO
Note: If you answer "Yes" to any of the above questions, you are required to apply for a general excise tax license.

FILING THE APPLICATION FOR TAX CLEARANCE

The completed application may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch. Applications which require an Internal Revenue Service Tax Clearance will be forwarded to the Internal Revenue Service after processing is completed by the Department of Taxation. Allow up to **10 to 15 business days** for processing between the Department of Taxation and the Internal Revenue Service.

State Department of Taxation
TAXPAYER SERVICES BRANCH
P.O. BOX 259
HONOLULU, HI 96809-0259
TELEPHONE NO.: 808-587-4242
TOLL FREE: 1-800-222-3229
FAX NO.: 808-587-1488
or
830 PUNCHBOWL STREET, RM 124
HONOLULU, HI 96813-5094

Internal Revenue Service
WAGE & INVESTMENT DIVISION
-TC M/S H214
FIELD ASSISTANCE GROUP 562
300 ALA MOANA BLVD., #50089
HONOLULU, HI 96850
TELEPHONE NO.: 808-566-2748
FAX NO.: 808-524-5950
or
TAXPAYER ASSISTANCE CENTER
HONOLULU:
300 ALA MOANA BLVD., RM 1-128

Applications are available at Department of Taxation and IRS offices in Hawaii, and may also be requested by calling the Department of Taxation on Oahu at 808-587-4242 or toll-free at 1-800-222-3229. The Tax Clearance Application, Form A-6, can be downloaded from the Department of Taxation's website at **tax.hawaii.gov**

----------FOR OFFICE USE ONLY----------

TYPE OF TAX	TAX RETURNS FILED STATUS	Clerk's Initials
INCOME		
GENERAL EXCISE/USE/ COUNTY SURCHARGE TAX		
HAWAII WITHHOLDING		
TRANSIENT ACCOMMODATIONS		
RENTAL MOTOR/TOUR VEHICLE/ CAR SHARING VEHICLE		
UNEMPLOYMENT INSURANCE		
OTHER TAXES		

ITEMS RECEIVED

APPENDIX A, ATTACHMENT 4

TECHNICAL QUESTIONNAIRE

Provide a narrative response to the following questions regarding your current operations at other airports or public venues. Identify the relevant or applicable airport(s) in your response. Answers to these questions are for information purposes and are not binding on the Proposer.

1. Provide a description of a recent airport or other public venue Wi-Fi installation, including:

   a. Performance and service level standards and the actual achieved performance (speed, reliability, response time, downtime, etc.)

   b. Network monitoring capabilities

   c. Customer technical support and problem resolution.

   d. Reporting and coordination with the airport operator.

2. Describe how adequate coverage is maintained through the terminal buildings or public venues where you currently operate.

3. The State is seeking a two-tier or three-tier system including free, sponsored service suitable for web browsing and email service, and faster paid services capable of supporting large file transfers, applications such as FaceTime or Skype, or streaming video. Provide an example of a current system offering a similar service describe how it works from both the customer and the Concessionaire standpoint.

4. Provide an example of how the Proposer ensures sufficient bandwidth is provided to meet user needs throughout the term of its concession agreement.

5. Describe facilities and terminal space that may be required to support the installation and operation of the Wi-Fi System.

6. Describe other unique attributes and features of your Wi-Fi systems and how these would benefit the Airports, and their passengers and users. Describe the appearance of the System equipment and the power requirements.

7. Describe how the Proposer measures customer satisfaction, and the levels of customer satisfaction achieved at its airport Wi-Fi concessions.

8. Describe how the Proposer supports digital shared services to airport tenants at its other installations.

The State is considering allowing the Wi-Fi Concessionaire to operate an integrated Distributed Antenna System at the Airports.

9. Provide an example of the installation and operation of an integrated Distributed Antenna System, if any, and how the Proposer would work with wireless cellular communication companies and Wi-Fi roaming providers.

10. Based on your experience, if any, do you believe a market for such services may exist at the Airports? Do you recommend that the provision of DAS services be included in the Concession? Please state the reasons why such services should be included and the benefits to the State, users of the Airports, and others, including cellular communications providers.

APPENDIX B

PROPOSAL PACKAGE

APPENDIX B - ATTACHMENT 1

PROPOSAL FORM

Director of Transportation
Department of Transportation c/o
Airports Division
Property and Business Development Staff
Honolulu International Airport
Inter-Island Terminal Building
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i 96819-1880

Dear Sir:

The undersigned, as Proposer, declares that with respect to the Wi-Fi Concession at Honolulu International Airport, Hilo International Airport, Kona International Airport at Keahole, Kahului Airport, and Lihu'e Airport ("Concession"), the Proposer has carefully examined all of the Wi-Fi Concession Documents, including the Concession Agreement.

The Proposer understands and agrees that:

1. In consideration of the rights privileges and obligations provided under the Concession Agreement, Proposer agrees to pay the State for the first contract year of the Concession Agreement a Minimum Annual Guarantee of _____($_____) payable in twelve equal monthly installments of $_____, or, a Percentage Fee of ____% of Gross Revenues, as defined in the form of Concession Agreement, whichever is greater. The Minimum Annual Guarantee will be subject to revision commencing each year of the Concession Agreement term on the anniversary of the effective date of the Concession Agreement to equal 85% of the prior contract year payments to the State.

2. The Director of Transportation has the right to reject any and all Proposals for the Concession, and to waive any defects when, in the Director's opinion, such rejection or waiver will be in the best interest of the State.

3. If the Proposer's Proposal is accepted by the State and the Director of Transportation subsequently awards the Concession Agreement to the Proposer as the qualified and successful Proposer, the Proposer shall

    a. execute the Concession Agreement (Appendix C) in the form provided by the State;

b. have its signature(s) acknowledged and notarized by a Notary Public;

c. return the executed and notarized Concession Agreement (Appendix C) to the State;

d. submit to the State a good and sufficient Concession Bond as required and described in the Instructions to Proposers and the Concession Agreements

e. comply with, fulfill anti satisfy all of the covenants, terms and conditions of the Concession Agreement; and

f. pay to the State during each year of the seven (7)-year term of the Concession Agreement, total annual fee which will be the greater of:

(1) Minimum Annual Guarantee Fee ("MAG"). The minimum annual guaranteed fee for the first year as set forth in the Proposal and as further set forth in the Concession Agreement for each succeeding year, or

(2) Percentage Fee.

(a) First year. For the first year of the term of this Concession Agreement, the percentage of Concession's annual Gross Receipts generated from, related or attributable to, or connected with the provision of Wi-Fi and related services.

(b) Succeeding years. For each succeeding year of the remaining Concession Agreement term, the percentage fee shall be separately determined based on the gross receipts of the Concession in the preceding Concession Agreement year in accordance with Article VI of the Concession Agreement.

FIRST-YEAR MINIMUM ANNUAL GUARANTEED (MAG) FEE	MAG DOLLAR AMOUNT
_____ (Written in Words)	$_____ (in numerals)
_____DOLLARS	
PERCENTAGE FEE	
_____ (Written in Words)	_____% (in numerals, no decimals)

NOTE: THE MAG FEE FOR THE AGREEMENT YEAR SHOULD BE ROUNDED TO THE NEAREST DOLLAR AMOUNT. THE MAG FEE FOR THE FIRST AGREEMENT YEAR SHALL NOT BE LESS THAN ONE HUNDRED FIFTY THOUSAND AND NO/IOO DOLLARS ($150,000.00).

As part of this Proposal, the Proposer submits herewith the following items:

1. Affidavit of Non-Collusion (Appendix B, Attachment 2)

2. Proposal Deposit, referred to in the Instructions to Proposers or Proposal Bond (Appendix B, Attachment 3)

DATED at _____, this ____day of _____, 20__.

Proposer_____

By (sign) _____

(Print) _____

Title _____

NOTE:

1. Signature(s) must be acknowledged accordingly on the form attached hereto.

2. Attach separate sheet evidencing authority of person(s) signing this proposal on behalf of the Proposer, including acknowledgement of signatures by a Notary Public. This may be in the form of the By-Laws duly certified by the Secretary of the corporation, a valid power of attorney duly recorded with the Bureau of Conveyances, etc. The State reserves the right to require that the Proposer submit updated information to evidence the authority of the person executing this Proposal if the State, in its sole discretion, determines that the previously submitted evidence is not sufficiently current.

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20__, before me appeared _____ to me personally known, who being by me duly sworn, did say that _____ is (are) the _____ of _____ and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____ acknowledged said instrument to be the free act and deed of said corporation.

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

Doc. Description: _____
No. of Pages: _____

_____
Notary signature

My Commission Expires: _____

APPENDIX B - ATTACHMENT 2

AFFIDAVIT OF NON-COLLUSION

STATE OF _____)

COUNTY OF _____)

_____ being first duly sworn deposes and says:

That the Proposal filed herewith is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, corporation or entity; that such Proposal is genuine and not collusive or a sham; that said Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not, directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham Proposal, or refrain from submitting a Proposal; that said Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of said Proposer or of any other Proposer, or to fix any overhead, profit, or cost element of such Proposal price or that of any other Proposer, or to secure any advantage against the Department of Transportation of the State of Hawai'i or anyone interested in the proposed Concession Agreement; that all statements contained in such Proposal are true; that said Proposer has not, directly or indirectly, submitted Proposer's Proposal price or any breakdown thereof or the contents thereof, or divulged information or data relative thereto, or paid or agreed to pay, directly or indirectly, any money, or other valuable consideration for assistance or aid rendered or to be rendered in procuring or attempting to procure the Concession Agreement, to any corporation, partnership, company, association, organization, or entity, or to any member or agent thereof, or to any other individual; and further that said Proposer will not pay or agree to pay, directly or indirectly, any money or other valuable consideration to any corporation, partnership, company, association, organization, or entity, or to any member or agent thereof, or to any other individual, for aid or assistance in securing the Concession Agreement in the event the same is awarded to:

_____

(Name of Individual, Partnership, Joint Venture or Corporation)

_____

Further Affiant sayeth not.

DATED at: _____

_____, 20__.

By (sign) _____

(Print) _____

Title _____

Subscribed and sworn to before me
this _____ day of _____, 20__.

_____

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

Doc. Description: _____

_____

No. of Pages: _____

_____
Notary signature

My Commission Expires: _____

APPENDIX B – ATTACHEMENT 3

PROPOSAL BOND

Bond No. _____

(This Proposal Bond, fully executed, may be filed as a deposit in lieu of the deposit of legal tender, or certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or certified check issued by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in accordance with Section 102-6, Hawai'i Revised Statutes.)

KNOW ALL MEN BY THESE PRESENTS: That we, _____ _____, hereinafter referred to as the "Principal," and _____, a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawai'i, as Surety, are held and firmly bound unto the Director of Transportation, State of Hawai'i, and his successors and assigns, hereinafter referred to as the "Obligee," in the sum of _____ DOLLARS ($_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and assigns, as the case may be, jointly and severally, and firmly by these presents.

WHEREAS, the Principal has submitted the accompanying Proposal Package, dated _____, 20_, for a concession agreement with said Obligee to operate the Wi-Fi System Concession (hereinafter referred to as the "Concession") at Honolulu International Airport, Island of O'ahu; Kahului Airport, Island of Maui; Hilo International Airport and Kona International Airport at Keahole, Island of Hawai'i; and Lihu'e Airport, Island of Kaua'i, State of Hawai'i.

NOW, THEREFORE, if the aforesaid Principal shall not withdraw its Proposal for a period of ninety (90) calendar days after the Obligee's deadline date for the submission of Proposal Packages, and if awarded the Concession upon said Proposal Package, shall enter into such Concession Agreement with said Obligee within ten (10) business days after the Principal has received the Concession Agreement for execution and shall contemporaneously therewith or prior to the execution of such Concession Agreement, give to said Obligee the performance security (Concession Bond) in the form and amount as prescribed and set forth in the "Instructions to Proposers" with respect to and forming a part of said Concession Agreement, and in all respects in conformity with such Instructions, then this obligation shall be null and void; otherwise the Principal and Surety shall pay unto the Obligee the sum of _____ _____DOLLARS ($_____), for damages sustained by the Obligee as a result of a failure on the part of the Principal to meet the conditions or any thereof aforesaid.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed at _____, this _____day of _____, 20__.

_____
(Principal)

By_____
Its

_____
(Surety)

By_____
Its Attorney-in-Fact

APPENDIX C
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EXHIBIT A – EXCLUSIVE USE CONCESSION PREMISES AND NON-EXCLUSIVE ASSIGNED AREAS (TERMINAL PLANS)

EXHIBIT B– DESCRIPTION OF THE IMPROVEMENTS [TO COME FROM PROPOSALS]

APPENDIX C

CONCESSION AGREEMENT
FOR THE WI-FI CONCESSION
HONOLULU INTERNATIONAL AIRPORT, KAHULUI AIRPORT,
KONA INTERNATIONAL AIRPORT AT KEAHOLE, LIHU'E AIRPORT,
AND HILO INTERNATIONAL AIRPORT
STATE OF HAWAI'I

This Concession Agreement made this __ day of _____, 2015, by and between the STATE OF HAWAI'I, by its Director of Transportation, hereinafter referred to as the "STATE," and _____, whose business and post office address is _____, hereinafter referred to as the "Concessionaire".

WITNESSETH:

WHEREAS, the STATE, pursuant to Chapters 102, 171, 261, 262, and 263 of the Hawai'i Revised Statutes and Act 141, Session Laws of Hawai'i 2014, is vested with control and jurisdiction over the operation of airports within the State of Hawai'i; and

WHEREAS, pursuant to Act 141, Session Laws of Hawai'i 2014 ("Act 141"), the STATE is authorized to grant the privilege to conduct concession operations involving the provision of electronic communication services at state airports; and

WHEREAS, the STATE desires to enter into this Concession Agreement to make available to air travelers, passengers and visitors at, and customers and users of the Honolulu International Airport, Kahului Airport, Kona International Airport at Keahole, Lihu'e Airport, and Hilo International Airport ("Airports") sponsored free and premium paid Wi-Fi services, which may include the seamless operation of a distributed antenna system to provide enhanced cellular voice and data communications within the terminal buildings at the Airports; and

WHEREAS, the STATE, in accordance with Act 141, issued a request for proposals ("RFP") from companies capable of operating a Wi-Fi concession at the Airports in the State of Hawai'i ("Concession"); and

WHEREAS, proposals were received from qualified proposers, which were carefully analyzed and fully reviewed, and the STATE determined that the proposal submitted by the Concessionaire offered the most advantageous proposal, and provided the best value to the STATE, and as such the STATE awarded this Concession Agreement to operate the Concession ("Concession Agreement") to the Concessionaire; and

WHEREAS, the Concessionaire desires to secure and enter into a Concession Agreement in accordance with the terms and conditions contained herein and undertake to provide adequate facilities and services of the type and character required by the STATE to meet the needs of air travelers, passengers and visitors at, and customers and users of the Airports; and

NOW, THEREFORE, the STATE and the Concessionaire, for and in consideration of the premises, and of the terms, covenants and conditions hereafter contained to be kept and performed by the STATE and the Concessionaire, respectively, DO HEREBY AGREE AS FOLLOWS:

ARTICLE I. DEFINITIONS

Unless the context indicates otherwise, as used herein the term:

A. "Administrator" means the Airports Administrator of the Airports Division, Department of Transportation, State of Hawai'i, or the Administrator's designated representative.

B. "Airports" means collectively Honolulu International Airport, Kahului Airport, Kona International Airport at Keahole, Lihu'e Airport and Hilo International Airport, located in the State of Hawai'i, as shown on Exhibit A, dated September 2015, attached hereto and hereby made a part hereof.

C. "Airport Concession Disadvantaged Business Enterprise" or "ACDBE" means a for-profit small business concern: (1) that is at least fifty-one percent (51%) owned by one or more individuals who are socially and economically disadvantaged, or, in the case of a corporation, an entity in which at least fifty-one percent (51%) of the stock is owned by one or more such individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified by STATE as a Disadvantaged Business Enterprise.

D. "Assigned Areas" means antenna locations, conduits and cable runs, and other places approved for the placement of Concessionaire's equipment.

E. "Concession" means the right, privilege and obligation to operate and maintain a Wi-Fi Concession at the Airports in accordance with the agreements, covenants, promises, provisions, requirements, restrictions, reservations, stipulations, terms, and conditions contained in this Concession Agreement.

F. "Concession RFP Documents" means all of the following: (1) Notice to Proposers, (2) Instructions to Proposer, (3) the Proposal Package, including the Proposal, (4) this Concession Agreement, (5) Concession Bond, (6) Proposal Bond, and (7) all other appropriate attachments.

G. "Concession Fee" means the greater of a fee based on a percentage of Gross Receipts (Percentage Fee), or a minimum annual guaranteed concession fee (MAG).

H. "Concessionaire" means the successful Proposer to whom the Concession is awarded and who enters into a Concession Agreement with STATE.

I. "Concessionaire's Agents" means all of the Concessionaire's directors, officers, employees, subsidiaries, associated companies, servants, contractors, subcontractors of any tier, licensees, sub-licensees of any tier, suppliers, utility service providers, sponsors, advertisers, customers, guests, patrons, and other invitees.

J. "County or Counties" refers individually or collectively to the City and County of Honolulu, Hawai'i County, Kaua'i County, Maui County, all in the State of Hawai'i.

K. "Customs and Border Protection" means the Customs and Border Patrol agency of the Department of Homeland Security.

L. "DAS" shall mean Distributed Antenna System, a network of spatially separated antennas connected to a transport medium – typically coax or fiber-optic cable -- that provides wireless voice and data service within the terminal buildings and connectivity to wireless carriers.

M. "Delinquent Payment" means any payment of rent, service charges, fees or other charges payable by the Concessionaire to the STATE which is not paid when due.

N. "Director" means the Director of Transportation, State of Hawai'i, or his or her duly authorized representative.

O. "DOH" means the State of Hawai'i, Department of Health.

P. "Environmental Laws" mean all federal, state, and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the EPA or DOH.

Q. "EPA" means the U.S. Environmental Protection Agency or its successor agency.

R. "FFE" means and includes, without limitation, any and all of the following: (a) trade fixtures, (b) office and business furnishings, (c) decorations, (d) equipment, (e) signs, (f) furniture, (g) draperies, (h) movable display cases and shelving, (i) movable appliances and drinking fountains, (j) communication (telephone, radio, telegraph) instruments and antenna, conduits and cabling (k) window air conditioning units, (l) portable heaters, and (m) other similar articles or chattels not firmly or permanently affixed to, on or in the Premises, including the improvements thereon, purchased or installed by the Concessionaire.

S. "Gross Revenues" means the definition of Gross Revenues as provided in Article VI, subject to the specific exclusions stated therein.

T. "Hazardous Substance" means any chemical, substance, radioactive material, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may be, or has been determined by state or federal authority under any environmental law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCBs), methane, fuels of any kind, and other materials or materials or substances that are, or may in the future be, regulated by state or federal authorities.

U. "HRS" means Hawai'i Revised Statutes.

V. "IEEE" shall mean the Institute of Electrical and Electronics Engineers, which sets technical standards for wireless communications.

W. "Improvements" means any and all buildings, structures, attachments, fixtures, conduit and cabling, equipment and articles permanently affixed or firmly embedded or fastened to land, buildings or other structures at the Airports.

X. "Land Board" means the Board of Land and Natural Resources of the State of Hawai'i.

Y. " Concession Premises" shall consist of assigned terminal space in the Airports for the exclusive use of the Concessionaire, including equipment rooms, office space, and other exclusive areas, but excluding the Assigned Areas.

Z. "Minimum Annual Guaranteed Concession Fee" or "MAG" means the Minimum Annual Guarantee, as stated in the concessionaire's proposal for the first Concession Agreement year. For each subsequent year of the Concession Agreement, the MAG shall be eighty-five percent (85%) of the Concession Fee that was paid and payable to the STATE in the prior Concession Agreement year.

AA. "Percentage Fee" means the percentage of Gross Receipts payable to the STATE for Wi-Fi services at the Airports.

BB. "Premises" means, collectively, the Concessions Premises and the Assigned Areas.

CC. "Socially and Economically Disadvantaged Individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(1) Any individual who the STATE finds to be a socially and economically disadvantaged individual on a case-by-case basis; or

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indian, Eskimo, Aleut, or Native Hawaiian;

(iv) "Asian-Pacific Americans," which includes persons whose origin are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;

(vi) Women; and,

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective.

DD. "Solicit" means to advertise, ask, implore, plead for; to endeavor to obtain by asking; to importune; to seek actively, though silently; or to try to obtain.

EE. "STATE" means the State of Hawai'i, Department of Transportation, Airports Division, by its Director of Transportation.

FF. "STATE's agents" means the STATE's officers, employees, servants, and authorized representatives.

GG. "Tenant Improvement Guidelines" refers to the manual prepared by the STATE which details specifications and guidelines to be adhered to for all Improvements, additions, and renovations made by the Concessionaire to the Premises, including any subsequent amendments thereto adopted by the STATE from time to time, and which is incorporated herein by reference.

HH. "TSA" means the U.S. Department of Homeland Security, Transportation Security Administration or its successor agency.

II. "VLAN" shall mean Virtual Local Area Network.

JJ. "VPN" shall mean Virtual Private Network.

KK. "Wi-Fi" means wireless networking Internet access technology that allows computers and other devices to communicate over a wireless signal and based on one of the 802.11 standards developed by the IEEE and adopted by the Wi-Fi Alliance. Wi-Fi includes DAS services if so provided in this Concession Agreement.

ARTICLE II. CONCESSION AGREEMENT STANDARDS

A. Foundation. This Concession Agreement sets forth the obligations and privileges of Concessionaire with respect to the operation of the Wi-Fi Concession at the Airports. This Concession Agreement incorporates by reference the Concession RFP Documents. In the event of a conflict among the Concession RFP Documents, this Concession Agreement shall control.

[Note: The Concession Agreement will incorporate the spaces to be used by the Concessionaire (Premises) following the final negotiations.]

ARTICLE III. PREMISES

A. Occupancy Granted. In connection with its obligation to operate the Concession at the Airports, Concessionaire shall, upon the payment of the required fees and charges prescribed and set forth in Article VI (Concession Fee) hereof, and the observance and performance of such further agreements, covenants, promises, provisions, requirements, restrictions, stipulations, terms, and conditions as are hereinafter provided, be granted the exclusive right and privilege to occupy and use, for such Concession purposes, the Premises. The Premises shall consist of Concession Premises and Assigned Areas, as shown on Exhibit A, attached hereto and made a part hereof.

B. Additional Space.

1. STATE's requirement. The STATE may make available to the Concessionaire at the Airports additional Concession Premises and/or Assigned Areas under this Concession Agreement as necessary to operate the Concession therefrom as determined by the STATE in its sole discretion. Changes to the Concession Premises shall require an amendment to this Concession Agreement. Changes to the Assigned Areas will be made by replacing Exhibit A with a new Exhibit A documenting the revised Assigned Areas.

2. Rental Payable. The rent payable for any additional Concession Premises upon which the Concessionaire is required to operate the Concession is set forth in Article VI (Concession Fee).

3. Concessionaire's Request. The Concessionaire may request the use of additional Concession Premises and Assigned Areas at the Airports for operation of the Concession. The STATE may grant or deny the Concessionaire's request, in whole or in part, in the STATE's sole discretion.

4. Agreement Amendment. The Concessionaire shall not use any such additional Concession Premises approved by the STATE unless and until an amendment to this Concession Agreement is signed by the STATE and the Concessionaire and properly approved by the Land Board. The rent for any additional Concession Premises requested by the Concessionaire and approved by the STATE is set forth in Article VI (Concession Fee). Any space added to the Premises after commencement of the Concession Agreement (whether at the request of the STATE or the Concessionaire) under an amendment to the Concession Agreement signed by the STATE and the Concessionaire and approved by the Land Board shall become part of the Premises under this Concession Agreement. Assigned Areas, which excludes the Concession Premises, may be adjusted from time-to-time by substituting Exhibit A with a replacement Exhibit A.

5. Preparation Costs. The Concessionaire shall be solely responsible for all costs and expenses relating to the use and occupancy of any additional spaces including, without limitation, all costs and expenses for readying and preparing such additional space for occupancy, and constructing and installing improvements, including any Concession Improvements and FFE, thereon.

C. Concession Limited to Premises. The Premises will collectively include (1) office space; and (2) a base station and equipment room; and (3) other space . Certain Concession Premises identified may be shared spaces serving multiple Airport functions and therefore not designated exclusively for use by Concessionaire, except as otherwise expressly stated herein.

D. Space Adjustments.

1. Director's Discretion. The specific Concession Premises and Assigned Areas assigned or provided to the Concessionaire to conduct the Concession may be subject to change at the sole discretion of the Director to meet the requirements of the Airports, including, without limitation, airport operations, modification or expansion.

2. No Specific Space Guaranteed. The award of the Concession Agreement and the use of the Premises shall not mean the Concessionaire is guaranteed the right of occupancy or operation from any specific portion of the Premises for the entire term of the Concession Agreement. The STATE shall not be responsible and the Concessionaire shall have

no claim against the STATE, for any costs or expenses incurred by the Concessionaire in relocating from any portion of the Concession Premises or Assigned Areas. At any time during the term of this Concession Agreement, the STATE may, by letter setting forth the reasons, require the Concessionaire to surrender any portion of the Premises. Should the STATE require such surrender, the STATE will use its best efforts to provide the Concessionaire with substantially equivalent substitute space provided, however, that the Concessionaire acknowledges and agrees that there may be a net reduction in the area of the Premises.

3. Changes to the Airports.

a. STATE's right. At any time and from time to time, the STATE may, without the consent of the Concessionaire, and without affecting the Concessionaire's obligations under this Concession Agreement, at the STATE's sole discretion, do the following:

(1) Changes. Change the shape, size, location, number and extent of the Improvements on any portion of the Airports, including, without limitation, the concourses, piers, boarding areas, concession areas and security areas located in the terminal buildings;

(2) Additional stories. Build additional stories above or below buildings and structures at the Airports;

(3) Public entrances. Eliminate or relocate public entrances to the Premises so long as there is at all times one public entrance to the Premises;

(4) Parking. Construct multi-level, elevated or subterranean parking facilities; and

(5) Expansion. Expand, change, alter or contract the Airports, including redefining the boundaries of the Airports so as to include additional lands within the Airports or excluding lands from the Airports or both.

b. No STATE warranties. The Concessionaire acknowledges and agrees that the STATE has made no representations, warranties, or covenants to the Concessionaire regarding the design, construction, repair, renovation, pedestrian traffic or views of or at the Airports, the Premises or location of other services offered to patrons of the Airports. Without limiting the generality of the foregoing, the Concessionaire acknowledges and agrees that (i) the Airports may from time to time hereafter undergo, renovation, construction and modification and (ii) the STATE may from time to time adopt rules and regulations relating to security and other operational concerns that may affect the Concessionaire's operation of the Concession and the volume, flow, and direction of pedestrian or vehicle traffic.

c. Concessionaire's acknowledgment. The Concessionaire acknowledges that such construction, renovation and modification at the Airports might involve

barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions and other inconveniences normally associated with construction, renovation and modification.

d. Concessionaire's release. The Concessionaire hereby releases and discharges the STATE and the STATE's Agents, from any and all claims, demands, causes of action, liabilities, losses, damages, costs and expenses, which the Concessionaire may now or at any time hereafter have against the STATE arising or alleged to arise out of any of the changes to the Airports described in Article III.D.3.a. (STATE's right), Article III.D.3.b. (No STATE warranties), and Article III.D.3.c. (Concessionaire's acknowledgment), including, without limitation, any Airports improvement project and any of the following resulting in changes, alterations, adjustments, amendments or revisions in, of, at or to any portion of the Airports: (1) design or redesign, (2) construction, (3) repair, (4) renovation, (5) removal or demolition, (6) pedestrian or vehicle traffic routing through any part of the Airports, or (7) views, view planes or view corridors of or at the Airports or the Premises.

e. No relief. The Concessionaire shall have no claim for any rebate or adjustment of the Concession Fees including any rebate or relief from any of its minimum guaranteed fee payment obligations under this Concession Agreement except for that set forth in Article VI.J. (Partial Relief from Obligation) and Article VI.K. (Relief due to Economic Emergency) for any change (including decreases in sales revenue and volume) that may arise from or be attributable to any of the changes to the Airports set forth in Article III.D.3.a. (STATE's right), Article III.D.3.b. (No STATE warranties), Article III.D.3.c. (Concessionaire's acknowledgment), and Article III.D.3.d. (Concessionaire's release), including those changes resulting from a significant decrease in the number or volume, flow, or direction of potential customers and other pedestrian traffic by or to the Premises.

ARTICLE IV. CONCESSION TERM

A. Seven-year term. The term of this Concession Agreement shall commence at 12:01 a.m. on _____ [date], 2016 and expire at 12:00 midnight on _____ [date], 2023, unless (1) sooner terminated pursuant to Articles XX (Termination by STATE) or XXIII (Termination by Concessionaire), or (2) extended in accordance with the holdover provisions set forth hereof.

B. Holdover.

1. STATE's decision. The STATE may, but shall not be obligated to, permit the Concessionaire to holdover on or at the Premises beyond the expiration of this Concession Agreement, subject to the terms and conditions set forth herein. In making its decision on whether to permit such a holdover, the STATE shall consider any circumstances impacting thereon, including, without limitation: (1) the benefits and costs to the STATE of permitting such a holdover, (2) conditions under which a delay in placing the Concession out to bid could result

in greater revenue to the STATE, (3) the potential revenue loss resulting from a gap in the provision of the Concession services, (4) renovations of the Airports terminal complexes affecting the Concession, and (5) the potential disruption and adverse impact on the STATE's overall concession program at the Airports. The STATE will notify the Concessionaire in writing of the STATE's offer of a holdover tenancy. Within thirty (30) days of receipt of the STATE's notice, the Concessionaire shall notify the STATE in writing as to the Concessionaire's acceptance of said holdover tenancy. If the Concessionaire fails to so notify the STATE in writing within said thirty (30)-day period, the Concessionaire shall be deemed to have rejected the STATE's offer of holdover tenancy.

2. Holdover time period. The STATE, in its sole discretion, may permit the Concessionaire to hold over and operate from, at and upon the Premises, in accordance with this Article IV (Concession Term), for a period of time not to exceed_____, 2024.

3. Holdover terms.

a. Month-to-month tenancy. If the STATE permits the Concessionaire to holdover on or at the Premises, such a holding over shall not be deemed a renewal or extension of the Concession Agreement, but shall create a month-to-month tenancy on the same terms and conditions of the Concession Agreement in effect immediately prior to the commencement of the holding over (hereafter the "Holdover start"), unless modified as deemed necessary by the STATE. Such modifications may include, but are not limited to, the Concessionaire's obligation to (1) pay to the STATE the rents, fees and charges in effect at the Holdover start, (2) furnish a sufficient Concession bond and adequate insurance coverage in accordance with the terms of the Concession Agreement in effect at the Holdover start, and (3) provide defense, indemnity and liability protection to the STATE as required by the terms of the Concession Agreement in effect at the Holdover start.

b. Modifications. The STATE may upon thirty (30) days prior written notice, after the Holdover start, increase or otherwise amend the rents, charges and fees payable by the Concessionaire to the STATE. The Concessionaire's obligation to furnish a sufficient Concession bond and adequate insurance coverage shall continue and extend no less than one year from the Holdover start and shall be renewed in the same manner, if deemed necessary by the STATE, upon expiration of such one-year period.

ARTICLE V. USE OF PREMISES

A. Authorized Use. Concessionaire shall, in general, have the exclusive right, privilege and obligation to use the Concession Premises and the Assigned Areas for the operation of the Concession for the purpose of providing Wi-Fi services to users of the Airports. Concessionaire shall be granted the exclusive rights to design, develop, and install a single, common, hosted system that supports passenger services, airline operations, and State airports applications, and may include the delivery of a DAS which shall provide reliable, gap-free

coverage and real-time roaming capability for all terminal facilities and properties at the Airports stated herein. The STATE's general objectives for the overall DAS project are to include the following:

1. Improve coverage and capacity for commercial wireless and operational radio systems throughout the Airports facilities.

2. Leverage the value of the Airports' facilities, infrastructures and geographic presence, and maximize potential revenue to the Airports.

3. Allow fair and equal access to the Airports' facilities for all wireless service providers by providing a truly neutral host DAS.

4. Provide an efficient administrative interface for the Airports for all wireless systems.

5. Ensure the interoperability of all wireless communication systems.

6. Minimize radio interference to the maximum extent possible.

7. Manage the system to include all current wireless and data telecommunication standards and to accommodate emerging telecommunication technology standards.

B. Prohibited Acts, Services and Uses. Concessionaire shall not perform any service nor use the Premises, or any portion thereof, for any purpose not enumerated in the preceding Article V.A. (Authorized Use) hereof, or not authorized pursuant thereto.

In addition to the foregoing, the Concessionaire shall not use the Premises or any portion thereof, or permit any of the same to be used by any of the Concessionaire's agents for any of the following:

1. Illegality. For any illegal purpose.

2. Nuisance. To do any act which results or may result in the creation or commission or maintenance of a nuisance on the Premises. The Concessionaire shall also not cause or produce or permit to be caused or produced upon the Premises, or to emanate therefrom, any offensive sounds, or any noxious or objectionable smoke, gases, vapors, or odors.

3. Lodging. For lodging or sleeping purposes.

4. Interference. For anything which may interfere with either the effectiveness of or access to utility systems, air conditioning systems, elevators or escalators (including facilities, structures, lines, equipment, conduits, and appurtenances, connected or appurtenant thereto) in or adjacent to the Premises; or which may interfere with the free access and passage in and to the Premises or public areas adjacent thereto, or in the streets or sidewalks adjoining the Premises; or interference with the use of space and/or rights claimed by any other

concessions or persons doing business at the Airports unless otherwise determined by the STATE in its sole discretion.

5. Overload. To overload any floor on the Premises or place loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways, elevators, or escalators in front of, within or adjacent to the Premises and the terminal buildings in which the Premises are located.

6. Effect on insurance. To do or permit the doing of any act or thing upon the Premises which will either increase the premium rate of, be contrary to, or invalidate any fire, casualty, or liability insurance policies either required herein or carried by the STATE, covering the Premises or the buildings in which the same are located. (The Concessionaire shall, in connection herewith, obey, observe and adhere to any and all present and future rules, regulations, orders and decisions issued by the STATE or any governmental authority pursuant thereto, and the requirements and directions of fire or other underwriters on the applicable policies of the STATE and the Concessionaire, which may pertain or apply to the operation of the Concession upon the Premises.)

7. Vending machines. To install, maintain or operate or permit the installation, maintenance or operation, of any coin, token, or credit card-operated vending machine or device for the purpose of vending or providing any product or service (and for the purposes hereof, amusement or entertainment shall be deemed a service) upon any portion of the Premises or the Airports without the prior written approval of the STATE.

8. Deceptive promotion. To engage in any deceptive promotional, sales or advertising practice which would mislead or otherwise provide any customer with an indication of an opportunity which is not as indicated or which significantly overvalues the service being sold.

9. Promotional medium. Use any advertising or promotional medium that may be seen, heard or otherwise experienced outside the Premises (such as searchlights, barkers or loudspeakers).

10. Handbills. Distribute handbills or circulars to patrons of the Airports or to vehicles in the parking lots of the Airports, or engage in any other advertising in the Airports (except as may specifically be permitted under this Concession Agreement).

11. Recruitment. Engage in any activity on the Airports outside the Premises for the recruitment or solicitation of business.

12. Injury to reputation. Do or permit to be done anything in any way tending to injure the reputation of the STATE or the Airports or the appearance of the Airports. The Concessionaire shall not, without the prior written consent of the STATE, reference the STATE or the Airports for any purpose other than the address of the business to be conducted by the

Concessionaire in the Premises, nor will the Concessionaire do or permit anything in connection with the Concessionaire's business or advertising which in the sole judgment of the STATE may reflect unfavorably on the STATE or the Airports, or confuse or mislead the public as to the relationship between the STATE and the Concessionaire.

13. Alcoholic beverages. Consumption of alcoholic beverages.

C. Exclusive Use of Premises. As long as the Concessionaire is not in default hereunder, the Concessionaire shall have the exclusive right, privilege and obligation to use the Premises described in Article III (Premises), solely for the purpose prescribed and set forth in Article V.A. (Authorized Use), and shall not use the Premises, or any portion thereof, for any other purpose during the term of this Concession Agreement. Any clarification or further determination of the uses allowed under this Concession Agreement shall be at the sole discretion of the STATE.

D. Abandonment and Non-Use of Premises. If the Concessionaire fails to properly use any part or portion of the Premises described in Article III (Premises) for the purpose prescribed and set forth in Article V.A. (Authorized Use), and such failure shall continue for a period of more than thirty (30) consecutive days after delivery by the STATE of a written notice of such abandonment and non-use by personal service, registered mail, or certified mail to the Concessionaire, the Concessionaire shall be deemed to have abandoned that part or portion of the Premises, and the Concessionaire shall return to the STATE, upon demand, such part or portion of the Premises deemed so abandoned, and release and relinquish any and all of the Concessionaire's rights relating thereto, all without any reduction in fees, or any other compensation from the STATE.

ARTICLE VI. CONCESSION FEE

A. Amounts. The Concessionaire shall pay to the STATE, without notice or demand, as and for the use of the Premises and for the privilege of operating the Concession at the Airports, for and during the term of this Concession Agreement, free from any and all claims, deductions, or set offs against the STATE, and at such times and in such manner as hereinafter provided for the term of the Concession, the Concession Fee.

For the Wi-Fi Concession Fee, the Concessionaire shall pay the STATE an annual percentage fee of xx.x% of Gross Revenues, or, a Minimum Annual Guarantee of $_____, whichever is greater. The annual percentage fee shall be applied against the total Gross Revenue for all of the Airports throughout the term of the Concession Agreement. [Note: The percentage fee and the first-year Minimum Annual Guarantee is to be incorporated from the successful Proposal].

After the first year of the Concession Agreement, the Minimum Annual Guarantee shall be adjusted for each subsequent year to equal 85% of the Concessionaire's total payment to the

State in the prior year. The total payments to the State shall be calculated by taking the sum of the previous twelve months MAG or percentage fee payments, whichever is greater.

B. Space Rents. The Concessionaire shall pay space rent for Concession Premises. Such space rent shall be separate from the Concession Fee. Rent shall be applied to each square foot of exclusively leased space according to the STATE's schedule of rents, fees and charges. There shall be no separate charge for the Assigned Areas.

1. Additional space. The Concessionaire shall pay to the STATE, in addition to the Percentage Fee or the Minimum Annual Guarantee, and the space rent for the Concession Premises, the annual sum of the space rents for additional Concession spaces requested by the Concessionaire and approved by the STATE, based on the applicable rental rates set forth in Article VI.B. (Space Rents) above, excluding those additional Concession spaces from or on which the STATE required the Concessionaire to operate the Concession, as prescribed in Article III (Premises) herein.

C. "Gross Revenue" shall mean the total revenues generated by the operation of the Wi-Fi (including the DAS system, if applicable) Concession from all sources and all service categories at the Airports and any derivative thereof performed by Concessionaire, its subcontractors, sub-licensees, subsidiaries, associated companies, or otherwise, regardless of the origin or delivery of the order. This includes revenue from sponsorship, advertising and other indirect sources of revenue, as well as fees paid by passengers, visitors, tenants, wireless carriers, cellular communications providers, or any others for use of the Wi-Fi (including the DAS system, if applicable) system.

1. Exclusions. "Gross Revenues" excludes:

a. Sales taxes. Any and all retail sales taxes, excise taxes, or related direct taxes upon the consumer and collected by the Concessionaire on such sales.

b. Gratuities. Customer gratuities paid or given to the Concessionaire's employees.

c. Uniforms. Gross receipts from uniform or clothing sales (at the Concessionaire's cost) to the Concessionaire's employees where such uniforms or clothing are required to be worn at work by such employees.

2. No Kickbacks. The Concessionaire shall not be credited with nor allowed to have any reduction in the amount of the gross receipts, as hereinabove defined, which results from any arrangements for a rebate, kickback, or hidden credits given or allowed to any customer.

D. Additional Space. If the Concessionaire requests and the STATE agrees to make available additional Concession Premises, the Concessionaire shall pay rental for such additional space as follows:

1. Concession Premises. Rent equal to the square footage of additional space multiplied by the rates and charges applicable to such additional space as set forth in Article VI.B. (Space Rents).

2. Gross receipts. The gross receipts received or realized by the Concessionaire from or otherwise attributable to such additional space shall be included in the percentage fee obligation payable by the Concessionaire to the STATE under the Concession Agreement.

E. Business Practices and Records. In connection with the fee obligation of the Concessionaire, the Concessionaire hereby agrees to the following:

1. Promote business. The Concessionaire shall use its best efforts in every proper manner to maintain, develop, promote, market, and increase the Concession business conducted by the Concessionaire hereunder, as well as propose to the STATE ways to enhance revenues.

2. No diversion. The Concessionaire shall not divert or cause to be diverted, any business which would reduce revenues to the Concession.

3. Storage obligation. The Concessionaire shall prepare and keep during the term of this Concession Agreement and for a period of not less than six (6) years following the end of the final year of the term of this Concession Agreement, including any holdover period, adequate records which shall show all receipts from the Concessionaire's operation of the Concession and daily receipts from all sales and other transactions by or involving the Concessionaire and any other persons conducting Concession business at, upon, or from the Premises and other areas of the Airports. The Concessionaire further agrees to keep in storage on the Island of Oahu, State of Hawai'i, for the entire term of this Concession Agreement and the subsequent six-year time period required herein, all pertinent original sales records, serially numbered sales slips and such other sales records as would normally be examined by a licensed independent certified public accountant pursuant to accepted auditing standards in performing an audit of the Concessionaire's sales and gross receipts.

4. Reports.

a. Monthly report deadline. Submit to the STATE on or before the 20th day of each and every month following each month of the term of this Concession Agreement, including the 20th day of the month following the end of said Agreement term by expiration or sooner termination, at the place fixed for fee payment, a written statement using forms prescribed or approved by the Director, to be certified as correct by the Concessionaire, or

by a person duly authorized by the Concessionaire to so certify, showing in accurate detail the amount of Gross Revenues for the preceding month.

b. Annual report deadline. The Concessionaire shall further submit to the STATE on or before the 60th day following the end of each agreement year during the term of this Concession Agreement, at the place fixed for fee payment, a written statement certified as correct by the Concessionaire, or by a person duly authorized by the Concessionaire to so certify, showing in accurate detail the amount of Gross Revenues during the preceding year at each of the Airports. The audited report shall certify as correct the Gross Revenues broken down into the categories as follows:

(1) Advertising revenue

(2) Premium Tier Wi-Fi service revenue (faster speed)

(3) Distributed Antenna System Revenue, organized by carrier or other service provider (if applicable)

(4) Any other revenue.

Should the Concessionaire fail to provide the written statement certified as correct by the Concessionaire, or by a person duly authorized by the Concessionaire to so certify, showing in accurate detail duly verified by a licensed independent certified public accountant on or before the 60th day following the end of the final year of the Concession Agreement term, the Concessionaire shall be deemed in default and the full face amount of the bond shall be immediately payable to the STATE as liquidated damages.

c. Form and style. The statements referred to herein shall be in such form (e.g., no larger than 11" x 17" in size) and style and contain such details and breakdowns as STATE may require.

d. Technical Reports. The Concessionaire shall provide such technical reports concerning system availability, response time, usage, maintenance performance, for such periods as the State shall determine.

e. STATE's right to prepare. Without prejudice to any remedies herein provided for default, if the Concessionaire shall fail to promptly furnish any such monthly or annual report or licensed independent certified public accountant's annual verification report, STATE may have such report prepared on the Concessionaire's behalf by a licensed independent certified public accountant to be selected by the STATE, at the sole expense of the Concessionaire. The Concessionaire shall furnish to such accountant all records requested for the purpose of preparing such reports, and the Concessionaire shall pay to the STATE all expenses incurred by the STATE in securing such reports.

f. Estimate of gross receipts. The STATE may make assessments upon the Concessionaire by recourse to such procedures selected by the STATE which would produce a reasonable gross receipts expectation upon which percentage fees may be computed. In the event that records have not been prepared and kept in accordance with the provisions set

forth herein, the STATE shall, in addition to all other payments required herein, including any percentage fees based on a reasonable amount of gross receipts estimated by the STATE, be entitled to demand and receive from the Concessionaire an additional payment of ten percent (10%) of the aggregate of: (a) the applicable Minimum Monthly Guaranteed Fee; and (b) the applicable Monthly Percentage Fees.

5. [Reserved.]

6. Audited Financial Statements. A complete set of the Concessionaire's entire detailed Audited Financial Statements, including, without limitation, Independent Auditor's Report, Balance Sheet, Statement of Revenues, Expenses and Changes to Retained Earnings, Statement of Cash Flows, Notes to the Financial Statements, and all Supplementary Information, prepared by a licensed independent certified public accountant is hereinafter collectively referred to as "Concessionaire's financial statements." The STATE may request the Concessionaire submit the Concessionaire's financial statements to the STATE if any of the following events occur:

a. the Concessionaire's request for the STATE's consent to an assignment; or,

b. the Concessionaire's request involves any type or claim of financial hardship or distress or any type of financial relief under the Concession Agreement, such as rent or other type of financial relief; or,

c. the Concessionaire's request for any change to the terms of the Concession Agreement (assuming such change is permissible) which, in the STATE's discretion, may have a significant financial impact on Concession operations; or,

d. the Concessionaire's submission of a financial, or other type of monetary claim under or pursuant to the Concession Agreement; or,

e. the STATE reasonably believes (based on the STATE's written findings) that the submission of Concessionaire's financial statements is necessary to effectively assess and monitor Concession operations.

If the STATE evaluates any claims by the Concessionaire of financial hardship or distress or requests by the Concessionaire for financial relief under the Concession Agreement, the STATE may, if it deems necessary after reviewing Concessionaire's financial statements and any other financial information submitted by the Concessionaire, require the Concessionaire to: (i) post additional security in the form of additional surety bonds; or (ii) increase the amount of the Concession Performance Bond (as defined herein). If the STATE determines that the Concessionaire should provide the STATE with additional security regarding the Concessionaire's ability to fully perform its obligations under the Concession Agreement, the Concessionaire shall provide such additional security, such as separate and additional surety

bonds or a Concession Performance Bond with increased dollar coverage, within five (5) business days after receiving the STATE's written notice.

7. Other reports. In addition to the Concessionaire's financial statements required to be submitted pursuant to Article VI.E.6 (Audited Financial Statements) of the Concession Agreement, the STATE may request and the Concessionaire shall submit to the STATE such other financial and statistical statements, reports, and analyses, to be prepared by a licensed independent certified public accountant (if requested by the STATE), as the STATE may deem necessary and in the STATE's sole discretion, to adequately reflect and explain the Concessionaire's financial position and results, in such form and detail as the STATE may reasonably direct. The Concessionaire's financial statements and such other financial and statistical statements, reports and analysis as the Concessionaire may be required to submit hereunder shall not be prepared and submitted on a condensed or similar summary basis. The Concessionaire's submission of a condensed statement of assets, liabilities, and partners capital (regardless of whether or not the same was submitted as part of the Concessionaire's federal or state tax return filings) shall not be sufficient to satisfy the Concessionaire's obligations hereunder.

8. Financial Records Inspection.

a. Access to records. The Concessionaire hereby grants unto the STATE, at all reasonable times, access to all of the following created, kept, maintained, updated, and prepared by or on behalf of the Concessionaire relating to the Concession, including operations on the Premises: books, ledgers, journals, accounts, records, reports, files, and all information created, processed, maintained, or stored electronically (such as on computer disks, files, software, hardware, and hard drives), including gross income tax reports and records showing daily sales, and all other financial, sales, gross receipts, cost and expense, capital expenditure, and depreciation and amortization, and accounting information, together with all pertinent Concession operations information (hereinafter referred to collectively as the "Records").

b. Right to audit. The Concessionaire shall ensure that the STATE receives a written response to the STATE's request to audit all or any portion of the Concessionaire's financial statements or the Concessionaire's Records within forty-eight (48) hours of the Concessionaire's receipt of the STATE's request. At any reasonable time thereafter, not to exceed five (5) days, the Concessionaire will permit a complete audit to be made by the STATE's accountant or by a certified public accountant retained by the STATE, of the Concessionaire's entire business affairs relating to the Concession business conducted on, at, from, related to or connected with the Premises for the term of the Concession Agreement, including, without limitation, the Concessionaire's financial statements and the Records. All of the Concessionaire's financial statements and the Records shall be available for inspection by the STATE and any auditor or accountant retained by the STATE on the Island of Oahu, State of Hawai'i.

c. Concessionaire shall cooperate. The Concessionaire will cooperate fully in the making of any inspection, examination, or audit and provide copies to the STATE of the Records as may be requested or needed by the STATE, at the Concessionaire's sole cost and expense.

d. Failure to comply. If the Concessionaire fails to fully and promptly by the deadlines required hereunder, comply with and satisfy the Concessionaire's obligations hereunder, including furnishing the copies of the Concessionaire's financial statements and the Records requested by the STATE or the STATE's auditor or accountant, the Concessionaire shall be deemed in default of this Concession Agreement and the STATE shall have the right to assess additional charges against the Concessionaire pursuant to Article VI.I. (Additional Charges) and/or terminate the Concession Agreement under Article XX (Termination by STATE).

e. Auditing standards. It is agreed that examinations of the Records will be conducted in accordance with generally accepted auditing standards applicable in the circumstances and that as such, said examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by the Concessionaire and deficiencies ascertained by applying percentages of error obtained from such testing and sampling to the entire period of reporting under examination will be binding upon the Concessionaire.

f. Audit cost reimbursement. If such audit by the STATE's accountant or licensed independent certified public accountant retained by the STATE shall disclose that fees have been underpaid by two percent (2%) or more for any period under examination, the STATE shall, in addition to the remedies provided in Article VI.E.4. (Reports) herein, be entitled to reimbursement of all costs and expenses incurred in completing any such audit, in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

g. Additional charges. If such audit by the STATE's accountant or licensed independent certified public accountant shall disclose that the fees have been underpaid by five percent (5%) or more for the period under examination, the STATE shall have the right, in addition to all other rights the STATE may have under this Concession Agreement, upon ten (10) days' advance written notice to the Concessionaire, to terminate this Concession Agreement.

F. [Reserved].

G. Time of Payment.

1. MAG. The MAG and, if any, space rent for Concession Premises and any additional Concession Premises for the reasonably efficient operation of the Concession herein shall be paid monthly, in advance, but not more than one year in advance, on the first day

of each month. The first MAG and space rent shall be due and payable on _____, 2016.

2. Percentage Fee. On or before the twentieth (20th) day of each month during the term of this Concession Agreement, including the twentieth (20th) day of the month following the end of said Agreement term by expiration or sooner termination, the Concessionaire shall pay to the STATE the amount, if any, by which the Percentage Fee required for the preceding month exceeds the amount of the MAG for said month.

3. Adjustments. The monthly payments of the Concessionaire for the MAG and Percentage Fee shall be subject to readjustments at the end of each year in order that at the end of each and every year during the term of this Concession Agreement, the Concessionaire shall have paid to the STATE that amount based upon either the Percentage Fee or upon the MAG, whichever is greater.

4. MAG Adjustment. The Concessionaire shall continue to pay into a new Concession Agreement Year, the MAG in effect at the end of the last day of the immediately preceding Concession Agreement Year, until the Concessionaire delivers, and the STATE validates, its annual report as required in Article VI.E.4.b. (Annual Report Deadline) provided however, if the STATE is able to sooner determine based upon the STATE's examination of the Concession Fee paid to the STATE by the Concessionaire and the Concessionaire's gross receipts report submitted to the STATE during the preceding Concession Agreement Year, what the MAG for a new Concession Agreement Year should be, then upon the STATE's notice to the Concessionaire of such determination, the Concessionaire shall pay the MAG in accordance with the STATE's determination for the New Concession Agreement Year. If the MAG for a new Concession Agreement Year is not sooner determined by the STATE, then upon the Concessionaire's submission of its annual report, as required, and the STATE's validation of said annual report, the Concessionaire shall immediately pay the appropriate MAG for the new Concession Agreement Year, including any adjustments to the Concession Fee previously paid to the STATE by the Concessionaire for the period prior to the determination of the new MAG.

H. General Payment Provisions.

1. Place of Payment. All payments of money required to be made by the Concessionaire to the STATE hereunder shall be made when due in legal tender of the United States of America at the STATE's office at Honolulu International Airport, or at such other place as the STATE may designate in writing.

2. Late Payment. Any delinquent payment shall bear interest at the rate of twelve per cent (12%) per annum, which interest shall be paid by the Concessionaire in addition to such amount. Without prejudice to any other remedy available to the STATE, the Concessionaire agrees without further notice or demand, to pay interest at the rate of twelve percent (12%) per annum on each delinquent payment.

3. Delinquent Payment. The term "delinquent payment" as used herein means any payment of rent, service charges, fees or other charges payable by the Concessionaire to the STATE which is not paid when due.

4. Accrued Fees. The termination of this Concession Agreement by the lapse of time, or otherwise, shall not relieve the Concessionaire of its obligation to pay any and all fees, rents, interest, service charges, or other charges or amounts accrued during a period in which the Concession Agreement is or was in effect, and which are unpaid at the time of any such termination.

5. Pro Rata Payment. If this Concession Agreement terminates without fault of the Concessionaire on any day other than the last day of any calendar month, the applicable fees, rents and charges for said month shall be paid pro rata in the same proportion that the number of days the Concession Agreement is in effect for that month bears to the number of days in the month.

I. Additional Charges. In addition to the right of the STATE to charge and collect upon demand additional rent, fees and charges as provided in this Concession Agreement or to terminate this Concession Agreement pursuant to Article XX (Termination by STATE) herein, the STATE may levy on and collect from the Concessionaire a charge of TWO HUNDRED-FIFTY AND NO/100 DOLLARS ($250.00) per day for each day the Concessionaire is in violation of any of the terms of this Concession Agreement; provided that there shall be no levy unless the violation continues beyond the period specified in Article XX (Termination by STATE) for remedial action; and provided further that separate charges may be levied for violations of separate provisions even though the violations may be concurrent. Payment of the additional charges shall be due on demand from the STATE.

Notwithstanding anything to the contrary, an unscheduled System outage in excess of 30 minutes for Honolulu International Airport and 60 minutes at the other Airports that is not the sole responsibility of the State or someone other than the Concessionaire shall be considered a violation of the terms of this section and result in a levy of $250 per outage per Airport.

J. Partial Relief from Obligation. Based on §102-10, HRS, if during the term of this Concession Agreement, there has been a reduction of fifteen percent (15%) or more in the volume of business at the Premises of the Concessionaire for a period of sixty days or more, computed on the average monthly gross receipts for the eighteen months just prior to the period or as long as the Concessionaire has been in the business under this Concession Agreement, whichever period is shorter, and such reduction, as determined by the STATE, is caused by construction work conducted by the STATE during the period of time on, within or contiguous to the Premises, with the approval of the Governor, the STATE may modify any of the terms of this Concession Agreement, including the agreed upon Concession Fee, for a period which will allow the Concessionaire to recoup the amount lost by such reduction, provided further that this provision shall not apply to this Concession Agreement if the application thereto may impair any contractual obligations with bondholders of the STATE, the State of Hawai'i, or with any other

parties. If §102-10, HRS, is revised or amended, the provisions contained in this Article VI.J. (Partial Relief from Obligation) will be automatically revised or amended to conform to such changes to §102-10, HRS, without any action by the STATE. If the Concessionaire elects to receive or receives the relief described in this Article VI.J. (Partial Relief from Obligation), the Concessionaire shall not be entitled to combine this relief with any other relief allowed under this Concession Agreement, including Article VI.K. (Relief due to Economic Emergency) below.

K. Relief Due to Economic Emergency

1. Conditions of relief. In the event of an "economic emergency," the STATE may, in its sole discretion, grant financial relief to the Concessionaire, in amounts to be determined by the STATE, in its sole discretion. An "economic emergency" is an event that satisfies at least the following conditions:

(a) The Concessionaire suffers a 15% reduction in gross receipts for a period of sixty (60) days or more, computed on the Concessionaire's average monthly gross receipts for the eighteen (18) months just prior to the date from which the Concessionaire requests relief or as long as the Concessionaire has been in business under this Concession Agreement, whichever period is shorter, provided that the Director may waive this requirement if, in the Director's sole discretion, the Director determines that it is likely that the Concessionaire will suffer the required 15% reduction in gross receipts; and

(b) Either of the following two conditions:

(1) The occurrence of an event that is sudden, extraordinary, and generates relatively immediate severe adverse economic impacts for the State of Hawai'i, as determined by the Director of Transportation, in the Director's sole discretion, including, without limitation, the force majeure events described in this Concession Agreement, and events such as a natural disaster, civil defense emergency (as determined by the Governor pursuant to Chapter 128, HRS), or acts of terrorism similar to the events of September 11, 2001 (hereafter the "Sudden Event"); or

(2) The Director of Transportation finds that from and after the date the Concessionaire requests relief, there has been a significant decrease in airline passenger departures (hereafter "enplanements") at the airport of twenty per cent (20%) or more for a period of sixty (60) consecutive days or more, computed on the airport's average monthly enplanements for the eighteen (18) months just prior to the date from which the Concessionaire requests financial relief.

(c). In the event the Concessionaire's request for relief under this Article VI.K. (Relief Due to Economic Emergency) occurs in the first year of the Concession Agreement, the reduction in gross receipts and enplanements shall be calculated as follows:

(1) MAG Equal To Or Greater Than MAG For Final Year Of The Previous Concession Agreement. The reduction of fifteen percent (15%) in gross receipts shall be calculated for the sixty days or longer period just prior to the Concessionaire's request for relief, provided that the sixty days or longer period may begin no earlier than the first month of the Concession Agreement, compared to the average monthly gross receipts for the eighteen (18) months just prior to the date on which the Concessionaire submitted its bid proposal; or

(2) MAG Less Than The MAG For The Final Year Of The Previous Concession Agreement. The percentage reduction in gross receipts calculated above in Article VI.K.1.c.(1) (MAG Equal To Or Greater Than MAG For Final Year Of The Previous Concession Agreement) multiplied by the quotient obtained by dividing the MAG for the first year of the Concession Agreement by the MAG for the final year of the previous Concession Agreement must result in at least a 15% reduction, and

(3) Enplanements. The reduction of twenty percent (20%) in enplanements shall be calculated for the sixty (60) days or longer period just prior to the Concessionaire's request for relief, provided that the sixty (60) days or longer period may begin no earlier than the first month of the Concession Agreement, compared to the average monthly enplanements for the eighteen (18) months just prior to the date on which the Concessionaire submitted its proposal.

2. Concessionaire's financial hardship claim. Concessionaire must submit a written request for fee relief to STATE claiming financial hardship or distress and make available to the STATE such financial information as may be required by STATE pursuant to Article VI.E.6. (Audited Financial Statements) and Article VI.E.6 (Other Reports) herein.

3. STATE determines amount and extent of relief. The STATE may, if it deems necessary after reviewing the Concessionaire's financial statements and any other financial information submitted by the Concessionaire, modify the financial terms of this Concession Agreement, at the STATE's sole discretion, including, without limitation, waiving a proportionate monthly amount of the minimum annual guarantee in the applicable agreement year during which the Sudden Event occurs until (a) the decrease in passenger enplanements at the Airports is cumulatively less than twenty per cent (20%) as compared to the same time of the previous year for at least sixty (60) consecutive days or (b) the decrease in the Concessionaire's gross receipts is cumulatively less than fifteen per cent (15%) as compared to the same time of the previous year for at least sixty (60) consecutive days.

4. STATE may terminate relief at any time. The STATE may at any time, at the STATE's sole discretion: (a) terminate any financial relief granted by the STATE to the Concessionaire, (b) cancel and revoke any terms under which such financial relief was granted, and (c) reinstate the applicable financial terms under this Agreement that were in effect immediately prior to the granting of financial relief by the STATE to the Concessionaire.

5. STATE may impose additional conditions in granting relief. In granting any financial relief to the Concessionaire, the STATE may impose such other requirements the STATE deems necessary, including, without limitation, additional reporting requirements to ensure that the STATE is able to timely monitor and assess the Concessionaire's receipt of gross receipts and the Concessionaire's financial condition.

6. No impairment. This provision shall not apply to this Concession Agreement if the application thereto may impair any of the STATE's contractual obligations to bondholders of the STATE or the State of Hawai'i, or to any other entities. This determination shall be made by the STATE, in the STATE's sole discretion.

ARTICLE VII. IMPROVEMENTS

A. Improvements. Concessionaire agrees to install the Wi-Fi System (and DAS, if applicable) at the Airports as described in Exhibit B, attached hereto and made a part hereof, including the specific equipment listed on Exhibit B.

Concessionaire shall provide a network installation diagram of its Wi-Fi System (and DAS, if applicable) including electrical and any other requirements to support the system as approved in advance by STATE, in accordance by the Tenant Improvement Guidelines.

[Note: Exhibit B to be developed from the successful Proposal as negotiated]

B. Acceptance of Premises.

1. Initial Premises. The Concessionaire has examined and knows of the condition of the Premises and agrees that the Concessionaire is accepting the Premises on an "As Is With All Faults" basis, in its existing form, content and state of condition. The Concessionaire further agrees that the STATE shall not be liable for any latent, patent or other defects in, on or under the Premises, including pre-existing improvements, fixtures and appurtenances thereto. The taking possession of the Premises and all that may be part thereof by the Concessionaire shall be conclusive evidence as against the Concessionaire that the Premises were in good and satisfactory condition when the Concessionaire took possession of the same. The Concessionaire agrees that the Concessionaire is not relying on any representations or warranties of any kind whatsoever, express or implied, from the STATE or the STATE's agents, as to any matters concerning the Premises, including, without limitation:

a. Physical condition. The quality, nature, adequacy, and physical condition and aspects of the Premises, including landscaping and utility systems.

b. Soils. The quality, nature, adequacy and physical condition of soils, geology and any groundwater.

c. Utilities. The existence, quality, nature, adequacy and physical condition of utilities serving the Premises.

d. Development potential. The development potential of the Premises and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose.

e. Zoning. The zoning or other legal status of the Premises or any other public or private restrictions on the use of the Premises.

f. Compliance. The compliance of the Premises or its operation with any applicable codes, laws, statutes, rules, regulations, ordinances, covenants, conditions and restrictions of any governmental, or quasi-governmental entity or of any other person or entity.

g. Hazardous Substances. The presence of Hazardous Substances (as defined in this Concession Agreement) on, under, or about the Premises or the adjoining or neighboring Airport properties.

h. Quality of labor. The quality of labor and materials used in any improvements on Airport property.

i. Title. The condition of title to the Premises and the properties comprising the Airports.

j. Other documents. Any agreements affecting the Premises, including covenants, conditions, restrictions, and other matters or documents of record or of which the Concessionaire has knowledge.

2. STATE to provide. The Concession Premises provided by the STATE to the Concessionaire that are located in the terminal buildings shall at minimum be unfinished space consisting of structural ceiling, concrete flooring and the utility stub outs or nearby connections as further described in Article XII (Utility Service).

C. Utility Connections. Utility service connections for electric power and telephones will be available for the Premises in the terminal buildings. Said utilities are to be separately metered and billed to the Concessionaire. If separate metering is not practicable for the installation of the Wi-Fi system at any of the Airports, then electrical power usage shall be estimated and Concessionaire shall pay an amount based on current rates paid by the STATE plus a 10% administrative fee.

1. Electricity. Electricity shall be available to serve the Concessionaire's exclusive use areas at electric power panels located in the respective Airport buildings. Heat and air conditioning may be made available at connection points determined by the STATE and the Concessionaire will be charged at established rates for its pro rata share of the cost of furnishing

such heat and air conditioning as well as for all other utility services which are not separately metered.

Concessionaire shall have the right to access the electrical circuitry of the terminal building for the installation of distributed Wi-Fi (and DAS, if applicable) transmitters and antennas provided such installation and plans are approved in advance by the STATE in accordance by the Tenant Improvement Guidelines.

2. Concessionaire to pay charges. All charges, including, but not limited to, deposits, installation costs, meter deposits and all service charges for electricity, heat, air conditioning and other utility services to the Premises, shall be paid by the Concessionaire regardless of whether such utility services are furnished by the STATE or by utility service providers.

3. Concessionaire's release. The Concessionaire hereby expressly waives and releases any and all claims for compensation or for any diminution or abatement of the rents, fees and charges provided for herein for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the heating or air conditioning systems, electrical apparatus, equipment, facilities, or wires furnished to the Premises which may occur from time to time from any cause other than the STATE's sole negligence or willful misconduct; and the Concessionaire hereby expressly releases and discharges the STATE and STATE's Agents from any and all demands, claims, actions, causes of action, liabilities, losses, damages, costs and expenses arising from any of the aforesaid defects, deficiency or impairment. In all instances where damage to any utility service line is caused by the Concessionaire or Concessionaire's Agents, the Concessionaire shall be solely responsible for the cost to repair such damage.

C. Maintenance and Repair.

1. STATE. The STATE will maintain the buildings at the Airports in or at which a portion of the Premises are located, and the exterior or the outer walls and roofs thereof, in good condition and repair, and at its expense, except for such damage to the structure as may be caused by the Concessionaire or Concessionaire's Agents. The STATE will also make or accomplish any repairs and replacements necessary to remedy and to maintain in good condition all utility service lines, storm sewers and Airport service roadways which are available to the Concessionaire for use in common with others.

Such maintenance and repair by the STATE shall not constitute either a bar, waiver, or release of any right or claim on the part of the STATE to recover damages from or against anyone, including the Concessionaire and any Airports Concessionaire, licensee, permittee, or any other persons responsible for damage to any Airports property, real or personal.

2. Concessionaire. The Concessionaire shall, at all times and at its sole cost and expense, keep and maintain all portions of the Premises, including, without limitation: (a) all FFE, (b) any hallway, walkway, corridor and other common routing used by the Concessionaire, (c) all mechanical room equipment such as, but not limited to, heat exchanges, fans, controls and

electric panels, (d) lighting fixtures used to sign or identify the activity permitted upon the Premises (including the lighting fixtures and signs on the sides of the Premises that face the public areas where passengers, users and visitors at the Airports will pass through) and (e) obstruction lights and similar devices, fire protection and safety equipment and all other like equipment required by any law, statute, rule, regulation, order, or ordinance, in good repair and in a clean and orderly condition and appearance and shall keep the areas adjacent to the Premises, particularly entrances, exits, and public walkways clean and orderly and free of obstructions. The Concessionaire shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or sooner termination of this Concession Agreement, the Premises will be in a condition similar to that which existed at the commencement of this Concession Agreement, ordinary wear and tear excepted.

a. Preventative Maintenance. To accomplish this requirement, the Concessionaire shall establish an adequate preventative maintenance program and the provisions of the Concessionaire's program shall be subject to periodic review and approval by the STATE.

b. Maintenance. The Concessionaire's maintenance and repair obligation hereunder shall include the interior and exterior cleaning of all windows, roll up doors or barriers, entrances and exits of the Premises (including the extended surface areas adjacent and surrounding such entrances and exits), doors (exterior and interior) and the cleaning and repair of all floors, interior walls, ceilings, lighting, decor and FFE.

c. Refurbishment. Refurbishing shall include, without limitation, all refinishing, repairs, replacement, redecorating and painting necessary to keep and maintain the Premises in a first class condition.

d. Failure to Comply. If the Concessionaire fails to properly perform and complete its maintenance, repair and refurbishment obligation hereunder, particularly with respect to nonstructural repairs, replacement, redecorating and painting, within a period of ten (10) days after the Concessionaire receives written notice from the STATE of such failure by the Concessionaire, the STATE may, at its option, and in addition to all other remedies which may be available to the STATE, repair, replace, rebuild, redecorate or paint any portion of the Premises included in said notice from the STATE to the Concessionaire, and the cost thereof, plus fifteen per cent (15%) for administrative overhead, shall be paid by the Concessionaire to the STATE upon demand from the STATE.

e. Damage Repair. The Concessionaire shall suffer no strip or waste of the Premises and shall repair, replace, rebuild and paint all or any part of the Premises which may be damaged or destroyed by the acts or omissions of the Concessionaire, the Concessionaire's agents, or other persons, including customers. Any and all structural repairs, alterations and additions to be made by the Concessionaire to or on the Premises (and any and all other such work which is non-structural and costs $3,000.00 or more) shall be subject to the

requirements of this Article VII (Improvements) herein and all such work must receive the prior written consent of the STATE.

D. Relocation. The Concessionaire acknowledges and agrees that the STATE may require, at the Concessionaire's sole cost and expense, an expansion of any portion of the Premises, and require the relocation of any portion of the Premises, in whole or in part, during the term of this Concession Agreement, upon a finding by the STATE that such expansion and/or relocation is necessary to provide for a Wi-Fi Concession in any area of the Airports' terminal buildings.

ARTICLE VIII. CONCESSION OPERATION

A. Quality of Service. In the operation of the Concession herein authorized, the Concessionaire shall ensure: (1) that the Concession services are conducted in an efficient and reliable manner; (2) that its employees who come into contact with the general public are courteous, polite, and inoffensive; and, (3) that at all times during the term of this Concession Agreement, strictly adhere to and comply with the following covenants, provisions, requirements, restrictions, stipulations, terms, and conditions:

1. Conduct of operations. The Concessionaire shall maintain and operate the Concession in an orderly, proper and first-class manner representative of a world-leading provider of Wi-Fi services for major international airports in the U.S.

a. No discrimination. The Concessionaire shall not discriminate against anyone based upon race, creed, color, national origin, sex, or a physical disability.

b. Equal treatment. The Concessionaire shall furnish services on a fair, equal, and nondiscriminatory basis to all parties, and shall charge fair, reasonable, and nondiscriminatory prices for each service provided.

c. No Annoyance. The Concessionaire shall not operate the Concession in any manner that tends to annoy or disturb, or be offensive to others at the Airports, and the STATE shall determine, in its sole discretion, whether the Concessionaire's operation of the Concession in fact annoys, disturbs or is offensive to others.

d. No diversion or Loss of Revenues. The Concessionaire shall not solicit or advertise Concession business, advertise other business or conduct any activity anywhere at the Airports except in a manner first approved in writing by the STATE. The Concessionaire shall not divert, cause, allow or permit to be diverted any business from the Premises and shall take all reasonable measures, in every proper manner, to develop, maintain and increase the business conducted by it under this Concession Agreement.

e. Revenue Enhancement and Promotion. The Concessionaire shall continually seek to engage in activities that will promote the Airports and enhance revenues for the Airports.

2. Concession Manager. The Concessionaire shall select and appoint, subject to approval by the STATE, a managing director ("Concession Manager") of the Concessionaire's operations at the Airports to be domiciled in Honolulu. The individual selected must be qualified and experienced in overseeing Wi-Fi services, vested with full power and authority to accept service of all notices provided for herein and oversee the operation of the Concession herein authorized, including the quality of service and the appearance, conduct and demeanor of the Concessionaire's Agents. At all times during the Concession Manager's absence, a subordinate Airport Duty, Relief or Shift Supervisor, capable of meeting the requirements and conditions prescribed and set forth in this Article, shall be in charge and available. Either the Concession Manager or a subordinate Airport Duty, Relief or Shift Supervisor shall be available at all times set forth in Article VIII.B.1. (Hours of Operation). The Concessionaire shall provide the STATE with the names and phone numbers of the managing director and responsible subordinates.

3. Meeting participation. The Concession Manager shall participate in airport organized meetings designed to communicate information regarding events and activities affecting the operation of the Airports, as well as to meet with any consultant, planner or member of the Airports administration identified by the STATE to discuss and review matters pertaining to wireless communications.

4. Concessionaire's Personnel. The Concessionaire at all times shall employ and have on duty adequate personnel, all of whom shall present a neat and clean appearance and be courteous and efficient in the discharge of their duties, in order to promptly and efficiently serve the public and to provide the quality of operation required herein.

a. No boisterous behavior. No personnel employed by the Concessionaire, while on or about the Premises, shall use improper language, act in a loud, boisterous or otherwise improper way or be permitted to solicit business in an inappropriate manner.

b. Resolving disputes. The Concession Manager and/or other on-duty supervisory personnel shall: (a) be capable of resolving disputes and problems involving the Concession; and (b) handle and address complaints involving the activities of the Concessionaire and the Concessionaire's Agents. The Concessionaire shall immediately respond to, handle and resolve complaints or problems that may be brought to the attention of the Concessionaire. In the event the Concessionaire or the STATE receives customer complaints, whether verbal or written, the Concessionaire shall be responsible for conducting investigation of all such complaints and initiating appropriate corrective measures.

c. Awareness Training. The Concessionaire shall have its employees participate in a training or orientation regarding the Airports' hospitality awareness program.

(1) Training program. The Concessionaire shall develop and administer a training program for employees to assist in their understanding and awareness of airport operating procedures, activities and the general layout and location of major tenants. Training shall include awareness and familiarity with applicable STATE's rules and regulations and the STATE's airport training program requirements, appearance guidelines, customer relations and service greeting standards.

(2) Knowledgeable. The Concessionaire's staff shall also be knowledgeable about the layout of the Airports and shall assist travelers when asked or approached, in answering way-finding questions, other airport locations, and directing the traveler to the appropriate site, counter, office or airport personnel or others for further assistance.

B. Operations.

1. Hours of operation. The Concessionaire shall provide and operate the Concession 24 hours per day, 7 days per week, 365 days of the year. Concessionaire shall schedule maintenance or make modifications to the system so as to minimize disruption to passengers and tenants during the hours between midnight and 4 a.m. The Concessionaire may advise the STATE of the Concessionaire's analysis of the optimum arrangements, but the ultimate determination will be made by the STATE, who may require, by written notice to the Concessionaire that the business hours be changed to meet new conditions including, but not limited, to aircraft arrival and/or departure times. The Concessionaire shall be excused from its obligations as set forth above in the event that its operations are closed or curtailed, in whole or in part, by reason of strike, lockout or other cause beyond the Concessionaire's control.

2. Education and training. The Concessionaire shall provide orientation, education and training programs so that all employees are familiar with operating procedures and rules of the Airports.

3. Licenses and Permits. The Concessionaire is responsible for obtaining all licenses, permits, and certificates that may be required in order to operate the Concession.

4. Waste disposal. The Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airports, of all trash, garbage and other refuse caused by or resulting from the operation of the Concession.

5. Hazardous Materials. The Concessionaire shall remove Hazardous Substances or any such materials in, on, or about the Premises, which may endanger property or the life or health of people at the Airports. The Concessionaire's obligations attributable to the Concessionaire's or Concessionaire's Agents' use, generation, handling, storage, or release of Hazardous Substances are further described in Article XI (Compliance with Laws) herein.

C. STATE's Right to Monitor and Inspect.

In addition to any other right the STATE may have to ensure the quality of customer service, reasonable prices and high quality standards for the Concession operations, and services offered, as described above in this Concession Agreement, the STATE may inspect and monitor the Concessionaire's operation of the Concession, including, without limitation, the following:

1. Periodic Inspection. A periodic inspection may be made, as determined by the STATE, of all portions of the Premises at the Airports during normal operating hours.

2. Concessionaire Assistance. The Concessionaire will provide, upon the STATE's request, any necessary assistance, cooperation and materials to support the STATE's inspection monitoring efforts relating to this Concession.

3. Scope of Inspection. The STATE's monitoring and inspection of the Concessionaire's conduct in managing and operating the Concession may cover any aspect of the Concessionaire's operation of the Concession, including, without limitation, prices, quality, operations, appearance, cleanliness, staff dress, staff attitude, customer service, and general customer satisfaction with the Concession.

4. Deficiencies. The STATE may (a) inform the Concessionaire of any discrepancies or deficiencies observed or noted by the STATE after the STATE has completed its inspection, review and evaluation and (b) specify and enforce a deadline for the Concessionaire to remedy or correct any discrepancy or deficiency.

5. Follow-up. The STATE may conduct any necessary follow-up inspection or check. If the Concessionaire does not correct or remedy the discrepancy or deficiency, to the STATE's satisfaction, by the STATE's deadline, the Concessionaire shall provide the STATE with written reasons for any such failure. If justified, appropriate time extensions, but not greater than allowed by law, or temporary exceptions, may be granted by the STATE. If the Concessionaire fails to adequately correct or remedy the discrepancy or deficiency, to the STATE's satisfaction, the STATE may resort to any remedy available to the STATE under this Concession Agreement and by law.

Nothing contained in this Article VIII (Concession Operation) shall be deemed to be a waiver or reduction of any rights or remedies the STATE may have for any violation or breach by the Concessionaire of any of the terms and conditions of this Concession Agreement.

D. Prohibited Advertisements. All advertising or sponsorships are subject to the written approval of the Director. Concessionaire will be allowed to display advertising on all pages of the Concessionaires Wi-Fi portal provided Concessionaire shall not load or display any advertisement that:

a. Contains profanity or obscenity;

b. Promotes the use or sale of tobacco or alcohol;

c. Promotes the use or sale of pornography;

d. Promotes the use or sale of weapons;

e. Promotes unlawful goods or services;

f. Promotes or encourages unlawful conduct;

g. Promotes or encourages "Adult" oriented goods or services (e.g. adult books stores, adult video stores, films rated "X", adult telephone services, adult internet sites, etc.); political campaign speeches; implies or declares an endorsement by the State;

h. Contains any material in violation of applicable laws, including and without limitation to laws regulating copyrights, trademarks, and other forms of intellectual property;

i. Is deceptive or misleading;

j. Depicts, promotes, or suggests explicit sexual acts (through words, innuendo, connotation, images, and the like);

k. Depicts, promotes, or suggests acts of violence (through words, innuendo, connotation, images, and the like);

l. Is demeaning or disparaging to any individual or group;

m. Contains disparaging remarks regarding airports, airlines, airport tenants, U.S. Customs and Border Protection, Transportation Security Administration, and the like, or services or products provided by any of them (e.g. delays, on-time performance, luggage handling, ticketing, security screening, food quality, etc.);

n. Contains words or phrases which common sense dictates, in the sole discretion of the Director, should not be broadcast inside an airport facility (e.g. killer, bomb, hi-jack, terrorist, etc.).

Concessionaire shall provide to the State an electronic copy of any advertising or sponsorship four (4) business days prior to being posted to the Wi-Fi Splash Page for State's written approval. Any Advertisement or sponsorship message previously approved by the STATE, but subsequently rescinded for good cause will be removed if so requested by the STATE.

E. Prohibited Content. Concessionaire shall take reasonable steps to prohibit access to websites offering pornographic material through use of a commercial Domain Name Service (DNS) filter or such other commercially available filter subject to the approval of the State.

ARTICLE IX. CONCESSION BOND

A. Requirements. Within thirty (30) days after award of this Concession Agreement or prior to the commencement date of this Concession Agreement, whichever first occurs, and throughout the term of this Concession Agreement and including no less than ninety (90) days after the later of: (a) the expiration or sooner termination of the Concession Agreement or (b) the end of any holdover period, the Concessionaire shall deliver to the STATE, and keep and maintain in force and effect at all times a concession bond or other equivalent security acceptable to the STATE, in accordance with the terms specified in this Article IX (Concession Bond), and in the amount equal to three (3) months of MAG for the appropriate year of the Concession Agreement term, as specified in the Concessionaire's Proposal hereof (hereafter the "Concession Bond"). The Concession Bond must:

1. Authorized surety. Be executed by a surety company licensed and authorized to do business under the laws of the State of Hawai'i (hereafter the "Surety");

2. STATE approval. Meet with the written approval of the STATE, including, without limitation, meeting the requirement that the Surety, to the STATE's sole satisfaction, has the financial capability to fully perform and complete the Surety's obligations under the Concession Bond;

3. STATE's attorney approval. Be in a form approved by an authorized representative of the Department of the Attorney General of the State of Hawai'i;

4. Guarantee full performance. Require the Surety to guarantee to the STATE that the Concessionaire shall fully and completely perform all of the promises, duties, responsibilities, obligations, covenants, provisions, requirements, restrictions, stipulations, terms and conditions set forth in this Concession Agreement which the Concessionaire is required to perform;

5. Concessionaire's cost. Be maintained by the Concessionaire, at the Concessionaire's sole cost and expense; and

6. Cover all Concession operations. Cover all of the Concessionaire's Concession operations during and throughout the term of this Concession Agreement including any holdover period; provided that suits or actions thereon by the STATE, the State of Hawai'i or anyone else entitled to do so may be commenced within the applicable period of limitation for contract claims unless otherwise specifically provided.

B. Surety. If the STATE, in its sole discretion, permits the Concessionaire to use on the Concession Bond sureties other than a surety company licensed and authorized to do business under the laws of the State of Hawai'i, such sureties must meet the requirements of all applicable laws, statutes, rules and regulations, particularly Section 102-12, HRS.

C. Beyond termination date. If the Concession Bond is for a period less than the full term of the Concession Agreement including any holdover period plus ninety (90) days, the Concessionaire, at least sixty (60) days prior to the expiration date of the then active Concession Bond, shall submit to the STATE another Concession Bond providing the coverage required herein beyond the expiration date of the then active Concession Bond.

D. Replacement Bond. If the STATE should receive a notice that an existing Concession Bond has been or will be canceled, the Concessionaire shall provide the STATE with a replacement Concession Bond providing the coverage required herein from the effective date and time of the cancellation of the existing Concession Bond so that there is no period of time wherein an adequate Concession Bond does not cover this Concession Agreement, as provided for herein. Such a replacement Concession Bond must meet all of the requirements set forth in this Article IX (Concession Bond) and be forwarded to and received by the STATE at least twenty (20) days prior to the effective date of the existing Concession Bond cancellation.

E. Concession Agreement Default. In the event that a replacement Concession Bond in the required amount and meeting the required terms is not received by the STATE at least twenty (20) days prior to the effective date of the existing Concession Bond cancellation or expiration, as stated, the Concessionaire shall be deemed in default of this Concession Agreement, regardless of whether or not a notice of breach or default or time to correct breach or default has been provided to the Concessionaire by the STATE, and the full value shown on the face of the existing Concession Bond, plus an additional charge of $250.00 for each day that there is no Concession Bond in place, shall be immediately payable by the Concessionaire to the STATE as liquidated damages.

F. Any lapse. Any lapse in keeping the Concession Bond in full force and effect, in the required sum or in accordance with the terms required herein, shall be a default of this Concession Agreement and shall give the STATE the right to file a claim against the Concessionaire and the Concession Bond Surety, and assess additional charges and/or terminate this Concession Agreement pursuant to Article VI.I. (Additional Charges) and Article XX (Termination by STATE), respectively, herein.

ARTICLE X. INSURANCE

A. In General.

1. Concessionaire's cost. The Concessionaire shall procure, at its sole cost and expense, and keep in effect at all times during the term of this Concession Agreement, the types and minimum amounts of insurance coverage specified herein

2. No Limitation. Concessionaire's procurement and maintenance of insurance, or the delivery of Certified Copies of policies, or the delivery of Certificates of Insurance or other written evidence of insurance in form and substance acceptable to STATE,

shall not be construed as a limitation of any kind on Concessionaire's obligations to indemnify, defend, insure, and hold harmless, as may be found anywhere in this or any other document.

3. Notification. In the event Concessionaire receives notice of cancellation or non-renewal of any insurance in accordance with policy provisions, Concessionaire shall immediately provide verbal and written notice to STATE and also deliver a copy of said notice of cancellation or non-renewal to STATE. In the event Concessionaire chooses to voluntarily cancel, non-renew, or reduce the scope of coverage or limits of liability, Concessionaire shall notify STATE in writing at least thirty (30) days prior to such cancellation, non-renewal, or reduction in scope of coverage or limits of liability.

4. Form of Policies.

a. Form and substance. All insurance required to be furnished by the Concessionaire hereunder shall be pursuant to policies in form and substance satisfactory to the STATE and issued by companies in good standing with the Insurance Division of the Department of Commerce and Consumer Affairs, licensed and authorized to transact insurance business in the State of Hawai'i on an admitted or non-admitted basis, and with an A.M. Best Financial Strength Rating of "A-" or better, and an A.M. Best Financial Size Category of "VII" or higher.

b. Required provision. All insurance shall:

(1) Additional Insured. Name the STATE, the STATE's Agents and their successors and assigns as Additional Insured, except with respect to Workers' Compensation and Employers' Liability and Professional Liability.

(2) Severability of interest. Apply separately to each insured against whom claim is made or suit is brought, except with respect to the Limits of Insurance.

(3) Waiver of subrogation. Contain a waiver of subrogation endorsement in favor of the STATE and STATE's Agents.

c. All insurance. All insurance shall:

(1) Primary. Be primary, not in excess of or pro rata, and non-contributing as to and with any other insurance held or maintained by the STATE.

(2) No premiums. Not require the STATE to pay any premiums.

(3) No partnership. The inclusion of the STATE and the STATE's Agents as Additional Insureds is not intended to, and shall not, make any of them, a partner or joint venturer with the Concessionaire.

d. Deductibles. Any insurance required hereunder may provide for deductibles or self-insured retentions which are reasonable and prudent in relation to the soundness of the Concessionaire's financial condition and acceptable to the STATE. Any deductibles or self-insured retentions in excess of $25,000 shall be disclosed to the STATE.

e. Failure to procure and maintain. Any lapse in, or failure by the Concessionaire to procure, maintain, and keep in full force and effect such insurance as is required herein, shall be a material breach of this Concession Agreement, and should the STATE or any of its insurers expend any funds which would have been or should have been covered by insurance as is required under this Concession Agreement, the Concessionaire shall assume the liability for such funds and indemnify the STATE and its insurers.

f. Waiver of Subrogation. All insurance policies required herein shall contain a waiver of subrogation in favor of the STATE and STATE's Agents.

g. Proof of insurance. The Concessionaire shall provide proof of all specified insurance and related requirements to the STATE by delivering certificates of insurance in form and substance acceptable to the STATE, or by other written evidence of insurance acceptable to the STATE. Each policy, certificate of insurance, or other written evidence of insurance shall contain the applicable policy number(s), the inclusive dates of policy coverage, the insurer's name, and bear the original signature of an authorized representative of the insurer. The STATE reserves the right to have submitted to it, upon request, a certified copy of each insurance policy, and pertinent information about any agent, broker, or insurer providing such insurance.

h. Interim review. The Concessionaire agrees that the types and minimum amounts of insurance coverage specified by the STATE herein may be reviewed for adequacy from time to time throughout the term of this Concession Agreement by the STATE who may, thereafter and upon thirty (30) days written notice, require the Concessionaire to modify the types and/or minimum amounts of insurance coverage as the STATE deems to be adequate for their own protection.

B. Types and Minimum Amounts of Insurance

1. General Liability ("Occurrence Form"). Minimum limits of $2,000,000 each occurrence (bodily injury and property damage combined) and $4,000,000 general aggregate (if applicable), covering bodily injury, property damage, and personal/advertising injury (subject to a personal/advertising injury aggregate of at least $2,000,000) arising out of the Concessionaire's Premises, operations, products, and completed operations. The general liability insurance shall include contractual liability for bodily injury and property damage obligations

assumed in the Contract, and fire damage legal liability (damage to rented premises) of not less than $1,000,000 each occurrence.

2. Automobile Liability. If operating exclusively outside of the operational area of any Airport at all times, automobile liability insurance covering any owned, hired, or non-owned automobiles operated by or on behalf of the Concessionaire, with minimum limits of $1,000,000 per person and $2,000,000 per accident for bodily injury, and $500,000 per occurrence for property damage, or a combined single limit not less than $2,000,000 each accident (bodily injury and property damage combined). If operating within the operational area of any Airport at any time, automobile liability insurance covering any owned, hired, or non-owned automobiles operated by or on behalf of the Concessionaire, with minimum limits of $5,000,000 per person and $5,000,000 per accident for bodily injury, and $5,000,000 per occurrence for property damage, or a combined single limit not less than $5,000,000 each accident (bodily injury and property damage combined).

3. Workers' Compensation and Employer's Liability. Workers' Compensation coverage meeting the statutory requirements of the State of Hawai'i and any other state in which employees are hired or work is performed, and including Employers' Liability coverage with minimum limits of $1,000,000.00 for Each Accident, Disease-Each Employee, and Disease Policy Limit, or as otherwise required by applicable Federal and State laws.

4. Pollution Liability. Minimum limit of $1,000,000 covering bodily injury, property damage (including damage to natural resources), legal expenses, and Concessionaire's obligations to clean-up and/or remediate first- and third-party environmental liabilities or claims resulting from any pollution condition or conditions associated with or arising out of the Concessionaire's Premises or operations. If the policy provides coverage on a "Claims-Made and Reported", "First Discovered and Reported", or similar form (i.e., other than an "Occurrence Form"), the Retroactive Date or Pending or Prior Date shall not be advanced beyond the initial Inception Date, and the Concessionaire shall maintain the policy, and if necessary purchase an Extended Reporting Period, assuring coverage for any claims first made and reported at least twelve (12) months beyond the term of this Concession Agreement, or any extension, or any holdover.

5. Cyber Liability and Technology Professional Liability. Minimum limit of $5,000,000 Each Claim and $5,000,000 in the Aggregate, covering any actual or alleged negligent act, error, omission, misstatement or misrepresentation, or unintentional breach of a written contract, resulting from the performance or non-performance of services by the Concessionaire or the Concessionaire's Agents. If the policy or policies provides coverage on a "Claims-Made and Reported", "First Discovered and Reported", or similar form (i.e., other than an "Occurrence Form"), the Retroactive Date or Pending or Prior Date shall not be advanced beyond the initial Inception Date, and the Concessionaire shall maintain the policy, and if necessary purchase an Extended Reporting Period, assuring coverage for any claims first made

and reported at least twelve (12) months beyond the term of this Concession Agreement, or any extension, or any holdover.

6. Buildings and Business Personal Property. Concessionaire shall insure their interest in buildings, structures, completed additions, fixtures, machinery, and equipment which are a permanent part of buildings, and other Improvements, and Concessionaire's FFE and other business personal property, including but not limited to furniture, fixtures, supplies, computers, other contents, mobile equipment, and personal property of others in Concessionaire's care, custody, or control, as would be procured and maintained by a reasonable and prudent owner thereof, protecting against Causes of Loss - Broad Form (or equivalent), including but not limited to the perils of fire, lightning, explosion, windstorm (including hurricane), smoke, aircraft or vehicles, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, and accidental water damage, on a replacement cost basis. STATE shall be included as a Loss Payee, as their interest may appear. Coverage shall also apply to debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements.

7. Builder's Risk. Before commencing construction of any initial or subsequent work on leasehold Improvements or the installation of FFE on, in, or at the Premises, or any portion thereof, Concessionaire shall, in addition to other customary insurance or bonds, and at its sole cost and expense, procure, maintain and keep in full force and effect during and throughout the entire period of construction and installation, property insurance designed to cover property in the course of construction or installation, on a special perils, open perils, or similar risk of direct physical loss policy form, including insurance against perils such as fire, lightning, explosion, smoke, windstorm (including hurricane), hail, riot, civil commotion, aircraft, vehicles, theft, vandalism, malicious mischief, sprinkler leakage, collapse, earthquake, volcanic action, falling objects, accidental water damage, flood, and breakage of building glass (such as windows), falsework, and testing and startup. Coverage shall also apply to temporary buildings and debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements. The amount of insurance shall be no less than the initial contract sum, plus the value of subsequent contract modifications and the cost of materials supplied or installed by others, comprising the total value of the Improvements on a replacement cost basis, including reasonable compensation for architect's, engineer's, and similar consultant's services and expenses. Such property insurance shall be maintained until the construction and/or installation is completed. This insurance shall include the insurable interests of the STATE, the Concessionaire, and all contractors and subcontractors of any tier, as their interest may appear. Concessionaire shall pay all deductibles, co-insurance, or other costs arising out of any deductible or co-insurance provisions.

ARTICLE XI. COMPLIANCE WITH LAWS

A. Generally. The Concessionaire and Concessionaire's Agents shall at all times during the term of this Concession Agreement comply with all applicable laws, statutes, rules, regulations, orders and ordinances of all governmental authorities, including, without limitation, the United States of America, the State of Hawai'i, and the Counties, and any political subdivision, or agency, authority, or commission thereof, which may have jurisdiction to pass laws, statutes, or ordinances or make and enforce orders, rules, and regulations with respect to: the Concession, the Premises, or the Airports. The Concessionaire's obligation to comply with all laws, statutes, rules, regulations, order and ordinances hereunder shall apply to the Concessionaire's use and occupancy of the Premises, the operation of the Concession thereon and the construction and installation of the Improvements and FFE.

The Concessionaire shall also take out and keep current all licenses and permits required by any governmental authority for the Concessionaire's conduct of the Concession at or on the Premises and the Airports, and pay promptly when due all fees.

Notwithstanding the foregoing provisions, the Concessionaire shall have the right, in its own name, to contest in good faith the validity or applicability of any law, statute, rule, regulation, order or ordinance of any governmental body or agency to the Premises or Concessionaire's operation thereon. The fact that the Concessionaire may, in connection with such contest, refrain from complying with such law, statute, rule, regulation, order or ordinance shall not affect in any way the Concessionaire's obligation to (1) refrain from subjecting any part of the Premises to forfeiture or loss, and (2) pay the required fees set forth in Article VI (Concession Fee).

B. Compliance with Americans With Disabilities Act.

1. Concessionaire's warranty. Concessionaire agrees that it shall conduct its Concession operations, and occupy or use the Premises in accordance with: (a) the Americans With Disabilities Act, 42 U.S.C.S. Section 12101 et seq. (hereinafter referred to collectively as the "ADA"), including, without limitation, modifying Concessionaire's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons; and (b) United States Access Board's ADA Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles (hereinafter referred to as the "ADAAG").

2. Accessible services. Concessionaire acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. Concessionaire shall provide the services or conduct its Concession operations as specified in this Concession Agreement in a manner that complies with the ADA, and any and all other applicable Federal, State, and local disability rights legislation. Concessionaire agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Concession Agreement, and Concessionaire further agrees that any violation of this prohibition on the part of

Concessionaire or Concessionaire's Agents shall constitute a material breach of this Concession Agreement.

3. ADA Requirements for Providing Services to Disabled Persons.

(a) Federal ADA requirements. During the entire term of this Concession Agreement, the Concessionaire is required to comply with and completely satisfy the ADA requirements as prescribed and set forth in the Disabilities Act of 1990 and 49 Code of Federal Regulations (CFR), Part 37.

(b) State's Accessibility Policy. During the entire term of this Concession Agreement, the Concessionaire is required to comply with the STATE's Accessibility Policy.

4. Notice. The STATE and the Concessionaire agree to promptly give written notice to the other (not to exceed three (3) days), of any notices which it receives alleging ADA violations.

5. Concessionaire's indemnification. Concessionaire shall protect, defend with counsel acceptable to the STATE, indemnify, and keep and hold harmless the STATE and the STATE's Agents, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses (including, without limitation, costs of suits and fees related thereto and reasonable attorneys' fees), fines or penalties, or any other liability, arising from the Concessionaire's actual or alleged failure to observe, comply with, or completely satisfy Concessionaire's obligations with respect to the ADA. This provision shall not be construed to be a limitation of any other assumption of liability or indemnification agreement which may be contained anywhere else in this or any other document.

C. Environmental Compliance – Concessionaire's Duties

1. Compliance with Environmental Laws. Concessionaire agrees, at its sole cost and expense, to comply with all Environmental Laws applicable to its occupancy, activities, operations, and use of the Premises. This duty shall survive the expiration or termination of this Concession Agreement, which means that Concessionaire's duty to comply with Environmental Laws shall include complying with all Environmental Laws that may apply, or be determined to apply, to the occupancy and activities of Concessionaire on the Premises after the expiration or termination of this Concession Agreement. Failure of Concessionaire to comply with any and all Environmental Laws shall constitute a breach of this Concession Agreement for which the STATE may, in its sole discretion, terminate this Concession Agreement, exercise its remedies under this Concession Agreement, including remediation of any condition on behalf of Concessionaire, at Concessionaire's sole cost and expense, under Article XI.C.5. (Environmental Investigations and Assessments) and Article XI.C.7. (Restoration and Surrender of Premises), and take any other action at law or in equity it deems appropriate.

2. Hazardous Substances. Concessionaire shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substance, or allow the same by Concessionaire's Agents or any other person, in, on, or about the Premises, without obtaining the prior written consent of the STATE, which consent may be withheld by the STATE in its sole discretion, and complying with all Environmental Laws, including giving all required notices, reporting to, and obtaining permits from all appropriate authorities, and complying with all provisions of this Concession Agreement.

3. Notice to STATE. Concessionaire shall keep the STATE fully informed at all times regarding all matters related to any Environmental Laws affecting Concessionaire or the Premises. This duty shall include, but not be limited to, providing the STATE with a current and complete list and accounting of all Hazardous Substances of every kind which are present on or about the Premises, together with evidence that Concessionaire has in effect all required and appropriate permits, licenses, registrations, approvals and other consents that may be required by any federal, state, or county authority under any authority or Environmental Laws. Concessionaire shall provide said list and accounting at the commencement of this Concession Agreement, and shall update said list and accounting whenever any Hazardous Substance not accounted for by Concessionaire is present on or about the Premises by any means. Concessionaire shall also provide immediate written notice of any investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to Concessionaire by any federal, state or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to the STATE shall include copies of all written communications from any federal, state or county agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data and any other documents received or obtained by Concessionaire. At least thirty (30) days prior to termination of this Concession Agreement, or termination of the possession of the Premises by Concessionaire, whichever occurs first, Concessionaire shall provide the STATE with written evidence satisfactory to the STATE that Concessionaire has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the STATE pursuant to Article XI.C.5 (Environmental Investigations and Assessments), or by any governmental agency responsible for enforcement of the Environmental Laws.

4. Disposal/Removal. Except the possession and handling of Hazardous Substances for which Concessionaire is exempt, and those Hazardous Substancesces for which Concessionaire has obtained all currently required permits to store or use certain Hazardous Substances on or about the Premises, including written permission from the STATE, Concessionaire shall cause any Hazardous Substances to be removed and transported from the Premises for disposal solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal, as required by all applicable Environmental Laws. Concessionaire shall provide the STATE with copies of documentary proof including manifests, receipts or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws.

5. Environmental Investigations and Assessments. Concessionaire, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance at, in, on, under, or about the Premises as may be directed from time to time by the STATE, in its sole discretion, or by any federal, state or county agency or authority. The extent and number of any environmental investigations and assessments, including testing and analyses incident thereto, shall be determined by the STATE or the federal, state or county agency or authority directing said investigations and assessments to be conducted. Concessionaire shall retain a competent, certified and qualified person or entity that is satisfactory to the STATE, to conduct said investigations, assessments, testing and analyses incident thereto. Concessionaire shall cause said person or entity conducting those assessments, investigations, tests and analyses to provide the STATE and governmental authority with the written results of all assessments, investigations, tests and analyses. Pursuant to this Concession Agreement, Concessionaire may be required to have environmental assessments conducted as aforesaid prior to, or at the time of, Concessionaire taking possession of the Premises and prior to, or at the time of, the termination of this Concession Agreement in order to determine the condition of the Premises.

6. Remediation. In the event that any Hazardous Substance is used, stored, treated, disposed on the Premises, handled, discharged, released, or determined to be present on or about the Premises, Concessionaire shall, at its sole expense and cost, remediate the Premises of any Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with Article XI.C.4. (Disposal/Removal). This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the STATE to Concessionaire to remediate Hazardous Substance. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is satisfactory to the STATE and governmental authority, as the case may be.

If Concessionaire has conducted an initial site assessment of the Premises which includes soil and ground water analyses for Hazardous Substances at the commencement of this Concession Agreement or Concessionaire's occupancy, which ever shall have first occurred, to the satisfaction of the STATE, Concessionaire shall be responsible for remediation and restoration of the Premises to the extent it is necessary to remediate and restore the Premises to the condition of the Premises and levels of any contamination or Hazardous Substance that existed on the Premises at the commencement of Concessionaire's occupancy or term of this Concession Agreement, which ever shall have first occurred, as shown by said initial site assessment.

7. Restoration and Surrender of Premises. Concessionaire hereby agrees to timely surrender the Premises upon termination of this Concession Agreement and, prior thereto, shall restore the Premises, including the soil, water, ground water and structures at, in, on, under, or about the Premises to the same condition as the Premises existed at the commencement of this Concession Agreement, as determined by the STATE, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of Concessionaire. This duty to

restore the Premises includes remediation as described in the previous Article XI.C.6. (Remediation). This duty also includes, but is not limited to, the removal of all pipes, pipelines, tanks and containers of any kind that Concessionaire has installed or erected on the Premises. In the event Concessionaire does not timely restore the Premises to a satisfactory condition, as determined by the STATE, Concessionaire understands and agrees that the STATE may exercise its rights under Article XI.C.8. (STATE's Right to Act) and until such time as the restoration is complete to the satisfaction of the STATE, Concessionaire shall be liable for Concession Agreement rent in the same manner and amount as if this Concession Agreement had continued in effect during the period of restoration, as well as any other damages and costs that the STATE may have incurred, including penalties, fines and assessments related to the Premises which may be imposed on STATE or by any governmental authority.

8. STATE's Right to Act. In the event Concessionaire fails for any reason to comply with any of its duties under this Concession Agreement or under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the STATE, the STATE shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. Concessionaire hereby grants access to the Premises at all reasonable hours to the STATE, its agents and anyone designated by the STATE, in order to perform said acts and duties. Any cost, expense or liability of any type that may be incurred by the STATE in performing said acts or duties shall be the sole responsibility of Concessionaire, and Concessionaire hereby agrees to pay for those costs and expenses, and indemnify the STATE and the STATE's Agents for any liability incurred. This obligation shall extend to any costs and expenses incident to enforcement of the STATE's right to act, including litigation costs, attorney's fees and the costs and fees for collection of said cost, expense or liability.

9. Release and Indemnity. Concessionaire hereby agrees to release and, to the extent permitted by law, protect, defend with counsel acceptable to the STATE, indemnify, and keep and hold harmless the STATE and the STATE's Agents, from liability of any kind, including, but not limited to, all claims, demands, suits, actions, causes of action, judgments or assessments, losses, damages, costs and expenses (including, without limitation, costs of suits and fees related thereto and reasonable attorneys' fees), fines or penalties, or any other liability, that may be imposed or obtained by any person, agency or governmental authority, by reason of any Hazardous Substance that may be present by whatever means in, on, about, or emanating from the Premises, or that arises out of or in connection with, or by reason of, any actual or alleged occurrence involving any Hazardous Substance that may be connected to, or related in any way with, the Concessionaire's operations, the Premises, the STATE's ownership of the Premises, or this Concession Agreement. The STATE and Concessionaire understand and agree that the intent of this release and indemnity includes, but is not limited by, those agreements authorized by 42 U.S.C. Section 9607 - LIABILITY, as amended, and any successor section thereof. This provision shall not be construed to be a limitation of any other assumption of liability or indemnification agreement by Concessionaire which may be contained anywhere else in this or any other document.

10. Insurance. Refer to ARTICLE X. INSURANCE.

11. Burden of Proof. In all instances covered in this Article XI.C (Environmental Compliance - Concessionaire's Duties), Concessionaire accepts the burden of establishing that it is not responsible for the existence of Hazardous Substances in the Premises. If Concessionaire cannot establish that it is not responsible for the existence of Hazardous Substances in the Premises, Concessionaire shall be deemed responsible for the existence of the Hazardous Substances.

D. Spill Prevention, Control and Countermeasure (SPCC). Pursuant to: (1) the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. Section 1251, et seq.; and (2) 40 CFR, Part 112 often referred to as the Spill Prevention Control and Countermeasure rules (hereinafter referred to as the "SPCC rules"), Concessionaire shall:

1. Concessionaire's Compliance with SPCC Rules. Throughout the entire term of this Concession Agreement, comply with and completely satisfy EPA's SPCC rules now or hereafter adopted, amended, published and/or promulgated pursuant thereto.

2. Concessionaire's Responsibility to Prepare and Implement SPCC Plan. Prior to the commencement date of this Concession Agreement and throughout the entire term of this Concession Agreement, prepare and implement, and amend, if necessary, Concessionaire's Spill Prevention Control and Countermeasure Plan (hereinafter referred to as "SPCC Plan").

3. Storage of Oil and Other Petroleum Products. Notwithstanding the applicability requirements of the SPCC regulations, if Concessionaire stores oil and/or other petroleum products and/or by-products in any quantity of less than 1,320 gallons, but has in or on the Premises, at least one (1) or more storage container(s) and/or tank(s) equal to or larger than 55-gallon capacity, then Concessionaire is required under this Concession Agreement to prepare and implement a written plan which conforms to the SPCC Plan requirements under the SPCC rules and to comply with and completely satisfy at least the portion of the SPCC rules, dealing with periodic testing of oil storage containers, providing secondary containment, training of oil handling personnel to prevent the discharge of oil, providing security around oil storage facilities, and all record keeping pertaining thereto.

E. National Pollutant Discharge Elimination System (NPDES). Pursuant to: (1) the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. Section 1251, et seq.; and (2) the requirements contained in the National Pollutant Discharge Elimination System (hereinafter referred to as "NPDES") regulations found in Hawai'i Administrative Rules Chapter 11-55 and the Appendices thereto, as amended and enforced by the EPA and DOH, Concessionaire shall, throughout the entire term of this Concession Agreement, comply with and completely satisfy all of the NPDES regulations governing general permits and consolidated permits, if applicable, now or hereafter adopted, amended, published and/or promulgated pursuant thereto.

F. Part 77 of FAA Regulations. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

G. Airspace. There is hereby reserved to the STATE, 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 surface of the designated Premises herein. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airports. No liability on the part of the STATE will result from the exercise of this right.

H. Airport Obstructions. The Concessionaire by accepting this Contract expressly agrees for itself, its successors and assigns and Agents, that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land designated as Concessionaire Premises hereunder which will exceed such maximum height as may be stipulated by the STATE. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions will govern the maximum height to be stipulated by STATE. In the event the aforesaid covenants are breached, STATE reserves the right to enter upon the land designated as Concessionaire Premises hereunder and to remove the offending structure or object and cut down the offending tree all of which will be at the expense of Concessionaire and without liability to STATE.

I. Airport Hazards. The Concessionaire by accepting this Contract agrees for itself, its successors and assigns and Agents, that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airports or otherwise constitute a hazard or obstruction. In the event the aforesaid covenant is breached, STATE reserves the right to enter upon the Premises hereby and cause the abatement of such interference at the expense of the Concessionaire and without liability of any kind.

ARTICLE XII. UTILITY SERVICE

A. Utility Services to Premises.

1. Services provided. The STATE shall provide in the buildings of the Airports the following utility services: reasonable amounts of water, electricity, telephone, wastewater outlets, and ventilation to a point determined by the STATE. All extensions of the facilities required by the Concessionaire for said utility services from the point(s) at which the STATE makes such utility services available shall be at the Concessionaire's sole cost and expense.

2. Utility costs. During the term of this Concession Agreement, all utility charges, including, but not limited to, deposits, installation costs, meter deposits, and all service charges for electricity and other public utility services to the Premises (such as water, telephone and wastewater) shall be paid by the Concessionaire, regardless of whether such utility services are furnished by the STATE or by utility service providers.

3. Service points. If the Concessionaire desires any changes to any points of supply as described in this Article XII (Utility Service), the expense of making such changes or alterations shall be at the Concessionaire's sole cost. When the Concessionaire makes connections or re-connections, due to repairs to the service points or lines provided by the STATE or makes service disconnections to cease service, the Concessionaire shall comply with the STATE's procedures to provide the necessary advance request and notice, and coordinate said action to make connections, re-connections or disconnections with the STATE.

4. Meters. The Concessionaire, at its sole cost and expense, shall be responsible for the installation of electric and water meters and shall connect said utility meters to the energy monitoring and control system at the Airports. For metered electricity, the CONCESSIONAIRE shall pay electricity charges based on rates charged the STATE, but on non-metered Premises, the Concessionaire shall pay a pro-rata share to be determined by the STATE.

B. Non-Liability for Interruption of Utility Services.

1. Concessionaire not relieved. No failure, delay or interruption in any utility service or services, whether such are supplied by the STATE or others, shall relieve or be construed to relieve the Concessionaire of any of its obligations hereunder, or shall be construed to be an eviction of the Concessionaire, or shall constitute grounds for any diminution or abatement of the rents, fees and charges provided for herein, or grounds for any claim by the Concessionaire against the STATE for damages (consequential or otherwise), unless first approved, in writing, by the STATE.

2. Waiver of damages. The Concessionaire hereby expressly waives any and all claims for damages arising or resulting from any failure, delay or interruption in any utility service or services (including, without limitation, electricity, gas, potable and non-potable water, plumbing, sanitary sewage disposal, telephone, telecommunications, ventilation) or for the failure or interruption of any public or passenger conveniences. The Concessionaire 's waiver herein shall extend to any failure, delay or interruption to electric service caused by power spikes or surges, severe climatic or weather conditions, including, but not limited to, high winds, rainstorms, hurricanes and other climatic or weather phenomena, and/or other acts of nature, such as earthquakes and seismic waves (tsunami) affecting the Premises.

3. Damage repair. If any damage to any electricity, water, sewer, telecommunication, or telephone service line or facility or utility service connection, or any other utility service line or facility or utility service connection is caused by the Concessionaire, or the

Concessionaire's agents, the Concessionaire shall, at its sole cost and expense, repair, restore or replace such utility service line or facility or utility service connection.

C. Telecommunications Equipment.

1. STATE's prior approval. The Concessionaire and its telecommunications service provider(s) shall not, without the STATE's prior written approval, install telecommunication facilities (i.e. conduit, equipment, cabling) or make service connections in any areas not within the Premises (such as common areas and other respective non-leasehold areas of the Airports), or in currently designated or future primary or secondary minimum-points-of-entry. The Concessionaire shall be responsible for paying the STATE for the use of such facilities, space, and/or areas at the Airports.

2. Telecommunication services. Telecommunication services include the installation, operation, and provisioning of telecommunications conduit, cabling, antennas, equipment, and service. Telecommunication service providers include cable and equipment installation contractors, system operators, and any entity which provides telecommunication services, such as Hawaiian Telcom, AT&T, government entities, or other Airports tenants. Such services provided by the Concessionaire shall allow the STATE to communicate operational and emergency information to persons at the Airports at no cost to the STATE.

3. Plans. The Concessionaire shall submit to the STATE for the STATE's review and approval, plans, documentation (i.e. plans, drawings, specifications, schedules and cost estimates) of each telecommunication circuit, infrastructure, equipment, line, facility, or appurtenance proposed to be used, to the STATE for approval prior to construction, installation and/or service. This documentation shall include, but not be limited to, specific routing detail, conduit types and sizes, access junction boxes, cable descriptions (type, quantity, size) per route segment, telecommunication rooms and closets used, termination block labeling, and cable pair assignments for each cable segment.

4. As-builts. The Concessionaire shall submit to the STATE within thirty (30) days of the completion of construction or installation, or as requested by STATE from time to time, as-built documentation of all systems, circuits, and infrastructure containing a separate stamp of the Concessionaire's licensed contractor who completed the system, circuits and infrastructure or accompanied by the Concessionaire's attestation that said as-built documentation are true and accurate.

5. No sale. The Concessionaire shall not allow the use of, and shall not sell, purchase, lease, sublet, or trade for, telecommunication facilities or services to or from other Airport entities or tenants without the STATE's prior written approval.

6. No interference. Telecommunication facilities and services established and used by the Concessionaire shall not interfere with the STATE's telecommunication facilities and services. All such facilities and services shall comply with all applicable municipal, state,

and federal rules and regulations, including without limitation, the Federal Communications Commission licensing regulations and the State Public Utilities Commission.

7. STATE's corrective actions. The Concessionaire shall be responsible for any and all costs and expenses (including, without limitation, attorneys' fees and court costs) incurred by the STATE in taking corrective or enforcement action with respect to the Concessionaire's non-compliance with this Article XII (Utility Service).

ARTICLE XIII. ASSIGNMENT AND SUBLETTING

A. Assignment or Other Transfers.

1. Assignment. The Concessionaire shall not assign, sublet, encumber or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof or any interest herein, or permit any other person to occupy or use the Premises except by way of devise, bequest or intestate succession, without the STATE's prior written consent, which consent may be granted or denied in the STATE's sole discretion. Any such transfer or assignment made without the STATE's consent shall constitute a default under this Concession Agreement and shall be voidable at the STATE's election. With prior written approval of the STATE, and the prior approval of the Land Board, such assignment and transfer of this Concession Agreement, or any interest therein, may be made in accordance with current industry standards, as determined by the Land Board, pursuant to Section 171-36, HRS; provided further, that prior to the written approval of the STATE of any assignment of this Concession Agreement, the STATE shall have the right to review and approve, in writing, the consideration paid by the Assignee, and may condition the STATE's consent to the assignment of this Concession Agreement on payment by the Concessionaire to the STATE of a premium of fifty percent (50%) of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of all Improvements and trade fixtures constructed or installed upon the Premises by the Concessionaire during the term of this Concession Agreement, and being transferred to the Assignee, as further explained in the Department of Transportation Assignment of Lease Evaluation Policy, attached hereto as Appendix C, Attachment 5 (hereafter the "Assignment Policy"). The Concessionaire shall pay the assignment premium to the STATE as calculated by the STATE based on the Assignment Policy.

The premium on subsequent assignments shall be based on the difference in the selling price and purchase price plus the straight-line depreciated cost of all Improvements constructed or installed upon the Premises by the then Assignor.

2. Changes in Concessionaire.

a. Controlling Interest. The merger of the Concessionaire with any other entity or the transfer of any controlling ownership interest in the Concessionaire, or the

assignment or transfer of a substantial portion of the assets of the Concessionaire, whether or not located on the Premises, shall constitute an assignment. Without limiting the generality of the foregoing, if the Concessionaire is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the Concessionaire, shall be deemed an assignment. If the Concessionaire is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of the Concessionaire or the sale or other transfer of a controlling percentage of the capital stock or membership interests of the Concessionaire or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the Concessionaire, shall be deemed an assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock or interests possessing at least twenty percent (20%) (or a percentage less than twenty percent (20%) if such percentage represents a controlling interest in the Concessionaire) of the total combined voting power of all classes of the Concessionaire's capital stock or interests issued, outstanding and entitled to vote for the election of directors.

b. Sale of assets. The sale of all or substantially all of the assets of the Concessionaire, or the transfer of Concessionaire's Concession business, shall be deemed to constitute an "assignment" for purposes of this Concession Agreement which requires the prior written approval of the STATE in accordance with this Article XIII (Assignment and Subletting).

3. STATE shall approve each assignment. The consent of the STATE to any one assignment shall not constitute a waiver of the STATE's right to approve subsequent assignments, nor shall consent of the STATE to any one assignment relieve or release any party previously liable as the Concessionaire from any obligation under this Concession Agreement. The acceptance by the STATE of the payment of rent or concession fee following an assignment shall not constitute consent to that assignment or any other assignment, and the STATE's consent shall be evidenced only in writing.

4. No release. In no event shall the STATE's consent to an assignment or transfer be deemed to be a release of the Concessionaire as the primary obligor hereunder. Nor shall the acceptance of rent or concession fee by the STATE constitute a release or waiver of the STATE's rights against the Concessionaire, or as a consent to any assignment or transfer, nor shall any other act of the STATE in relation to said Assignee be so construed.

5. Void if not properly approved. Any transfer or assignment made in violation of the foregoing provision shall be void. Any attempted assignment, or any subleasing of the whole or any part of the Premises, or any other transaction which violates Articles XIII.A. (Assignment or Other Transfers) or XIII.B. (No Subletting) shall be void and shall confer no right, title or interest in or to this Concession Agreement, or right of occupancy of the whole or any portion of the Premises, upon any such purported assignee, subtenant, successor or purchaser. The STATE shall further have the right to terminate this Concession Agreement and to enforce such other remedies as are provided in this Concession Agreement.

B. No Subletting. The Concessionaire shall not rent or sublet the whole or any portion of the Premises.

C. Assignor or transferor. If the transferor or the Concessionaire defaults in the performance of any of the terms of this Concession Agreement, the STATE may proceed directly against the Concessionaire, the transferor or each transferor if there has been more than one assignment, subletting, encumbrance or transfer (hereafter collectively "Transfer") without the necessity of exhausting remedies against the Concessionaire. The STATE may consent to subsequent Transfers or amendments or modifications to this Concession Agreement with transferees, without notifying the transferor (or if there has been more than one Transfer, then each transferor) and without obtaining its or their consent thereto and such action shall not relieve any transferor of liability under this Concession Agreement as amended.

D. Procedure and conditions.

1. Procedure. The Concessionaire must provide the STATE in writing:

a. the name and address of the proposed assignee or transferee;

b. the nature of the proposed business to be operated by the assignee or transferee on the Premises;

c. the terms of the proposed assignment or transfer; and

d. reasonable financial information so that the STATE can evaluate the proposed assignee or transferee under this Article XIII (Assignment and subletting).

2. Conditions. Transfers by the Concessionaire are also subject to:

a. the terms of this Concession Agreement;

b. the term of any assignment or other Transfer agreement shall not extend beyond the Concession Agreement Term;

c. the Concessionaire shall remain liable for all Concession Agreement obligations;

d. consent to one Transfer does not waive the consent requirement for any future Transfers;

e. payments to the STATE of all premiums or other amounts which the Concessionaire may be required to pay under this Article XIII (Assignment and subletting);

f. any other conditions that may be imposed by the STATE.

ARTICLE XIV. DAMAGE OR DESTRUCTION

A. Partial Damage. If all or a portion of the Premises are partially damaged by fire, explosion, acts of God, the elements, severe climatic or weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves [tsunami]), acts of the public enemy, sabotage, riots, rebellion, and other civil commotion or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by the STATE, subject to the limitations as hereafter provided; if said damage is caused by the negligence or omission to act of the Concessionaire, or the Concessionaire 's agents, the Concessionaire shall be responsible for directly and fully paying for all such repair and for directly and fully reimbursing the STATE for the cost and expenses incurred in such repair upon demand and as directed by the STATE.

B. Extensive Damage. If the damages are so extensive as to render the Premises or a portion thereof uninhabitable, but are capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the STATE, subject to the limitations as hereafter provided, and an appropriate portion of the rents, fees, and charges payable herein shall abate from the time of the damage until such time as the Premises or portion thereof are fully restored and certified by the STATE as again ready for use; provided, however, that if such damage is caused by the negligence or omission to act of the Concessionaire or the Concessionaire's Agents, said rents, fees, and charges will not abate and the Concessionaire shall be responsible for reimbursing the STATE for the costs and expenses incurred by the STATE in completing such repair upon demand and as directed by the STATE.

C. Complete Destruction. If all or a substantial portion of the Premises are completely destroyed by fire, explosion, acts of God, the elements, severe climatic and weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves [tsunami]), acts of the public enemy, sabotage, riots, rebellion, or other civil commotion or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than thirty (30) days, the STATE shall be under no obligation to repair, replace, or reconstruct the Premises, and an appropriate portion of the rents, fees, and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the Premises are fully restored. The STATE shall notify the Concessionaire of the STATE's intentions within sixty (60) days of the destruction or damage. If within twelve (12) months after the time of such damage or destruction, the Premises have not been repaired or reconstructed, the Concessionaire may terminate this Concession Agreement in its entirety upon seven (7) days written notice to the STATE, such termination to be effective as of the date of such damage or destruction subject to the survival of the Concessionaire's obligations as set forth in this Concession Agreement, particularly in Article XLIII (Survival of Obligations) herein. Notwithstanding the foregoing, if the Premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of the

Concessionaire or the Concessionaire's Agents, said rents, fees, and charges shall not abate and the STATE may, in its discretion, require the Concessionaire to repair and reconstruct the Premises within twelve (12) months of such destruction and pay the cost therefor, or the STATE may repair and reconstruct the same within twelve (12) months of such destruction and the Concessionaire shall reimburse the STATE for the cost and expenses incurred by the STATE in completing such repair upon demand and as directed by the STATE.

D. Limits of STATE's Obligations Defined. It is understood that, in the application of the foregoing provisions, the STATE's obligations shall be limited to repair or reconstruction of the Premises to the same extent and of equal quality as obtained by the Concessionaire at the commencement of its Concession operations hereunder. Such replacement or repairs shall be equivalent to or better in quality than the Improvements so destroyed or damaged, as of the date of the original installation and construction for new Improvements and as of the commencement date of this Concession Agreement for pre-existing Improvements thereof.

Redecoration and replacement of furniture, equipment, supplies and FFE shall be the responsibility of the Concessionaire and any such redecoration, refurnishing, and re-equipping shall be equivalent in quality to that originally installed.

E. Restrictions on Abatement. The foregoing provisions for abatement of the obligation to pay rents, fees, and charges required under this Concession Agreement and for cancellation of this Concession Agreement shall not apply if the Concessionaire has caused or is responsible in any part for the Premises becoming damaged, destroyed, untenable, or uninhabitable.

ARTICLE XV. SIGNS

STATE's Approval. The Concessionaire shall not erect, construct or place any signs or displays pertaining to the Concession business upon any portion of the Airports other than upon a portion of the Premises, unless otherwise first approved in writing by the STATE.

ARTICLE XVI. INGRESS AND EGRESS

A. Reasonable access. The Concessionaire in common with others, shall have the nonexclusive right of ingress and egress to and from the Premises and such other portions of the Airports area to or from which such persons shall reasonably require ingress or egress, in such manner, upon such terms and at such locations as the STATE may from time to time designate; provided, however, that the aforementioned right of ingress and egress as it applies to the suppliers of any flammable fuel or other such product or materials shall be subject to the prior written approval of the STATE.

B. Subject to rules. The privilege of ingress and egress at the Airports shall be subject to the rules and regulations of the STATE, now in effect or which may hereafter be adopted or amended, for the safe and efficient operation of the Airports.

C. Right to alter access. The STATE may, at any time, temporarily or permanently, close, consent to close, or request the closing of any roadway and any other area at the Airports, presently or hereafter used as such, so long as a reasonable alternative means of ingress and egress remains available to the Concessionaire.

D. Concessionaire release. The Concessionaire hereby releases and discharges the STATE and STATE's Agents from any and all claims, demands, causes of action, liabilities, losses, damages, costs and expenses, which the Concessionaire may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, access area or other area, whether within or outside the Airports, or any closure, change, alteration, adjustment, amendment or revision in any pedestrian traffic routing through any part of the Airports.

E. No relief. If the STATE is required or elects to impose access restrictions against the general public in the interest of establishing or maintaining safety and security, and in so doing significantly decreases the number and amount of potential customers and other pedestrian traffic by or to the Premises, the Concessionaire shall not be entitled to any rebate or relief from any of its minimum annual guaranteed fee payment obligations under this Concession Agreement (except for that set forth in Article VI.J. (Partial Relief from Obligation) or Article VI.K. (Relief Due to Economic Emergency) herein. The Concessionaire shall have no claim for any rebate or adjustment of fee for any change which may arise as a result of the STATE's change, adjustment, amendment, alteration or revision to pedestrian traffic patterns or the imposition of restrictions on access into any portion of the Airports.

ARTICLE XVII. LIABILITY AND INDEMNITY

A. Assumption of liability. The use of the Airports and the Premises by Concessionaire and Concessionaire's Agents shall be at the sole risk of the Concessionaire, and the Concessionaire shall assume full liability for all of Concessionaire's Agents as set forth herein.

B. Indemnity. The STATE shall not be liable for and the Concessionaire shall, to the extent permitted by law, protect, defend with counsel acceptable to the STATE, indemnify, and keep and hold harmless the STATE and STATE's Agents, and their respective successors and assigns, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses (including, without limitation, costs of suits and fees related thereto and reasonable attorneys' fees), fines or penalties, or any other liability, arising from any actual or alleged injury to or death of persons, including but not limited to actual or alleged work-related injuries or death of employees of the Concessionaire, or

actual or alleged damage to or destruction of property, including but not limited to property of the Concessionaire, or any personal injury/advertising injury, conduit injury, content injury, disclosure injury, impaired access injury, privacy injury, reputational injury, crisis management and public relations expenses, privacy notification expenses, regulatory defense expenses, consumer redress funds and regulatory fines, and any other cyber, technology, or professional liability, resulting from or related to the Concessionaire's Premises, operations, products, or completed operations, and the Concessionaire's use or occupancy of the Premises or any other portion of the Airport. This provision shall not be construed to be a limitation of any other assumption of liability or indemnification agreement by the Concessionaire which may be contained anywhere else in this or any other document.

ARTICLE XVIII. SURRENDER OF PREMISES

A. Prompt and peaceful surrender. The Concessionaire shall yield and deliver peaceably to the STATE possession of the Premises and all Improvements thereupon, on the date of the cessation of this Concession Agreement whether such cessation be by termination, expiration, or otherwise, promptly, peaceably, quietly, and in as good order and condition as that which existed at the commencement of the Concession Agreement or at the time of installation of the Improvements, reasonable wear and tear arising from use of the Premises to the extent permitted elsewhere in this Concession Agreement and damage resulting from causes over which the Concessionaire had no control, excepted.

B. Transition. In the event the Concessionaire is not awarded the Concession Agreement for the period subsequent to the term of this Concession Agreement, the Concessionaire covenants with the STATE that the Concessionaire shall assist in the peaceful transition and occupancy of the Premises by the replacement Concessionaire. The Concessionaire shall allow entry into and upon the Premises by the replacement Concessionaire during all reasonable hours and times prescribed by the STATE. Any dispute or disagreement regarding this transition to the replacement Concessionaire shall be resolved by the STATE, and such decision by the STATE shall be deemed conclusive and binding upon the Concessionaire and replacement Concessionaire. The Concessionaire shall not remove, damage, destroy, or otherwise render unusable any item, article, Improvement, FFE, or portion of the Premises that, by the terms of this Concession Agreement, becomes or could become the STATE's property. If the Concessionaire fails to properly perform its obligations as described in this Article XVIII.B. (Transition), the Concessionaire shall pay to the STATE, upon demand from the STATE, all monies deemed necessary by the STATE to correct, remedy, and cure the Concessionaire's failure, including, without limitation, repairing or replacing any item, article, Improvements, FFE, or portion of the Premises damaged, destroyed, removed, or rendered unusable by the Concessionaire.

ARTICLE XIX. RIGHTS OF ENTRY RESERVED

A. Inspection. The STATE and the STATE's Agents shall have the right at all business hours with reasonable notice to enter upon all portions of the Premises as described in Article VIII.C.1. (Periodic inspection) herein, for the purpose of inspecting the same, for observing the Concessionaire's performance of its obligations under this Concession Agreement, and to serve or post or keep posted on the Premises notices provided by any applicable law, statute, rule, regulation or order of any governmental authority and for the doing of any act or thing which the STATE may be obligated or have the right to do under this Concession Agreement or otherwise.

B. Maintain Systems. Without limiting the generality of the foregoing, the STATE and the STATE's agents, shall have the right, for its own benefit, for the benefit of the Concessionaire, or for the benefit of persons other than the Concessionaire at the Airports, to: (1) maintain existing and future utility, mechanical, electrical, and other systems, (2) to enter upon said Premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the STATE, be necessary or desirable and, from time to time, (3) complete construction and installation work over, in or under the Premises for access to other parts of the Airports not otherwise conveniently accessible. The STATE shall return the Premises to substantially the same condition as existed prior to the STATE's entry upon said Premises.

C. No Obligation to Construct or Repair. Nothing in this Article XIX (Rights of Entry Reserved) shall impose or shall be construed to impose upon the STATE any obligations to so construct or maintain, or to make repairs, replacements, additions or alterations to the Premises, nor shall the STATE's entry upon the Premises, or any portion thereof, create any liability on the part of the STATE for any failure to do so.

D. Showing the Premises. At any time, and from time to time, during ordinary business hours, the STATE, the STATE's Agents and the STATE's invitees, whether or not accompanied by interested parties, shall have the right to enter upon the Premises, or any portion thereof, for the purposes of exhibiting and viewing all parts of the same, and the Concessionaire shall grant and allow such inspection and viewing without undue conditions, provided the STATE does not unreasonably interfere with the operation of the Concession.

E. No Abatement. No abatement of rents, fees or other charges shall be claimed by or allowed to the Concessionaire by reason of the STATE's exercise of any or all of the rights contained in this Article XIX (Rights of Entry Reserved) herein; provided, however, that nothing in this Article contained shall permit or be construed to permit the STATE to exercise any right of access or entry for any of the purposes denoted hereinabove, except at reasonable times and in such a manner as to not unreasonably interfere with or hinder the occupancy, use and enjoyment of the Premises by the Concessionaire.

ARTICLE XX. TERMINATION BY STATE

A. Events of Breach or Violation. The Concessionaire shall be in breach or violation of this Concession Agreement, and the STATE shall have the right to terminate this Concession Agreement if any one or more of the following events shall occur:

1. Transfer of interest. When, without the prior written approval or consent of the STATE, any interest of the Concessionaire under this Concession Agreement shall be transferred or assigned, whether voluntarily or involuntarily, by reason of assignment, sublease or otherwise, stock transfer, operation of law, or death, to any other individual, limited or general partnership, joint venture, firm, company, corporation, limited liability company, or any other entity; or

2. Ownership change. When the ownership of the Concessionaire, without the prior written approval or consent of the STATE, is changed by inter vivos stock transfer to one or more individuals or entities who are not stockholders at the inception of the Concession Agreement, or if the Concessionaire is a partnership, whether limited or general, by the introduction of a new partner or partners, whether limited or general, who was not a partner or who were not partners at the inception of the Concession Agreement; or

3. Partnership dissolution. If the Concessionaire is a partnership of any type and the partnership is dissolved as a result of any act or omission of its partners or any of them, or by operation of law, or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

4. Receivership. When, by or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession of all or substantially all of the property of the Concessionaire, and such possession or control shall continue in effect for a period of at least fifteen (15) days, without being contested by the Concessionaire in good faith by proper legal proceedings within said fifteen (15) day period; or

5. Abandonment. When the Concessionaire shall voluntarily abandon, desert or vacate the Premises, or discontinues its operation of the Concession on or at the Premises; or

6. Prevented from use. After exhausting or abandoning any right of further appeal, the Concessionaire shall be prevented for a period of at least ninety (90) days by the action of any governmental agency from using the Premises, regardless of the fault of the Concessionaire; or

7. Suspension. The happening of any act which results in the suspension or revocation of the rights, powers, licenses, permits or authorities necessary for the conduct and operation of the Concession authorized herein for a period of more than thirty (30) days; or

8. Successor corporation. The Concessionaire becomes, without the prior written approval of the STATE, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution; or

9. Attachment. When any attachment, judgment, lien or encumbrance is filed against the Concessionaire's interest in the Premises because of any act or omission of the Concessionaire, and said attachment, judgment, lien or encumbrance is not discharged or contested by the Concessionaire in good faith by proper legal proceedings within thirty (30) days; or

10. Failure to pay rent. When the Concessionaire fails to duly and punctually pay the rents, fees and charges required under this Concession Agreement, including any interest, service charges or late fees, or to make any other payment required under this Concession Agreement when due to the STATE upon the lapse of five (5) business days after the Concessionaire's receipt of a written notice from the STATE demanding such payment or payments; or

11. Failure to pay taxes. When the Concessionaire fails to duly and punctually make payments due to any agency of the STATE or any political subdivision (county) of the STATE, including, but not limited to, payments for any permit, license or lease, general excise taxes, workers' compensation payments, unemployment taxes, real property taxes, etc., and such payments are not made within thirty (30) days of their due dates; or

12. Poor quality control. When the Concessionaire fails to provide, maintain and upgrade, as necessary, the quality of Concession equipment or services to the satisfaction of the STATE, as required by Article V (Use of Premises) and Article VIII (Concession Operation) herein, within fifteen (15) days from and after receipt of written notice from the STATE to correct or cure the condition objected to; or

13. Failure to perform. When the Concessionaire fails to keep, perform, and observe each and every other agreement, promise, covenant, term and condition set forth in this Concession Agreement, on its part to be kept, performed or observed, and such failure shall continue for a period of more than thirty (30) days after the Concessionaire's receipt of a written notice from the STATE of such breach or violation by personal service or registered mail or certified mail to the Concessionaire, except where fulfillment of the Concessionaire's obligation requires activity over a period of time, and the Concessionaire begins to perform whatever may be required for fulfillment within ten (10) days after receipt of said written notice and continues such performance, showing improvement or correction, without interruption except for causes beyond the Concessionaire's control; or

14. General assignment. The Concessionaire makes a general assignment for the benefit of creditors, or files a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under any law or statute of the United

States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the Premises; or

15. Lien. Any lien is filed against or affecting the Premises or any portion thereof, because of any act or omission of the Concessionaire and such lien is not removed or enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days.

16. Other contract. When the Concessionaire fails to cure or remedy any breach or violation of any promise, covenant, term and condition in any other permit, contract lease, or other agreement entered into with STATE by Concessionaire during the term of this Concession Agreement.

B. Default and Termination. In the event of any breach or violation due to the occurrence of any of the events enumerated in Article XX.A. (Events of Breach or Violation) herein, the STATE may, after the giving of a written Notice of Default in accordance with Section 171-20 HRS, pursue any available remedy, legal or equitable, it may have against the Concessionaire.

If the Concessionaire fails to correct the violation(s) contained in the Notice of Default to the satisfaction of the STATE, the STATE may, without prejudice to any other remedy, elect to:

1. Additional charge. Assess a charge of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) per day as prescribed and set forth in Article VI.I. (Additional Charges) hereof; and

2. Termination letter. Concurrent with or subsequent to the assessment of such additional charge, subject to Section 171-21, HRS, proceed to terminate this Concession Agreement by providing a written Letter of Termination and Notice to Vacate to the Concessionaire.

If this Concession Agreement is terminated by the STATE because of default, the Concessionaire will not be allowed to bid on any other concession or lease offered by the State of Hawai'i for a period of five (5) years following the date of termination as prescribed and set forth under Section 171-13, HRS.

C. Right of Re-entry. The STATE shall have, as an additional remedy upon the giving of a written Notice of Termination and Notice to Vacate as provided in this Article XX.B. (Default and Termination) herein, the right to re-enter the Premises and every part thereof demised under this Concession Agreement upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the

obligations of the Concessionaire under this Concession Agreement, and shall in no event constitute an acceptance of surrender.

D. Concessionaire's rights cease. Upon such termination by the STATE, all rights, powers and privileges of the Concessionaire granted hereunder shall cease. Unless otherwise stated herein, the Concessionaire shall immediately vacate the Premises occupied and used by it under this Concession Agreement, and the Concessionaire shall have no claim of any kind whatsoever against the STATE, by reason of such termination, or by reason of any act by the STATE incidental or related thereto. In the event of the exercise by the STATE of such option to terminate, the Concessionaire shall have no right to or claim upon any Improvements or the value thereof, which may have been previously constructed, installed, erected or placed by the Concessionaire on, in or at the Premises. The STATE may also remove or store any of the Concessionaire's FFE located thereon or therein, at the sole cost and expense of the Concessionaire, without the STATE being liable to the Concessionaire for damage or loss thereby sustained by the Concessionaire.

E. Waiver of redemption and damage. The Concessionaire waives, releases and discharges any claims it may now or hereafter have relating to the STATE's exercise of the STATE's rights under this Concession Agreement to re-enter and regain and resume possession of the Premises and to remove the Concessionaire, the Improvements and the Concessionaire's FFE from the Premises and store or dispose of any of the Concessionaire's property, including the Concessionaire's FFE.

The Concessionaire hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event the STATE obtains or retains possession of the Premises in any lawful manner. The Concessionaire further agrees that in the event the manner or method employed by the STATE in reentering or regaining possession of the Premises gives rise to a cause of action in the Concessionaire in forcible entry and detainer under the laws of the State of Hawai'i, the total amount of damages to which the Concessionaire shall be entitled in any such action shall be the sum of ONE AND NO/DOLLAR ($1.00), and the Concessionaire agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

F. Survival of Concessionaire's Obligations.

1. Concessionaire's obligations remain. In the event this Concession Agreement is terminated by the STATE, or in the event the STATE reenters, regains or resumes possession of the Premises, all of the obligations of the Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Concession Agreement as if there had been no termination, reentry, regaining or resumption of possession.

2. Rent remains due. Subject to the STATE's obligation to mitigate damages, the amount of the rent, fees and charges shall become due and payable to the STATE to the same extent, at the same time and in the same manner as if no termination, reentry,

regaining or resumption of possession had taken place. The STATE may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

3. Subsequent to termination. The amount of damages for the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any rents, fees and charges received by the STATE during the remaining term of this Concession Agreement as if no termination, reentry, regaining or resumption of possession had taken place from a succeeding operator of the Concession:

a. MAG. On account of the Concessionaire's MAG obligation, the cumulative total thereof less the amount paid prior to the effective date of termination; or

b. Percentage fees. On account of the Concessionaire's percentage of annual gross receipts, the appropriate amount if in excess of said MAG, which gross receipts would have been received by the Concessionaire during the balance of the term of this Concession Agreement as if there had been no termination, reentry, regaining or resumption of possession. For the purpose of calculation hereunder, the amount of gross receipts shall be derived by taking the Concessionaire's total gross receipts during the twelve (12) months immediately preceding termination, dividing said total by three hundred sixty-five (365) days and then multiplying the result by the number of days in the balance of term hereof.

c. No effect on STATE's rights. The STATE and the Concessionaire agree that the damages specified above shall not affect or be construed to affect the STATE's right to such damages in the event of termination, reentry, regaining or resumption of possession where the Concessionaire has not received any actual gross receipts under this Concession Agreement.

G. Additional rights of STATE. The STATE, upon termination of this Concession Agreement, or upon reentry, regaining or resumption of possession of the Premises, may occupy the Premises and shall have the right to permit any person, firm, corporation or entity to enter upon the Premises and use the same. Such occupation by others may be of only a part of the Premises, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder as if no termination, reentry, regaining or resumption of possession had taken place, and on terms and conditions the same as or different from those set forth in this Concession Agreement. The STATE shall also have the right to repair or to make such structural or other changes in the Premises as are necessary in its judgment to maintain the suitability thereof for uses and purposes similar to those granted under this Concession Agreement without affecting, altering or diminishing the obligations of the Concessionaire hereunder.

H. Termination before commencement. If any of the events enumerated in Article XX.A. (Events of Breach or Violation) herein shall occur prior to the commencement of the Concession Agreement term, the Concessionaire shall not be entitled to enter into possession

of the Premises, or any portion thereof, and the STATE, upon the occurrence of any such event, or at any time thereafter during the continuance thereof, by twenty-four (24) hours' notice, may cancel or terminate the interest of the Concessionaire under this Concession Agreement, such cancellation or termination to be effective upon the date specified in such notice.

ARTICLE XXI. WAIVER

A. STATE waiver. No acceptance by the STATE of rents, fees, charges or other payments in whole or in part, for any period or periods after a default of any of the covenants, provisions, requirements, stipulations, terms or conditions hereof to be performed, kept or observed by the Concessionaire, shall be deemed a waiver of any right on the part of the STATE to terminate the Concession Agreement for any like or other or succeeding breach or default.

B. No implied waiver. No failure by either party to insist upon the strict performance of the other party under this Concession Agreement or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. A waiver or assent by the STATE, express or implied, of or to any breach or default of the Concessionaire, in the performance of any of the covenants, provisions, requirements, stipulations, terms or conditions of this Concession Agreement shall not be deemed or considered to be a waiver of any other or succeeding breach or default. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than default, performance or period of time specified in such express waiver.

C. Cumulative remedies. The rights, powers, privileges, options and remedies of the STATE contained in this Concession Agreement shall be construed to be cumulative, and no one of them shall be deemed to be exclusive of the other, or exclusive of any right, power, privilege, option or remedy provided by law.

ARTICLE XXII. WITHDRAWAL

A. STATE's right. The STATE reserves and shall have the right, at any time during and throughout the term of this Concession Agreement, in its sole discretion, and regardless of whether or not the Concessionaire has breached this Concession Agreement or has been or then is in default: (1) to withdraw all or a portion of the Premises from the Concession Agreement, terminate and cancel this Concession Agreement with respect to the portion of the Premises so withdrawn and to reoccupy said portion of the Premises thereunder in the public interest or (2) to recapture any portion of the Premises not utilized by the Concessionaire for the purposes identified or prescribed by this Concession Agreement.

B. Notice. The STATE shall give the Concessionaire written notice of any such withdrawal or recapture and the STATE's intent to cancel or terminate the Concession

Agreement as to the portion of the Premises so withdrawn or recaptured no less than sixty (60) days prior to the effective date of such cancellation or termination.

C. Improvements. The STATE shall pay to the Concessionaire the then unamortized value of the Improvements constructed or installed by the Concessionaire, at the Concessionaire's sole cost and expense, in, at or upon the portion of the Premises being withdrawn or recaptured.

The unamortized value of the withdrawn Improvements shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed under the Internal Revenue Code, regardless if such accelerated method is used by the Concessionaire.

D. No claim against the STATE. The Concessionaire shall peaceably surrender the portion of the Premises the STATE desires to withdraw or recapture and the Concessionaire shall remove all Improvements and the Concessionaire's FFE in accordance with Article XVIII (Surrender of Premises) herein if required by the STATE, all at no cost to the STATE. The Concessionaire shall not, by reason of its surrender, be entitled to any claim against the STATE for any reduction in rent or for any of the Concessionaire's cost of removal. If an alternate location at the Airports is made available by the STATE, in its sole discretion, the STATE may permit the Concessionaire, without rent adjustment and by appropriate amendment to this Concession Agreement, to relocate the portion of its Concession business affected by the withdrawal or recapture to the alternate location, all at no cost to the STATE. The Concessionaire shall not be entitled to any other payment (except as provided herein) for the STATE's withdrawal or recapture of the requested portion of the Premises. If the Concessionaire is in breach of any provision of this Concession Agreement or has been or then is in default of this Concession Agreement, the STATE need not compensate the Concessionaire for the unamortized value of the Improvements. In such event, the Concessionaire shall be deemed to have waived its rights to the Improvements and any compensation that might be payable therefor.

E. Surrender of entire Premises. If the surrender of the portion of the Premises requested by the STATE renders the remainder of the Premises unsuitable for the purposes of the Concessionaire under this Concession Agreement, and the STATE does not provide an alternate location, the Concessionaire may surrender the remainder of the Premises and be relieved of any further obligation hereunder except with respect to such other obligations of the Concessionaire which are intended to survive the termination of this Concession Agreement, including, without limitation, those obligations set forth in Article XLIII (Survival of Obligations) herein.

ARTICLE XXIII. TERMINATION BY CONCESSIONAIRE

If any one of the following events shall occur, the Concessionaire may terminate this Concession Agreement, in its entirety, either prior to or subsequent to the commencement of the Concession Agreement term, to wit:

1. Abandonment. The permanent abandonment of the Airports as a terminal for the transport by air of persons, property, cargo or mail.

2. Assumption. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airports, or any substantial part or parts thereof, in such a manner as to substantially restrict the Concessionaire from operating the Concession thereon for a period of at least sixty (60) consecutive days.

3. Injunction. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airports for the purposes authorized under this Concession Agreement, and the injunction remaining in force for a period of at least sixty (60) consecutive days.

4. Breach. The breach by the STATE of, or its failure to perform, any of the covenants or agreements contained in this Concession Agreement, and either the failure of the STATE to remedy such breach for a period of sixty (60) days after receipt of a written notice of the existence of such breach, or, if fulfillment of the STATE's obligations requires activity over a period of time, the failure of the STATE within said sixty (60) day period in good faith to commence the required activity and to continue the same thereafter except for causes beyond the STATE's control.

ARTICLE XXIV. SUSPENSION OR ABATEMENT

Upon the occurrence or maturity of any of the termination events contained in Article XXIII (Termination by Concessionaire) herein, the Concessionaire may, in lieu of termination and upon prompt written notice to the STATE, either suspend this Concession Agreement, or in the alternative, request a just abatement of such portion of the concession fee obligations of the Concessionaire hereunder, as may be mutually agreed upon, in writing, by and between the STATE and the Concessionaire, such suspension or abatement to be effective from the time of the receipt of such written notice until there is a cessation of the occurrence or activity giving rise to the initial right to terminate this Concession Agreement. Nothing in this Article XXIV (Suspension or Abatement) shall be construed as prohibiting the STATE from exercising its rights under Article XXII (Withdrawal) to withdraw or recapture all or any portion of the Premises.

ARTICLE XXV. SUBORDINATION

A. Joint-Use. This Concession Agreement shall be subordinate in all respects to the provisions of any existing or future agreements between the STATE and the United States Government, or any agency thereof, relative to the aircraft operating areas of the Airports, the execution of which has been or may be required as a condition precedent to the expenditure of

federal funds for the development of the Airports. In the event of any such inconsistency between such agreement(s) and the occupancy by the Concessionaire of the Premises, and its use thereof pursuant to Article V (Use of Premises) herein, this Concession Agreement or the particular terms and conditions affected thereby shall be suspended or terminated without the STATE being liable for any damages.

This Concession Agreement shall be subordinate in all respects to the provisions of any existing or future Joint-Use Agreement between the STATE and the United States Navy, the United States Army or the United States Air Force. In the event of any such inconsistency described in the preceding paragraph between this Concession Agreement and any existing or future Joint-Use Agreement, this Concession Agreement or the particular terms and conditions affected thereby shall be suspended or terminated without the STATE being liable for any damages.

B. National Emergency. During times of war, whether declared by Congress or not, or national emergency, the STATE shall have the right to enter into any agreement with the United States Government for any military use of part or all of the landing area, the publicly-owned air navigation facilities, and all other areas and facilities of the Airports. In the event any such agreement is executed, the provisions of this Concession Agreement, insofar as they are inconsistent with the provisions of the agreement with the United States Government, shall be suspended without the STATE being liable for any damages.

C. Rights of Concessionaire. Nothing in this Article XXV (Subordination) contained shall detract from or limit, nor be construed to detract from or limit, the rights of the Concessionaire set forth in Articles XXIII (Termination by Concessionaire) and XXIV (Suspension or Abatement) herein, to seek damages or compensation from other than the STATE in the event of the execution of any such agreement described above, the terms of which are or may be inconsistent with the rights of the Concessionaire under this Concession Agreement.

ARTICLE XXVI. CONDEMNATION

A. Definitions. For purposes of this Article XXVI (Condemnation), the following capitalized terms shall have the following meanings:

1. "Award" means all compensation, sums or value paid, awarded or received for Taking, whether pursuant to judgment, agreement, settlement or otherwise.

2. "Date of Taking" means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor, and (b) the date on which the Concessionaire is dispossessed.

3. "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable

laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

B. General. If during the Concession Agreement term, any Taking of all or any part of the Premises or any interest in this Concession Agreement occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Article XXVI (Condemnation). The STATE and the Concessionaire intend that the provisions hereof govern fully in the event of a Taking.

C. Total Taking; Automatic Termination. If a total Taking of the Premises occurs (all of the Premises are included in the Taking) then this Concession Agreement shall terminate as of the Date of Taking.

D. Partial Taking; Election to Terminate.

1. Entire termination. If a Taking of any portion (but less than all) of the Premises occurs, then this Concession Agreement shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises untenantable or unsuitable for continued use by the Concessionaire for the operation of the Concession; (b) the condition rendering the Premises untenantable or unsuitable either is not curable or is curable but the STATE is unwilling or unable to cure such condition; and (c) the STATE elects to terminate.

2. Material portion taken. If a partial Taking of a material portion of the Premises or the Airports terminal structure within which a portion of the Premises is located occurs, the STATE shall have the right to terminate this Concession Agreement in its entirety.

3. Notice of election. The STATE's election to terminate this Concession Agreement pursuant to this Article XXVI (Condemnation) shall be exercised by the STATE giving notice to the Concessionaire on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Concession Agreement shall terminate upon the thirtieth (30th) day after such notice is given.

E. Award. Upon termination of this Concession Agreement pursuant to a Total Taking under Article XXVI.C. (Total Taking; Automatic Termination) or an election under Article XXVI.D. (Partial Taking; Election to Terminate) herein then:

1. Concessionaire.

a. Fees. The Concessionaire's obligation to pay all rents, fees and charges required under this Concession Agreement shall continue up until the date of termination and thereafter shall cease.

b. Surviving obligations. The Concessionaire shall continue to be obligated to perform and comply with all obligations that are intended to survive the termination of the Concession Agreement, including, without limitation, those obligations set forth in Article XLIII (Survival of Obligations) herein.

c. Improvements. The Concessionaire shall be entitled to recover the unamortized value of the Improvements constructed and installed on the Premises by the Concessionaire in the ratio that the unexpired term of the Concession Agreement on the Date of Taking bears to the unexpired term of the Concession Agreement on the date the Improvements were completed by the Concessionaire.

d. No claim against the STATE. The Concessionaire shall have no claim against the STATE or others for (i) compensation or indemnity for the Concessionaire's interest in the Premises and (ii) compensation and damages payable for or on account of land (including access rights) or Improvements thereon (except as provided in Article XXVI.E.1.c. [Improvements] herein).

e. Separate claim against condemning authority. The Concessionaire may make a separate claim for compensation from the condemning authority for the Concessionaire's relocation expenses, or the interruption of or damage to the Concessionaire's business or damage to the Concessionaire's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Concessionaire may receive any Award made specifically to the Concessionaire for such claim.

2. STATE. The STATE shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the interest in the Premises created by this Concession Agreement), except for the unamortized value of the Improvements as set forth in Article XXVI.E.1.c. (Improvements) herein.

F. Partial Taking; Continuation of Concession Agreement. If a Partial Taking of the Premises occurs and this Concession Agreement is not terminated in its entirety under Article XXVI.D. (Partial Taking; Election to Terminate) herein, then this Concession Agreement shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion of the Premises not taken, and the rights and obligations of the STATE and the Concessionaire shall be modified as follows:

1. Potential Concession Fee reduction. If the Taking causes any portion of the Premises to become unusable for the operation of the Concession, as authorized under this Concession Agreement, the Concession Fee shall be reduced as follows:

a. Non-sales space. For all non-sales space comprising the Premises that are part of the Taking, the Concession Fee paid by the Concessionaire will be reduced by a factor comprising the square footage of the space comprising the Taking multiplied by the applicable rates and charges established by the STATE for the applicable category of space.

b. Sales space. For the Sales spaces of the Premises that are part of the Taking, the Concession fee paid by the Concessionaire shall be reduced as follows:

(1) Percentage of gross receipts. Of the total gross receipts generated by the Premises for the twelve (12) months immediately preceding the Date of Taking, determine the percentage whose numerator is the gross receipts attributable to the Sales space of which the area of the Taking is a part (hereafter the "Taking Sales Space") and whose denominator is the total gross receipts.

(2) Greater of MAG or Percentage Fee. Multiply the percentage derived in Article XXVI.F.1.b.(1) (Percentage of Gross Receipts) by the greater of the MAG or the Percentage Fee.

(3) Taking Sales Space Area. Divide the product derived in Article XXVI.F.1.b.(2) (Greater of MAG or Percentage Fee) by the square footage of the Taking Sales Space.

(4) Value of area of the Taking. Multiply the square foot value derived in Article XXVI.F.1.b.(3) (Taking Sales Space Area) with the square footage of the portion of the area of the Taking Sales Space which is part of the Taking. The resulting product is the amount by which the Concession Fee payable for the remainder portion of the Taking Sales Space not part of the Taking shall be reduced.

2. Improvements. The Concessionaire shall be entitled to recover the unamortized value of the Improvements constructed and installed on the Premises by the Concessionaire in the ratio that the unexpired term of the Concession Agreement on the Date of Taking bears to the unexpired term of the Concession Agreement on the date the Improvements were completed by the Concessionaire.

3. No claim against the STATE. The Concessionaire shall have no claim against the STATE or others for (i) compensation or indemnity for the Concessionaire's interest in the Premises and (ii) compensation and damages payable for or on account of land (including access rights) or improvements thereon (except as provided in Article XXVI.F.2 [Improvements] herein).

4. Separate claim against condemning authority. The Concessionaire may make a separate claim for compensation from the condemning authority for the interruption of or damage to the Concessionaire's business or damage to the Concessionaire's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Concessionaire may receive any Award made specifically to the Concessionaire for such claim.

5. STATE's Award. The STATE shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the interest in the Premises created by this Concession Agreement), except for the unamortized value of the Leasehold Improvements as set forth in Article XXVI.F.2. (Improvements) herein.

6. Prompt Use. Any portion of the Award received by the Concessionaire shall be used promptly by the Concessionaire to the extent necessary to restore or replace the Improvements on the remaining Premises, in accordance with plans, specifications, drawings, cost estimates and schedules first approved in writing by the STATE.

7. Continuing obligation. Nothing herein shall be construed to excuse the Concessionaire from the Concessionaire's full performance of all covenants, obligations, terms and conditions under the Concession Agreement as to the part of the Premises not part of the Taking and the Concessionaire shall remain responsible for paying to the STATE all fees and charges required under the Concession Agreement.

G. Temporary Takings. Notwithstanding anything to contrary in this Article XXVI (Condemnation), if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Concession Agreement shall remain unaffected thereby, and the Concessionaire shall continue to pay the fees and charges required under the Concession Agreement and to perform all of the terms, conditions and covenants of this Concession Agreement. In the event of such temporary Taking, the Concessionaire shall be entitled to receive any Award.

ARTICLE XXVII. LITIGATION

A. Concessionaire Responsible. If the STATE shall, without any fault, be made a party to any litigation commenced by or against the Concessionaire arising out of Concessionaire's occupancy or use of the Premises or Airports, or Concessionaire's conduct of the Concession, or Concessionaire's Improvements or FFE (other than condemnation proceedings), the Concessionaire shall indemnify, defend, keep, save, and hold the STATE harmless, and if or when appropriate or necessary, insure the STATE and the STATE's Agents from and against any and all lawsuits, judgments, injunctions, decisions, orders, liabilities, losses, damages, costs, and expenses arising out of or related to any such litigation, including, without limitation, paying any and all costs, charges, and reasonable attorneys' fees incurred or imposed on STATE in connection with such litigation. In any action by the STATE for recovery of any sum due under this Concession Agreement, or to enforce any of the agreements, covenants, obligations, promises, stipulations, terms, or conditions contained in this Concession Agreement, the STATE shall be entitled to recover any and all costs, fees, charges, and reasonable attorneys' fees incurred or imposed on the STATE in connection with such actions.

B. Attorneys' Fees. For purposes of this Concession Agreement, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys who practice in

the County with the equivalent number of years of experience in the subject matter area of law for which the STATE's attorneys' services were rendered.

C. Prompt Notice. Each party shall give prompt written notice to the other party of any claim or lawsuit instituted against it that may affect the other party.

D. Waiver of Claims. The Concessionaire hereby waives any claim against the STATE and the STATE's agents for loss of revenue, loss of opportunity, and loss of anticipated profits caused by any lawsuit or proceedings directly or indirectly attacking the validity of this Concession Agreement, or any part or portion hereof, or by any judgment or award in any lawsuit or proceedings declaring this Concession Agreement null, void, or voidable or delaying the same, or any part or portion hereof, from being carried out.

ARTICLE XXVIII. LIENS

A. STATE's Lien. The STATE shall have a lien upon all the Concessionaire's FFE upon the Premises, to the extent permitted by law, for the purpose of securing to the STATE the payment of all sums, including rents, fees, and other charges, which may be due from the Concessionaire under this Concession Agreement. In the event that past-due rents, fees, or charges are not paid by the Concessionaire within five (5) days after a notice of default is given by the STATE to the Concessionaire, the STATE may take possession of and sell such portion of the Concessionaire's FFE as may be sufficient to pay the delinquent rents, fees, and charges owed by the Concessionaire to the STATE. A sale of the Concessionaire's FFE pursuant to this Article XXVIII (Liens) may be made either publicly or privately, upon the notice given to the Concessionaire as herein provided.

B. Other Liens Prohibited. The Concessionaire shall not commit or suffer any act or neglect whereby the Premises, or any portion thereof, including any portion of the Airports or the Improvements thereupon or therein, or the estate or interest of the Concessionaire in the same, at any time during the term of this Concession Agreement shall become subject to any attachment, lien, charge, or encumbrance whatsoever. The Concessionaire shall indemnify, defend, save and hold the STATE harmless, and if or when appropriate or necessary, insure the STATE and the STATE's Agents from and against any and all attachments, liens, charges, and encumbrances, and any and all actions, suits, judgments, and orders relating thereto and any and all costs, fees, charges, expenses, and attorneys' fees resulting therefrom, it being expressly understood that the Concessionaire shall have no authority, express or implied, to create any attachment, lien, charge, or encumbrance upon or affecting the Premises, or any portion thereof, except as otherwise authorized in writing by the STATE under this Concession Agreement.

ARTICLE XXIX. SUCCESSORS AND ASSIGNS

Each and all of the expressions, phrases, terms, conditions, provisions, stipulations, promises, covenants, agreements, requirements, and obligations of this Concession Agreement shall, whenever applicable, extend to and bind and inure to the benefit of STATE and Concessionaire, and the legal representatives, successors, and permitted assigns of either or both of them.

ARTICLE XXX. NOTICES

Except as otherwise specifically provided in this Concession Agreement, any notice, consent, request, demand, or other correspondence given under this Concession Agreement shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid; to: (a) Concessionaire at the address provided on Page 1 of this Concession Agreement; or (b) STATE at the following address: State of Hawai'i, Department of Transportation, Airports Division, Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880; or (c) such other address as either the Concessionaire or the STATE may designate, in writing, as its new address for such purpose by notice given to the other in accordance with this Article XXX (Notices) herein. Any notice hereunder shall be deemed to have been given and received and effective two (2) calendar days after the date when it is mailed, if sent by first-class, certified mail, one (1) calendar day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the number set forth herein, or such other number as may be provided from time to time; provided, however, neither party may give official or binding notice by facsimile.

ARTICLE XXXI. INTERPRETATION OF CONCESSION AGREEMENT

A. Headings. The headings and captions preceding the articles and sections of this Concession Agreement and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Concession Agreement.

B. Not Against Drafter. This Concession Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein, and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Concession Agreement. The language hereof, and in all parts of this Concession Agreement shall, in all cases, be construed simply according to its fair meaning, and not strictly for or against either the STATE or the Concessionaire.

C. Fair Meaning. Provisions in this Concession Agreement relating to number of days shall be calendar days. Use of the word "including" shall mean "including, without limitation." References to statutes, sections, ordinances, or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the statute, section, ordinance, or regulation.

D. Gender and Number. Whenever the singular number is used in this Concession Agreement and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "person" shall include corporation, limited liability company, partnership, firm, and association.

ARTICLE XXXII. NO PARTNERSHIP

It is expressly understood and agreed by and between the STATE and the Concessionaire, that the STATE shall in no way be nor for any purpose become or be construed to become a partner of the Concessionaire in the conduct of its Concession business, or otherwise, or a joint venturer or a member of a joint enterprise with the Concessionaire and the STATE does not assume responsibility for the Concessionaire's conduct or performance under this Concession Agreement. The provisions of Article VI (Concession Fee) hereof, relating to the percentage fee payable hereunder to the STATE by the Concessionaire is included therein solely for the purpose of providing a method whereby the concession fee is to be measured and ascertained. The STATE and the Concessionaire acknowledge and agree that there are no third-party beneficiaries to this Concession Agreement.

ARTICLE XXXIII. FORCE MAJEURE

A. STATE's obligations. The STATE shall not be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including (but without limitation thereto) strikes, boycotts, picketing, slow-downs, work stoppages, or labor troubles of any other type, whether affecting the STATE, its contractors, or subcontractors.

The STATE shall not be obligated to supply any service or services, if and to the extent, and during any period, that the supplying of any such service or services, or the use of any component necessary therefor, shall be prohibited by any federal, state, or municipal law, rule, regulation, requirement, order, or direction, provided, however, that even if such prohibition does not expressly apply to the STATE, the STATE may choose to comply with such prohibition, in whole or in part, and in so choosing, the STATE shall not be obligated to supply any such service or services.

B. Fees remain payable. Unless and only to the extent otherwise specified in this Concession Agreement (such as Article VI.K. [Relief Due to Economic Emergency]), no

abatement, diminution, or reduction of the rents, fees, or other charges payable by the Concessionaire shall be claimed by or allowed to the Concessionaire for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances, or regulations of the United States of America, or of the State of Hawai'i, or any county or municipal governments, or of any other municipal, governmental, or lawful authority whatsoever; or by priorities, rationing, curtailment, or shortage of labor or materials, or by war, acts of terrorism, or any matter or thing resulting therefrom, or by strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or by any other cause or causes beyond the control of the STATE, nor shall this Concession Agreement be affected by any such causes.

C. Non-economic relief. Upon the occurrence of a force majeure event, as determined by the Director, in the Director's sole discretion, the Director may, but is not obligated to, grant non-economic relief to the Concessionaire, the amount, extent, and duration of which shall be determined by the Director, in the Director's sole discretion. Examples of force majeure events include acts of God, federal or state laws, governmental regulations, orders, or restrictions, acts of superior government authority, war, war-like conditions, hostilities, acts of terrorism, acts of the public enemy, sabotage, rebellion, riots, looting, military mobilization, blockades, embargoes, or other transportation delay, strikes, lockouts, or other labor disputes, shortages of labor, inability to secure fuel, materials, supplies, or power due to shortages thereof, epidemic, fire, or flood.

D. Concessionaire enforcement. Nothing in this Article contained shall preclude nor be construed to preclude the enforcement by the Concessionaire of any of its rights contained in Article XXIII (Termination by Concessionaire) and Article XXIV (Suspension or Abatement) hereof.

ARTICLE XXXIV. ENTIRE AGREEMENT

The parties intend that this Concession Agreement (including all of the exhibits and attachments which are made a part of this Concession Agreement) shall be the final expression of their entire agreement with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Concession Agreement shall constitute the complete and exclusive statement of its covenants, agreements, obligations, stipulations, terms, and conditions, and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative, or other legal proceeding.

ARTICLE XXXV. AMENDMENTS

Neither this Concession Agreement, nor any of the terms, and conditions contained herein may be varied, changed, modified, or revised by any oral agreement or representation, or otherwise, except by an instrument, in writing, of subsequent date hereto, executed by both parties by their respective officer(s) or other duly authorized person(s).

ARTICLE XXXVI. INVALID PROVISION-SEVERABILITY

If any provision of this Concession Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of this Concession Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Concession Agreement shall be valid and be enforceable to the full extent permitted by law.

ARTICLE XXXVII. NON-LIABILITY OF INDIVIDUALS

Neither the STATE, the Director, nor any elected official, Agents, director, officer, employee, or any other person acting for or on behalf of the STATE, shall be charged personally by the Concessionaire, or be held personally liable or personally responsible to the Concessionaire under any covenant, provision, term, or condition of this Concession Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

ARTICLE XXXVIII. NONDISCRIMINATION

A. Construction. The Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the Premises, that in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this Concession Agreement for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Federal Regulations may be amended.

B. Operation. The Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby further covenant and agree:

1. That no person on the grounds of race, creed, color, national origin, sex or a physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, shall be denied the benefits of, or be otherwise subjected to discrimination in, the use of said facilities and services;

2. That in the construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex or a physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, shall be denied the benefits of, or otherwise be subjected to discrimination;

3. This Concession Agreement is subject to the requirements of the U. S. Department of Transportation's regulations, Title 49 CFR Parts 23 and 26;

4. That the Concessionaire shall not discriminate against any business owner because of race, creed, color, national origin, sex or a physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, in connection with operating and maintaining the Concession at the Airports or in connection with the award and performance of any Concession Agreement covered by Title 49, CFR Parts 23 and 26;

5. That the Concessionaire shall use the Premises, and operate and maintain the Concession thereon in compliance with all other requirements imposed by or pursuant to Title 49, CFR, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Federal Regulations may be amended; and

6. That the Concessionaire will include the foregoing statements in any subsequent Concession Agreement or other agreements it enters and cause those businesses to similarly include the statements in further agreements.

C. Breach. In the event of breach of any of the foregoing nondiscrimination covenants, the STATE may terminate this Concession Agreement and re-enter and repossess the Premises, together with all Improvements and the Concessionaire's FFE thereon, and hold the same as if the Concession Agreement had never been made or issued.

ARTICLE XXXIX. CIVIL RIGHTS PROVISION

The Concessionaire assures that it will undertake an affirmative action program as required by Title 14, CFR Part 152, Subpart E and as said regulation may be administered upon the Airports by the Federal Aviation Administration, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered by Title 14, CFR Part 152, Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire further assures that it will require that its covered sub-organizations provide assurances to the STATE that they similarly will undertake affirmative action programs, and that they will require assurances from their sub-organizations, as required by Title 14, CFR Part 152, Subpart E, to the same effect.

ARTICLE XL. DISPUTES

A. All disputes. All controversies and disputes between the STATE and the Concessionaire which arise under, or by virtue of, this Concession Agreement, and which are not resolved by mutual agreement, shall be decided by the Director, in writing, within one hundred twenty (120) calendar days after receiving a written request by the Concessionaire for a final decision concerning the controversy; provided that if the Director does not issue a written decision within one hundred twenty (120) calendar days after receiving a written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Concessionaire may proceed as if an adverse decision had been received.

B. Notice of decision. The Director shall immediately furnish a copy of the decision to the Concessionaire, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

C. Final and conclusive. Any such decision by the Director shall be final and conclusive.

ARTICLE XLI. BROKERS

The Concessionaire warrants and represents to the STATE that the Concessionaire has not had any contact or dealings regarding the renting of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Concession Agreement. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Concessionaire shall be responsible for such

commission or fee and shall indemnify, defend, and hold harmless the STATE from any and all claims, demands, actions, suits, causes of action, judgments, liabilities, losses, damages, costs, and expenses arising from the Concessionaire's dealings and interactions with any broker, finder or person who could claim a right to a commission or finder's fee. The provisions of this Article XLI (Brokers) shall survive any termination or expiration of this Concession Agreement.

ARTICLE XLII. STATE RESERVATIONS

The STATE may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, to conduct a financial audit, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. The STATE shall use reasonable efforts to minimize disruption to the Concessionaire's Concession operation. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive, of the Concessionaire from the Premises. The STATE reserves the exclusive right to use all areas of the Airports not comprising the Premises, and the exterior walls and roofs of the Premises. The STATE reserves the exclusive right to use such areas, together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, equipment, appurtenances and structural elements serving other parts of the Airports in and through the Premises. This reservation in no way affects the Concessionaire's maintenance obligations contained in the Concession Agreement.

ARTICLE XLIII. SURVIVAL OF OBLIGATIONS

A. STATE's right to enforce. Termination of this Concession Agreement, whether by expiration or sooner termination, shall not affect the right of the STATE to enforce any or all indemnities and representations and warranties given or made by the Concessionaire to the STATE under this Concession Agreement, nor shall it affect any provision of this Concession Agreement that expressly states it shall survive termination hereof, including, without limitation, Articles IX (Concession Bond), XI.B. (Compliance with Americans With Disabilities Act), XI.C. (Environmental Compliance – Concessionaire's Duties), XVII (Liability and Indemnity), XXVI (Condemnation), XXVII (Litigation), XXVIII (Liens) and XLI (Brokers). The Concessionaire specifically acknowledges and agrees that, with respect to each of the Concessionaire's indemnities contained in this Concession Agreement the Concessionaire has an immediate and independent obligation to defend the STATE from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Concessionaire by the STATE.

B. Accrued obligations. The Concessionaire's obligation to make payments to the STATE with respect to accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to the STATE) which are accrued at the expiration or earlier termination of this Concession Agreement shall survive the expiration or earlier termination of this Concession Agreement.

ARTICLE XLIV. QUIET ENJOYMENT

The Concessionaire, upon paying all of the rents, fees and charges required under this Concession Agreement and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Concession Agreement term as against all persons or entities claiming by and through the STATE. The Concessionaire expressly acknowledges that the Concessionaire's right to quiet possession of the Premises does not preclude the STATE's right to make changes and additions to the Airports, including the Premises, and to do work in the Premises as permitted by this Concession Agreement, including, without limitation, the STATE's right to relocate the Concessionaire as described in this Concession Agreement.

ARTICLE XLV. ACCORD AND SATISFACTION

A. Concessionaire's instructions void. The payment by the Concessionaire or the receipt by the STATE of a lesser amount than the concession fee or rent stipulated in this Concession Agreement may be, at the STATE's sole option, deemed to be on account of the earliest due of first: (1) any interest, service charges and late fees and second (2) any stipulated concession fee or rent (beginning with earliest owing concession fee or rent), notwithstanding any instruction by or on behalf of the Concessionaire to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and the STATE may accept such check or payment without prejudice to the STATE's right to recover the balance of such concession fee or rent or payment or pursue any other remedy available in this Concession Agreement or at law.

B. Acceptance does not invalidate notice. The STATE may accept any partial payment from the Concessionaire without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law.

ARTICLE XLVI. JOINT AND SEVERAL LIABILITY

The obligations, covenants, promises, liabilities, warranties and representations of the Concessionaire under this Concession Agreement shall be joint and several by and among any and all entities and persons comprising the Concessionaire.

ARTICLE XLVII. ESTOPPEL STATEMENTS

A. Concessionaire must deliver. Within ten (10) days after request therefor by the STATE, the Concessionaire shall deliver, in recordable form, an estoppel statement certifying that this Concession Agreement is in full force and effect, the date of the Concessionaire's most recent payment of rent or concession fee, and that the Concessionaire has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested by the STATE.

B. Failure to deliver. If the Concessionaire fails to deliver the requested estoppel statement to the STATE within the specified period, the following shall be deemed conclusive: (1) this Concession Agreement is in full force and effect, without modification, except as may be represented by the STATE; (2) there are no uncured defaults in the STATE's performance and the Concessionaire has no right of offset, counterclaim or deduction against the rents or concession fee payable under this Concession Agreement; and (3) no more than one month's rent or concession fee has been paid in advance. Such conclusions shall be binding upon the Concessionaire. Notwithstanding these conclusions, the Concessionaire's failure to deliver the requested estoppel statement shall constitute a breach of this Concession Agreement.

ARTICLE XLVIII. AUTHORITY

If the Concessionaire signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Concession Agreement on behalf of the Concessionaire does hereby covenant and warrant that the Concessionaire is a duly authorized and existing entity, that the Concessionaire has and is duly qualified to do business in Hawai'i, that the Concessionaire has full right and authority to enter into this Concession Agreement, and that each and all of the persons signing on behalf of the Concessionaire are authorized to do so. Upon the STATE's request, the Concessionaire shall provide the STATE evidence reasonably satisfactory to the STATE confirming the foregoing representations and warranties.

ARTICLE XLIX. CONSENTS

If the STATE is required to be reasonable in granting or withholding consent or approval, but fails to do so, the Concessionaire's sole and exclusive remedy is to seek specific

performance, and in no event will the STATE be liable for any monetary damages. All approvals by the STATE shall be in writing.

ARTICLE L. COUNTERPARTS

This Concession Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing, and delivery of this Concession Agreement, duplicate unexecuted pages of the counterparts may be discarded, and the remaining pages assembled as one document.

ARTICLE LI. GOVERNING LAW

This Concession Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Hawai'i.

[Remainder left intentionally blank.]

IN WITNESS WHEREOF, the parties have duly executed this Concession Agreement on the day and year first above written.

APPROVED AS TO FORM:

_____
LAURA KIM-NUGENT
Deputy Attorney General

STATE OF HAWAI'I
DEPARTMENT OF TRANSPORTATION

By _____
FORD N. FUCHIGAMI
Director of Transportation

STATE

By _____
Its

CONCESSIONAIRE

APPROVED:

BOARD OF LAND AND
NATURAL RESOURCES

By _____
SUZANNE D. CASE
Chairperson and Member

Approved by the Board
at its meeting held on

_____

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20__, before me appeared _____ to me personally known, who being by me duly sworn, did say that _____ is (are) the _____ of _____ and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____ acknowledged said instrument to be the free act and deed of said corporation.

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

Doc. Description: _____
No. of Pages: _____

_____
Notary signature

My Commission Expires: _____

Exhibit A – Exclusive and Non-Exclusive Premises (Terminal Plans)

Exhibit B– Description of the Improvements [to come from Proposals]

APPENDIX C – CONCESSION AGREEMENT (SEPARATE DOCUMENT WITH ATTACHMENTS)

ATTACHMENT 1 – TERMINAL EXHIBITS

ATTACHMENT 2 – TENANT IMPROVEMENT GUIDELINES
May be reviewed and downloaded from the address below

http://hidot.hawaii.gov/airports/doing-business/other/tenant-improvement-guidelines/

ATTACHMENT 3 – ENVIRONMENTAL PRESERVATION GUIDELINES

ATTACHMENT 4 – DEVELOPMENT STANDARDS FOR LEASED AIRPORT PROPERTY

ATTACHMENT 5 - DEPARTMENT OF TRANSPORTATION ASSIGNMENT OF LEASE AND PREMIUM EVALUATION POLICY

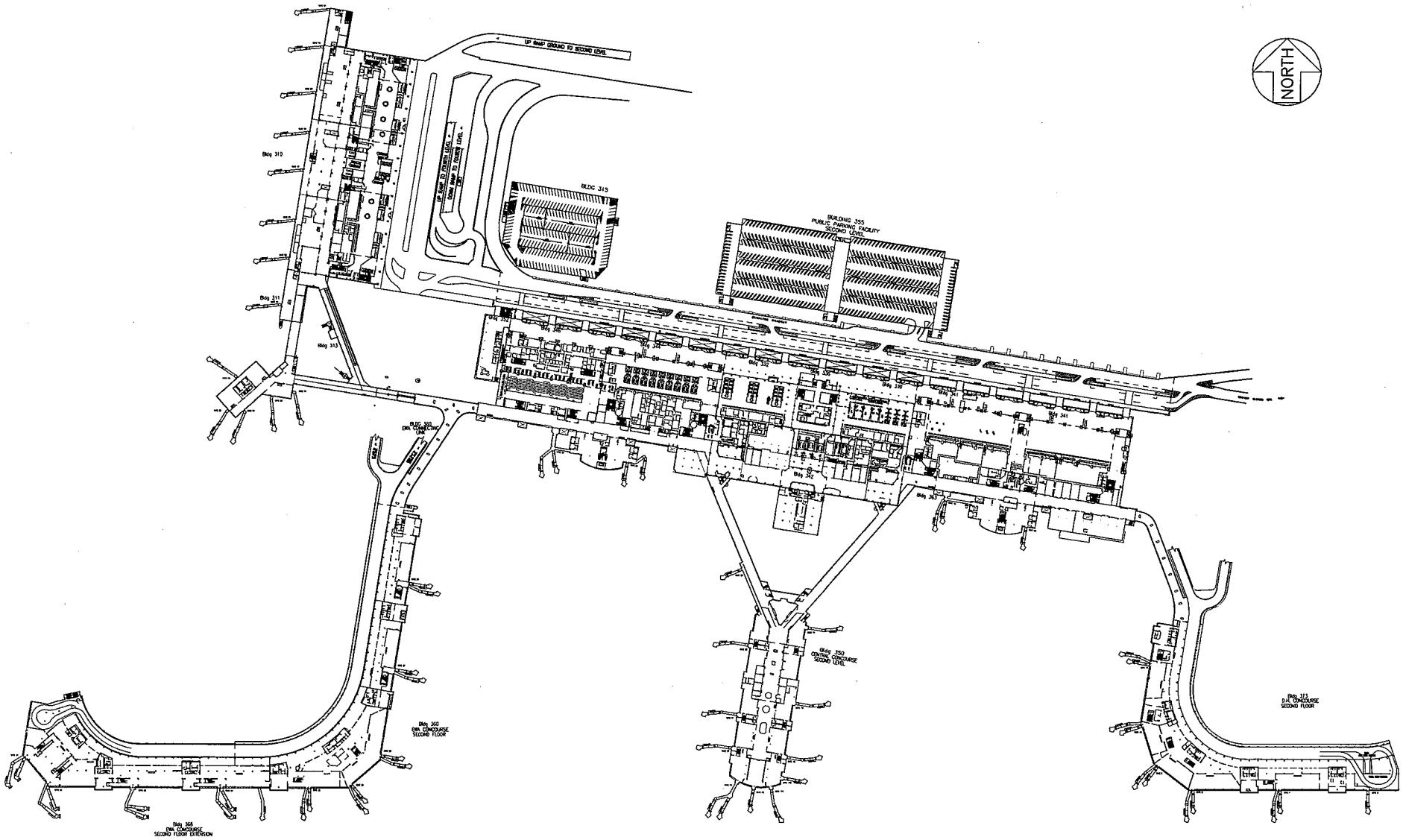
ATTACHMENT 6 – DEPARTMENT OF TRANSPORTATION SUBLEASE EVALUATION POLICY

ATTACHMENT 7 – PERFORMANCE BOND; PAYMENT BOND

ATTACHMENT 8 – CONCESSIONAIRE'S LISTING OF HAZARDOUS SUBSTANCES

ATTACHMENT 9- CONCESSIONAIRE'S LISTING OF ENVIRONMENTAL PERMITS

ATTACHMENT 1 – TERMINAL EXHIBITS



HONOLULU INTERNATIONAL AIRPORT		Date : JULY 2015	EXHIBIT:
Airports Division	TERMINAL LAYOUT		A1

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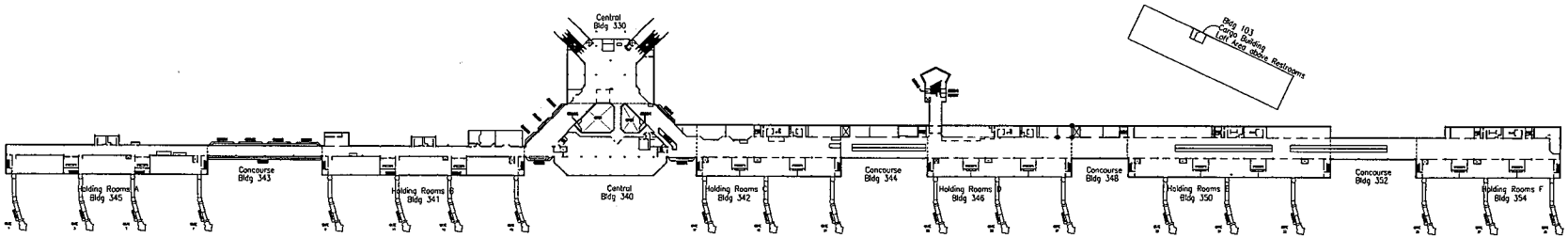

KAHULUI AIRPORT		Date : AUGUST 2015	EXHIBIT:
DEPARTMENT OF TRANSPORTATION · STATE OF HAWAII · Airports Division	TERMINAL LAYOUT	SECOND LEVEL	B2

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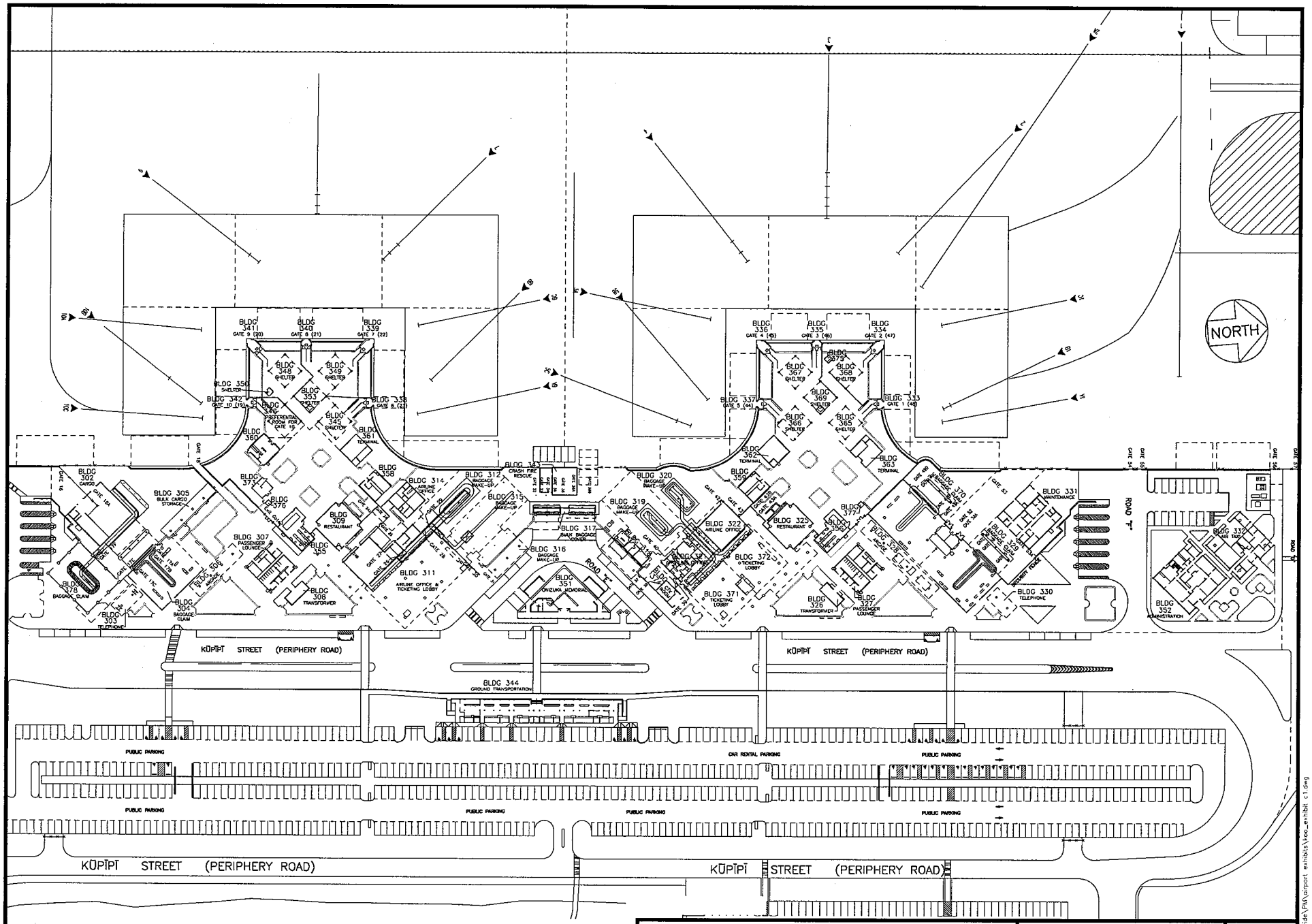

KONA INTERNATIONAL AIRPORT AT KEAHOLE	Date : JULY 2015	EXHIBIT:
DEPARTMENT OF TRANSPORTATION STATE OF HAWAII — Airports Division	TERMINAL LAYOUT	C1

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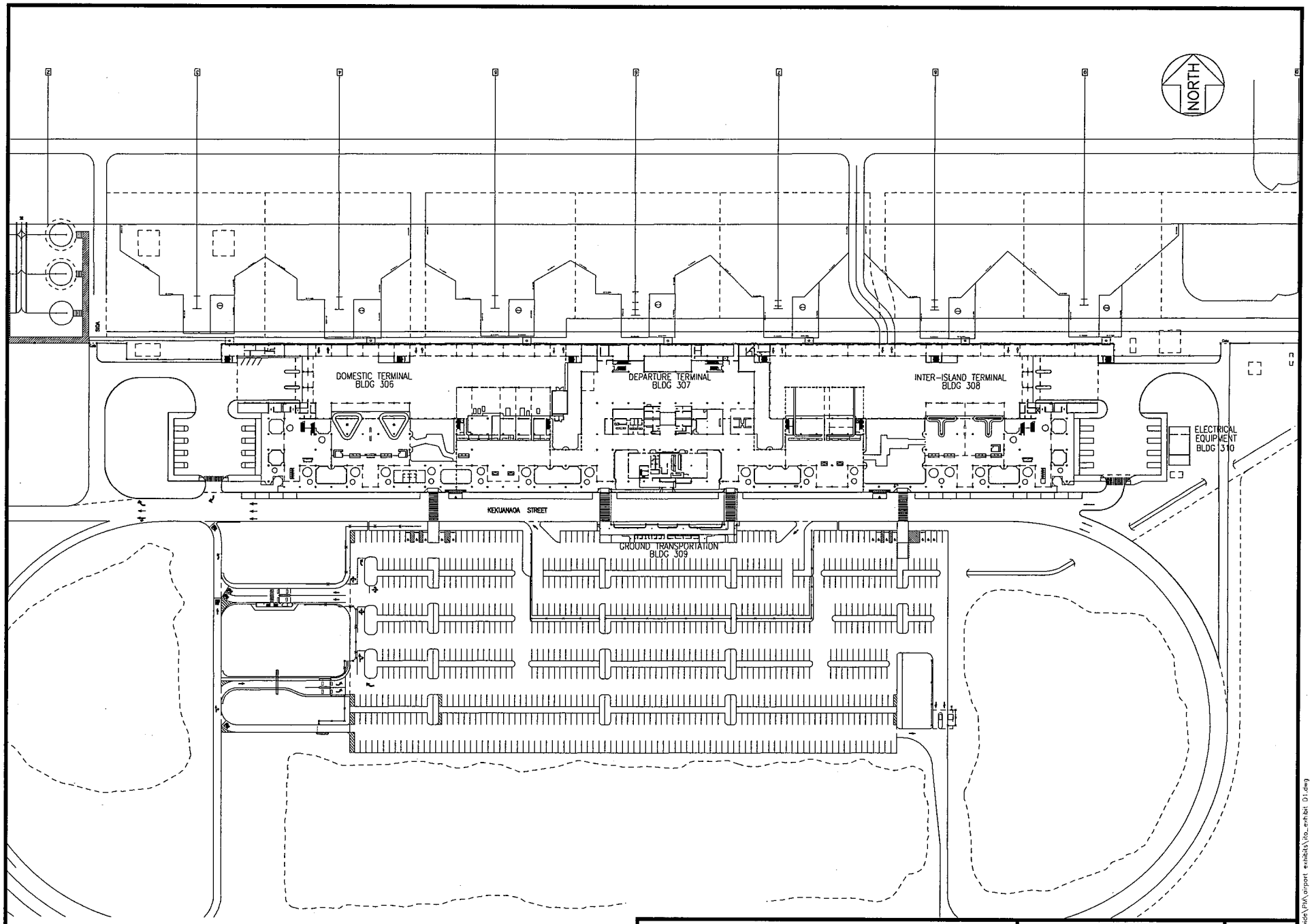

HILO INTERNATIONAL AIRPORT		Date : JULY 2015	EXHIBIT:
Airports Division	TERMINAL LAYOUT		D1

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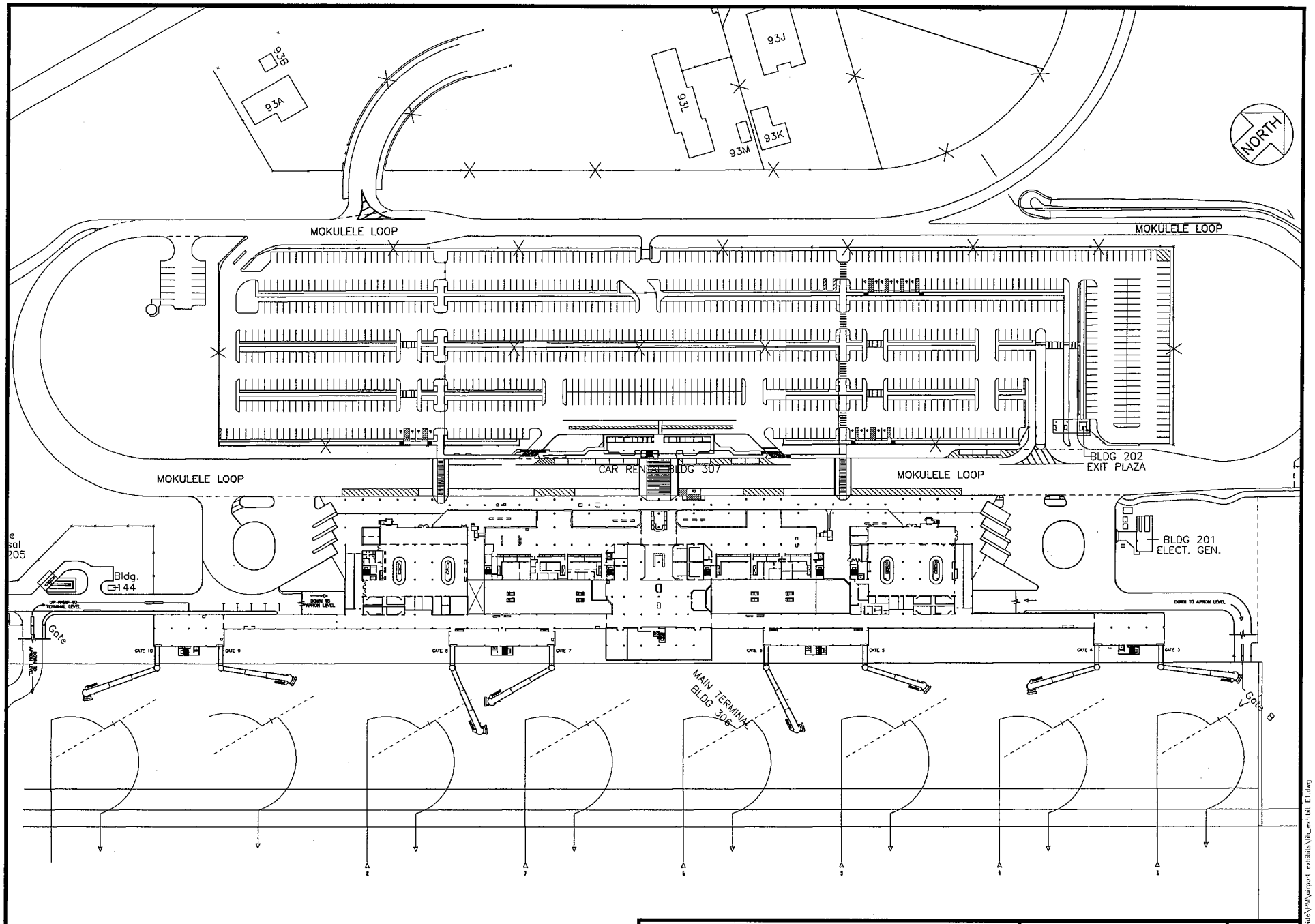

LIHUE AIRPORT		Date : JULY 2015	EXHIBIT:
Airports Division	TERMINAL LAYOUT		E1

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ATTACHMENT 2 – TENANT IMPROVEMENT GUIDELINES

May be reviewed and downloaded from the address below:

http://hidot.hawaii.gov/airports/doing-business/other/tenant-improvement-guidelines

Procedure No. 7.7 ENVIRONMENTAL PRESERVATION GUIDELINES

Approved by Owen Miyamoto **Effective Date: 05/01/1990**

7.7.01 PURPOSE

The purpose of this procedure is to establish guidelines for the maintenance of spaces visible to the public at State airports.

7.7.02 POLICY

It is the policy of the Airports Division to maintain at all times an attractive decor in harmony with the architecture of the terminal building and other structures of the airport. The standards established by this procedure shall govern significant details such as: style, content, copy, location and color of signs, logos, advertising, posters, promotions, brochure distribution, commodity or service displays, decorations, and vending equipment.

7.7.03 APPLICABILITY

This procedure applies to Airports District Managers and airport tenants.

7.7.04 PROCEDURES

A. Approval

Prior to construction, installation or display by airport tenants, requests for approval by the State shall be submitted in writing to:

Airports Administrator
Airports Division
Department of Transportation
Honolulu International Airport
Honolulu, Hawaii 96819

B. General

1. These guidelines shall apply to all public spaces of the airport terminal buildings and also to leased areas which have been designed and finished by the State for airlines, concessionaires and other tenants where leased areas are visible to the public.

2. These guidelines shall not apply to interiors of office and storage spaces or concessionaire shops designed and finished by the tenant in accordance with plans previously approved by the State.

3. Requests for permission to erect or modify any structure, display, or stand; to install or to paint any sign, poster, logo, decal, point of purchase piece, or banner; to place equipment; or to place and/or distribute any promotional material in spaces visible to the public at the airport shall be made in writing to the State. Detailed drawings, specifications, and samples of materials and colors of any proposal shall be submitted and shall be approved in writing by the State before the start of fabrication.

4. The tenant requesting permission to make changes shall be notified of approval or disapproval in writing, although such approval or disapproval may initially be given verbally. Review by the State shall be made promptly and replies made within two weeks of receipt.

5. A tenant found to be in violation of these guidelines shall be notified of the violation in writing

although such notice may initially be given verbally. Any installed non-conforming or unapproved sign, display, structure, etc., shall be brought into conformance or removed at the sole expense of the tenant. Temporary signs, hand-lettered, written or printed on paper, cardboard, or similar materials shall be prohibited except in an emergency. The use of visible masking or adhesive tapes for the attachment of signs shall also be prohibited.

6. Seasonal decorations shall be planned, installed and paid for by the State.

7. Lettering style for all airline, concession and terminal directional and information signs shall be helvetica medium.

8. Requests to display special promotional materials such as posters, pictures, etc., introducing new services, etc., shall specify the number of days it is desired to display such material.

9. Verbal approval, disapproval, or notice shall be given only by the Airports Administrator.

C. Airlines

The placement of display material shall be limited to the following in relation to airline leased areas:

1. Ticket counter and luggage check-in

   a. One over-counter position identification at each position as approved by the State.

   b. Not more than one schedule rack, as approved by the State, for each position and only material from the airline relating to scheduling shall appear in the schedule rack. Credit card signs or material shall not be permitted except credit cards of the airline.

   c. Direct line telephone for service shall be permitted on counter and must be removed when counter is manned. Call button, where required, shall be flush with counter top.

   d. Except for the position identification signs, nothing shall be allowed to be suspended in any manner over, in back of, or in front of the ticket counter.

   e. Company insignia on wall behind ticket counter shall be submitted to the Airports Administrator for approval prior to installation. Glossy sign face material is not permitted.

   f. The wall behind the ticket counter shall not be altered in any way to break the architectural conformity to all other counter backwall areas. Application of color, in the form of paint or wallcovering of any material, or any form of decoration, or the affixing of any signing, equipment or lighting, shall be prohibited.

   g. Comfort mats for agents' positions shall be subject to approval by the State.

   h. No adding machines, typewriters, radios, tape records, record players, or audio receivers of any type shall be permitted, except those required to conduct company business. Special operating equipment may be installed as approved by the State.

   i. Airline signs, flight numbers, destination signs and other related signs originally installed by the State in ticket lobby area shall be maintained and revised by the State. Airline requests for sign changes shall be sent to the State at least 60 days prior to the effective date of change.

   j. Luggage counter and conveyor housing tops shall be kept clear; no signs or equipment of any type shall be used.

   k. Posters required by the federal government or IATA agreements shall be installed by the State.

2. Holding Areas at Gates

a. Check-in desk tops shall be kept free of unnecessary material.

b. Airline identification sign shall be furnished by the State.

c. Ropes, tapes, relocated furniture and other barricades to channelize passenger movement is prohibited.

d. Airline computer terminals shall be installed in the check-in counter. Free-standing consoles are prohibited.

3. Entrance or Corridor Doors to Airline Leasehold Area

a. Decals or special identification signs shall not be placed on office corridor doors exposed to public or common use areas within the terminal building without approval of the State.

b. Approved door signing shall company conform with State Airports Division "Signage and Graphic Design Manual".

c. Doors secured with padlock and hasp shall not be permitted.

d. Airline Club Entrance Identification shall have only signing approved by the State and shall not exceed two square feet in total area..

4. Exterior signs on structures other than the terminal or outside of such structures shall be approved by the State before being placed on any building other than the terminal building or in the vicinity of any building . Projecting signs shall be prohibited.

5. General

a. Signs, extra tables, chairs, counters and equipment of any type visible to the public shall not be used without the approval of the State.

b. Furniture in public areas and holding rooms shall not be moved to be used as barriers or crowd control purposes. The furniture is not to be moved for any reason unless authorized by the State. Barricades, ropes, stanchions and other passenger control and channeling devices will be furnished by the State, except where specifically approved by the State.

c. Airline wheelchairs shall be returned to authorized storage areas after the flight has departed.

d. No signs, decals, stickers, posters, etc., shall be permitted.

D. <u>Concession and Other Non-Airline Tenants</u>

Concession areas shall be limited to the following:

1. Counters Between Concession Space and Public Area

a. Typewriters, adding machines, radios or other types of sound equipment shall not be permitted on the tops of counters.

b. Only one brochure holder per concession counter shall be permitted and the material must relate to the business of the concession upon whose counter it is placed.

c. Merchandise shall not be permitted to be stacked on counters.

d. No promotional material, point of purchase material, credit card signs, or attention-getters with flashing, moving, or audible action shall be permitted.

e. Call button, where required, shall be flush with counter top.

f. Telephone shall not be permitted on counter tops except for direct line service when

counter is unmanned.

g. No merchandise, signs, or banners shall be permitted to be suspended in front of, behind, or over counters; nothing shall be permitted beyond the lease line.

h. No wastebaskets, ash urns, signs, point of purchase material, rugs, mats, floor signs inserted into terrazzo, etc., shall be permitted.

2. Concession Area With Counter and Finished Backwall by State

a. Painting of the backwall shall not be permitted; the application of any material in any form altering the original appearance shall also not be permitted.

b. Company insignia on wall behind ticket counter shall conform with the design and specifications set forth in the original terminal construction drawings on file with the Airports Division. Glossy sign face material shall not be permitted.

3. Store Frontage Between Concession Space and Public Area

a. Each concession shall be provided with a sign over and parallel to the concession lease front lines by the State. No other signs shall be permitted on the store front.

b. The service provided by the concession shall be the sole identification on the sign; no trade or corporate names shall be permitted on the concession space signs. International symbols, approved by the State, may be used on the sign. Foreign languages or symbols shall not be permitted. The sign style, color and letter type face shall conform to the airport standards. No other sign colors or letter type shall be permitted on the store frontage.

c. Decorative exterior treatment or painting of any type individualizing the exterior of any concession shall not be permitted.

d. Concessionaire shall not erect, construct, or place any signs or advertising pertaining to the concession upon any portion of the airport other than within the concession area. Signs, display racks or other devices directing traffic into a concession area or announcing entertainment within an area shall not be permitted.

e. No signs, logos, decals, credit card identifications, lettering, banners, etc., shall be permitted on the glass show window of store front.

f. No framing to block out glass area in any manner shall be permitted.

g. Doorways shall not be used as a display area with merchandise blocking the entrance in any manner.

h. No flashing action, moving action, or audible signs or displays shall be permitted in display windows.

i. All lighting fixtures used in windows, including the method of installation, shall be subject to approval by the State.

j. Credit card signs shall be on individual pedestals and shall be set back a minimum of twelve inches from the glass line and the aggregate area of one sign shall not exceed twenty-four square inches.

E. Office and Storage

The facade of office and storage spaces throughout the airport complex shall be subject to the following criteria and limitations:

I. Storage space shall not be permitted overhead or projecting; door signing shall conform with the "Signage and Graphic Design Manual".

2. A padlock and hasp on storeroom or office doors shall not be permitted except when required by federal or state laws and regulations.

3. No other signs, posters, logos, decals, lettering, etc.., shall be permitted on exterior facade, windows or doors.

F. Vending Machines

The installation of vending machines throughout the airport complex shall be subject to the following criteria and limitations:

1. Vending machines shall be allowed only in approved vending machine areas; the machines shall conform in width and height and approved manufacturers source.

2. All utility lines running to machines shall be hidden whenever possible and painted to conform with the background if they cannot be hidden.

3. The updating of machines shall be subject to the request of the State.

7.7.05 REFERENCE

"Signage and Graphic Design Manual", State of Hawaii Airports Division, 1984.

Procedure No. 7.6 DEVELOPMENT STANDARDS FOR LEASED AIRPORT PROPERTY

Approved by Owen Miyamoto **Effective Date: 01/15/1995**

7.6.01 PURPOSE

The purpose of this procedure is to establish a standard that shall be followed by lessees in the development of leased property (in construction of improvements).

7.6.02 POLICY

It is the policy of the Airports Division that the development of leased airport property shall be aesthetically compatible with existing and planned airport facilities and accomplished in accordance with the applicable rules and procedures of the Department and all other applicable laws, ordinances, rules and regulations of federal, state and county agencies.

7.6.03 APPLICABILITY

This procedure applies to persons who lease airport property.

7.6.04 PROCEDURES

A. Definitions

1. "Airport" means the areas of land or water set aside by Executive Order of the Governor of the State of Hawaii for public airport purposes.

2. "Buildings" means the main portion of each structure including all projections, extensions, additions, changes, garages, outside platforms and docks, carports, canopies, eaves, and porches. Paving, ground cover, fences, signs and landscaping are specifically excluded from the definition.

3. "Building site" means the land included in the lease agreement.

4. "Corner building site" means a building site which has two or more lease boundary lines abutting a street.

5. "Department" means the Department of Transportation of the State of Hawaii.

6. "Director" means the Director of the Department.

7. "Improvements" means all buildings, structures, and facilities including paving, fencing, signs, and landscaping constructed, installed, or placed on, under, or above any building site by or on the account of a lessee.

8. "Landscaping" means all aesthetic improvement of building sites through the use of lawns, ground cover, trees, and shrubs, as well as walls, screenings, terraces, fountains, pools, and other water arrangements.

9. "Land use plan" means the most recent plan for the future development of airport adopted by the Department, wherein various segments of airport land are reserved for specified uses.

10. "Lease boundary line" means each of the perimeter lines of each building site as leased to each lessee.

11. "Lessee" means any person, firm, corporation, or other entity who has a lease with the Department

for a building site.

12. "Segment" means one of the areas of the airport designated for particular uses (general aviation commercial, general aviation noncommercial, etc.) on the land use plan.

13. "Setback area" means the minimum required area situated between a lease boundary line and a setback line.

    a. "Front setback area" means the area between the street on which a building site abuts and the front setback line and extends from the side lease boundary line to side lease boundary line. On a corner building site, the front setback area shall apply to each lease boundary line abutting a street, unless otherwise specified in this procedure.

    b. "Side setback area" means the area between the side lease boundary line and the side setback line and extends from the front setback line to the rear lease boundary line.

    c. "Rear setback area" means the area between the rear lease boundary line and the rear setback line and extends from side setback line to side setback line.

14. "Setback line" means a line of a building site lying parallel to each lease boundary line and separated from it by the distance required to provide the minimum setback area.

15. "Site coverage" means the portion of the total building site area that may be covered by buildings.

16. "Site width" means the diameter of the largest circle which can be inscribed within the lease boundary lines of a building site.

17. "Street" means the paved portion of a right-of-way maintained by the Department for vehicular access to the building site and used as a thoroughfare by the public.

18. "Taxiway" means a Department-maintained aircraft taxiway, apron, ramp or any other right-of-way for aircraft whose edge is the edge of the right-of-way for all purposes of these standards.

B. Performance Standards For All Segments

1. General. No part of the airport or any improvement on it shall be used or allowed to be used at any time for the manufacture, storage, distribution, serving, or sale of any product or the furnishing of any service, in a manner which is unreasonably noxious or offensive or which is an unreasonable annoyance or nuisance to others at the airport because of odors, fumes, smoke, noise, glare, vibration, soot, or dust. No activity which may be dangerous to public health and safety, increases the fire insurance rating for adjoining or adjacent property, or is illegal shall be permitted.

2. Noise.

    a. The sound pressure levels generated on a building site shall comply with the applicable Hawaii Administrative Rules of the State Department of Health--except for the authorized operation of motor vehicles, aircraft or other transportation equipment:

        (1) To, from and on a building site.

        (2) On the public area of the airport.

    b. The testing of aircraft engines shall be conducted in noise-suppressing test cells so that sound levels do not exceed the levels referenced above.

3. Air Pollution. Atmosphere emissions produced by motor vehicles or aircraft--except for those produced by the authorized operation of motor vehicle and aircraft to, from and on a building site--shall comply with the applicable standards established by the State Department of Health or any other governmental agency.

4. Heat or Glare. Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be perceptible without

instruments at any lease boundary line of a building site.

5. Waste Disposal. All disposal of storm and sanitary sewage and industrial waste shall be in accordance with all applicable laws, rules or regulations of the Departmental and county, state and federal agencies.

6. Electronic and Radio Interference. No tenants shall construct facilities capable of reflecting radio signals or producing electrical, electronic, or radio emissions which will interfere with, obstruct, or adversely affect the operation of air navigation aids and airport radio communications.

7. Stormwater Pollution Prevention. the tenant shall:

   a. Use all reasonable methods to minimize pollution from fuel spills and use of hazardous materials or hazardous waste;

   b. Develop a waste minimization plan and coordinate it with the appropriate Airports District Manager; and

   c. Develop a Stormwater Pollution Prevention Plan under the guidelines of Airports Division SWPPP and have it approved by the Airports District Manager.

C. Building Site Development Standards for all Segments

1. Permitted Uses. The uses permitted shall be those defined in the lease for the building site.

2. Automobile and Truck Parking and Loading Requirements

   a. Paved off-street parking areas sufficient for all the automobiles and trucks of employees, tenants, and customers and other vehicles used in the conduct of a lessee's business shall be provided on each building site. Parking on the streets and at public areas on airport property shall be permitted only in areas and times specifically designated and posted by the Department.

   b. Parking in the front setback area shall not exceed 60% of the required minimum front setback area, and shall be appropriately screened from view by landscaping. Parking and maneuvering space shall be provided in accordance with accepted traffic engineering standards.

   c. Buildings shall be designed and placed upon each building site so that motor vehicles of maximum length permitted by the State of Hawaii at the time of construction of each building may be maneuvered and loaded or unloaded off the street. On-street vehicle maneuvering or loading shall not be permitted.

   d. On the side of a building facing a street, no truck loading door or loading dock shall be nearer than fifty (50) feet to the lease boundary line. Loading facilities shall be constructed so that no part of the longest legal loading vehicle being loaded or unloaded at any loading dock, loading door, or loading area will extend beyond the lease boundary line.

3. Aircraft Parking and Servicing

   a. Except for permitted parking and servicing of aircraft on designated areas of the airport, provisions for parking aircraft belonging to tenants and their patrons, invitees, employees, and others shall be on the building sites.

   b. Whenever hangar doors open onto a lease boundary line abutting a taxiway, they shall be set back a distance which in the opinion of the Department shall provide sufficient clearance for the holding, maneuvering, and parking of aircraft as incidental to the ingress and egress of aircraft from the hangars. No holding, maneuvering, stopping, or parking of aircraft off a building site for purpose of hangaring, parking, or storing of aircraft shall be permitted.

   c. All aircraft parked or left unattended on any building site shall be entirely within the lease

boundary lines.

4. Building and Construction Materials.

   a. Any building material which has been approved by the Department and which complies with applicable building codes may be used.

   b. All aircraft taxiways and parking areas on the building site shall be paved with materials of sufficient strength to accommodate the heaviest aircraft anticipated to be parked on the building site, or of sufficient strength to accommodate aircraft with gross ramp weights of at least 12,500 pounds, whichever is the greater.

   c. Any connection from a driveway or sidewalk on a building site to the paved surface of an abutting street shall be constructed in accordance with the applicable standards of the Highways Division of the Department. Any connection from a taxiway or apron on a building site to the paved surface of an abutting public use taxiway shall be either.

      (1) For a distance of twenty-five feet from the connection and of the same material and strength as the taxiway to which it is connected; or

      (2) Painted in accordance with standards established by the Department to indicate that the connection is non-loading bearing.

   d. All ventilating fans, cooling towers, equipment, etc. placed on roofs of buildings shall be screened from view or enclosed in a manner that is architecturally compatible with the main portion of the building structure.

   e. Accessory buildings, enclosures, and fences shall be consistent in design and quality of materials with the buildings they serve.

5. Building Heights. All building heights shall conform to the rules and regulations of the Department and the Federal Aviation Administration.

6. Dust Control. All ground areas not covered by buildings shall be landscaped or paved, properly drained and graded, and maintained in good condition free of weeds, trash, and other debris.

7. Illumination. The design and location of exterior lighting shall be subject to the approval of the Department and shall comply with the requirements of the Federal Aviation Administration and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around airport.

8. Landscaping.

   a. All areas not paved or covered by buildings shall be landscaped in accordance with plans approved by the Department. In addition to trees, ground cover, and gardens, landscaping shall include, where appropriate, the use of walls, screenings, terraces, fountains, pools, and other water arrangements.

   b. Such landscaping, as approved by the Department, shall be installed within a period not to exceed ninety (90) days after the notice of completion of the initial building. Hose bibs or sprinkler systems shall be provided to serve all landscaped areas.

   c. Plans, specifications, and inspections for landscaping shall be accomplished by a professional landscape architect registered in the State of Hawaii and shall require the written approval of the Department prior to installation.

   d. Plant material shall consist of a balanced mixture of trees shrubs and ground cover.

   e. All trees shall at all times be limited to a height of thirty-five (35) feet above the curb line.

f. A continuous greenbelt shall be required to be maintained on all building sites abutting streets; the greenbelt shall consist of grass lawns, ground cover, trees, shrubs, or any combination thereof as approved by Department. The greenbelt requirement shall be included in the minimum landscaping requirement for the building sites as set forth in this procedure.

g. Any unpaved area between the lease boundary line and the edge of the curb of the abutting street shall be landscaped and maintained to the satisfaction of the Department by the lessee of the building site.

9. Power, Telephone, Utilities, and Sewer. No electric power line, water pipe, gas pipe, sewer pipe, or drainage pipe (other than roof leaders) shall be installed or maintained upon any building site above the surface of the ground, except for meter connections which shall be screened or enclosed in a manner approved by the Department.

10. Setbacks. All front setback areas or side setback areas facing a street, with the exception of driveways, sidewalks, other walkways, and any parking, shall be used exclusively for the planting and growing of trees, shrubs, lawns and other ground cover, or material as approved by the Department. If landscaping is not properly maintained by the lessee, the Department may undertake such maintenance as it deems necessary with the resulting expense charged to the lessee.

11. Signs and Advertising. All signs on the airport shall comply with Airports Division Procedure 7.7 "Environmental Preservation Guidelines."

12. Hedges and Fences.

a. Except as otherwise specified in this procedure, no hedge or fence shall be grown, constructed, or maintained on any lease boundary line or lines or in any setback area or an area which abuts a street.

b. No hedge or fence shall be grown, constructed, or maintained on or adjacent to any street setback line that exceeds six (6) feet in height or elsewhere within setback lines that exceeds ten (10) feet in height, without the prior written approval of the Department.

c. Fences shall be constructed and gates installed and controlled where necessary to restrict access from the street to the aircraft operations area; the design and placement of the fences and gates shall be subject to the written approval of the Department prior to installation.

13. Outside Storage

a. No vehicle, equipment, material, supply, or product shall be stored or permitted to remain on any building site outside a permanent building unless such storage is suitably shielded from public view by an appropriate screen compatible in design with the permanent structure; the screen shall require the written approval of the Department prior to installation.

b. No aviation fuel shall be stored, except as approved by the Department, on any building site other than on aviation fuel storage areas reserved by the Department for such use, and in accordance with a valid written contract with the Department.

c. Activities that involve the dismantling of aircraft or the storage of salvaged aircraft, aircraft engines, air-frames, parts, or accessories shall comply with the provisions of this procedure for storage. Aircraft stored at the airport without a current airworthiness certificate (except for purposes of relicensing) may, at the discretion of the Department, be declared salvage aircraft and shall thereupon be treated as a salvaged aircraft for the purposes specified above.

D. Design and Construction of Improvements for All Segments.

1. General. No improvements of any kind shall be erected, altered, placed, assembled, or permitted

to remain on a building site unless and until plans showing their type of use, location, size, and architectural and engineering design have been approved in writing by the Department

2. Plans Required. All plans for improvements shall be prepared by registered architects or engineers and shall include:

   a. Topographic, grading, drainage, and utility plans showing one (1) foot contours and spot elevators referenced to airport datum and a plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet and showing the relationship of the proposed improvements on the building site to the improvements on the adjacent sites and to the utilities, streets, and taxiways.

   b. Preliminary plans and specifications of all proposed improvements in sufficient detail to determine compliance with these standards. The plans and specifications may be manufacturer's standard plans if sufficient. Plans shall be a suitable scale, but in no event smaller than 1/16-inch to the foot.

   c. Ground cover plans (including landscaping) which incorporate, at a minimum, the Department's general landscaping and paving requirements.

   d. An accurate architectural perspective of the proposed improvements, including the proposed exterior color schemes, style, materials, and design, working, and placement of all signs proposed.

   e. Any other plans, specifications, or design features requested by the Department.

3. Approval of Plans.

   a. Approval of plans and specifications for compliance with this procedure and for aesthetics shall be at the discretion of the Department .

   b. Approval of plans and specifications may be withheld because of failure to comply with this procedure.

4. Plans for Alterations to Improvements. All plans for alterations to the building site either for the construction of additional improvements or for alterations to existing improvements which are visible from the exterior of any building or which affect the structural system of any building or change any grade or landscaping, shall be prepared, submitted, and approved under the applicable provisions of this procedure.

5. Issuance of Building and Related Permits. Prior to obtaining necessary building and other related permits, lessees shall obtain written approval from the Department stating that the uses and plans for the lessee's building site have been approved by the Department as being in full compliance with this procedure.

E. Special Requirements for Airline Maintenance Hangar Area.

1. Permitted Uses. Any use which involves the operation of a facility for the maintenance and overhaul of air carrier aircraft, engines, parts, accessories, and equipment. The sale of aviation services and the offering of any services, or repairs of any type to the general public shall be specifically prohibited. Permitted activities shall include, but not be limited to, the following:

   a. The loading and unloading of aircraft.

   b. The maintaining, storing, and servicing of aircraft, which shall include overhauling, rebuilding, repairing, inspecting and licensing, and the purchasing and selling of parts, equipment, and accessories.

   c. The right of sale, disposal, and exchange of aircraft, aircraft parts and accessories therefor, and aviation equipment of every description as incident to the conduct of maintaining and overhauling air carrier aircraft, but not as distributor or as a dealer of same.

d. The training of lessee's personnel but not members of the general public in any art, science, craft, or skill pertaining directly or indirectly to aircraft.

e. The operation of offices and facilities incident to the conduct of lessee's business.

2. Building Site Requirements.

a. On-line Maintenance Hangar:

(1) Minimum Site Area . . . . . 2 acres

(2) Maximum Site Coverage 30%

(3) Minimum Landscaping Coverage 5%

b. Airline Maintenance Base:

(1) Minimum Site Area . . . . . 5 acres

(2) Maximum Site Coverage 30%

(3) Minimum Landscaping Coverage 5%

3. Setback Requirements.

a. Front Setback Line . . . . . 25 ft. minimum

b. Side Setback Line . . . . . .10 ft minimum on each side

c. Rear Setback Line . . . . . .10 ft minimum

4. Other Requirements. Engine runups shall be confined to soundproof test cell blocks or equivalent mobile suppressors.

F. Special Requirements for Cargo Mail Area.

1. Permitted Uses. Any use which involves the operation of a facility for the handling and storage of air cargo and mail shall include, but not be limited to, the following:

a. The loading and unloading of aircraft.

b. The receiving, delivering, dispatching, processing, handling and storing of air cargo, express, mail, and other property.

2. Building Site Requirements.

a. Minimum Site Area . . . . . 1 acre

b. Maximum Site Coverage 50%

c. Minimum Landscaping Coverage 5%

3. Setback Requirements.

a. Front Setback Line 2
5 ft. minimum

b. Side Setback Line . . . . . .10 ft. minimum on each side

c. Rear Setback Line . . . . . 10 ft. minimum

G. Special Requirements for Aviation Support Area.

1. Permitted Uses. Any use which involves the operation of a facility to support the authorized businesses and services of others holding valid leases, contracts, or permits in the terminal complex shall include, but not be limited to, the following:

   a. Inflight kitchens or catering services.

   b. Airport employee cafeteria.

   c. Offices and storage areas.

   d. Ground transportation maintenance and storage areas.

   e. Communications and meteorological facilities.

   f. Airline training schools.

2. Building Site Requirements.

   a. Minimum Site Area . . . . . 1 acre

   b. Maximum Site Coverage 50%

   c. Minimum Landscaping Coverage 5%

3. Setback Requirements.

   a. Front Setback Line . . . . . 15 ft minimum

   b. Side Setback Line . . . . . 10 ft minimum on each side

   c. Rear Setback . . . . . 10 ft minimum

H. Special Requirements for General Aviation Commercial Fixed Base Operator Area.

1. Permitted Uses. Any business or service involving the sale of general aviation commercial services to the general public shall include, but not be limited to, the following as authorized in the lease from the Department to the lessee:

   a. Aircraft servicing, repair, maintenance and storage.

   b. Sales of new and used aircraft and aircraft parts, accessories, equipment, and materials at retail and wholesale prices.

   c. Storage and vending of aircraft fuels, lubricants, and propellants.

   d. Aerial photography, survey, and mapmaking services.

   e. Air taxi, ambulance, and sightseeing services.

   f. Nonscheduled, sightseeing, and charter services for the transportation of passengers, freight, cargo, and mail.

   g. Flight schools--unless the Department has prohibited flight school activity at the airport and has provided adequate alternate landing facilities for this activity.

   h. Offices, services, and retail activities complementary to the uses set forth above.

2. Building Site Requirements.

   a. Minimum Site Area . . . . . 2 acres

b. Maximum Site Coverage 30%

c. Minimum Site Coverage 5%

d. Minimum Improvements:

(1) Aircraft shop and maintenance hangar . . . . . 10,000 sq. ft.

(2) Office administration building . . . . . .1,000 sq. ft.

(3) Paved apron area with access to hangar . . . . . 40,000 sq. ft.

e. Minimum Landscaping Coverage 5%

3. Setback Requirements.

a. Front Setback Line . . . . . 25 ft. minimum

b. Side Setback Line . . . . . .10 ft. minimum on each side

c. Rear Setback Line . . . . . 10 ft. minimum

I. Special Requirements for General Aviation Non-Commerical Area.

1. Permitted Uses. Any industrial, corporate, or business lessee that desires to hangar or accommodate one or more aircraft it owns or operates solely in connection with the internal conduct of its business for the transporting, not for hiring, of lessee's personnel, patrons, materials, and products shall be permitted to engage in certain activities including the following:

a. The loading and unloading of aircraft.

b. The maintaining, storing, and servicing of aircraft owned or operated and hangared by each such lessee on its building site by its own full-time employees.

c. The right of sale, disposal, and exchange of aircraft and their parts and accessories and of aviation equipment as directly incident to the conduct of maintaining and overhauling aircraft owned or operated and hangared by the lessee, by not as a regular business activity, or as a distributor or as a dealer of same.

d. The training of the lessee's personnel but not members of the general public in any art, science, craft, or skill pertaining directly or indirectly to aircraft owned or operated and hangared by the lessee.

e. The operation of offices and facilities incidental to the operation of the lessee's business.

2. Prohibited Uses. No use of noncommercial general aviation areas shall be permitted which, in the opinion of the Department will directly or indirectly compete with, impair, or restrict commercial aviation activities in the commercial aviation areas defined in subsection 7.6.04 H above.

3. Building Site Requirements.

a. Minimum Site Area . . . . . 30,000 sq. ft.

b. Minimum Site Width . . . . . 100 ft.

c. Maximum Site Coverage 60%

d. Minimum Landscaping Coverage 5%

4. Setback Requirements.

a. Front Setback Line . . . . . 25 ft.

b. Side Setback Line . . . . . .10 ft. minimum on each side

c. Rear Setback Line . . . . . 10 ft. minimum

J. Special Requirements for Fuel Farm Area.

1. Permitted Uses. The maintenance and operation of bulk storage facilities for gasoline, oil, grease, lubricants, and other fuels necessary for the operation of aircraft.

2. Prohibited Uses. No use of the fuel farm area shall be permitted which in the opinion of the Department will directly or indirectly compete with, impair, and restrict general aviation commercial activities as defined in this procedure. No aviation fuel or propellant may be purchased, stored, sold, or handled in these areas except by an aviation fuel vendor or user authorized under written contract by the Department to provide such fueling service at the airport. The servicing of aircraft in this area shall be specifically excluded.

3. Building Site Requirements.

a. Minimum Site Area . . . . . 2 acres

b. Minimum Landscaping Coverage . . . . . A minimum of two (2) feet inside the fencing abutting or facing a public right-of-way

4. Setback Requirements. As specified by the State Fire Marshall, or other governing agency.

5. Other Requirements.

a. In addition to the requirements in this procedure, the installation of improvements in the fuel farm area shall be subject to the requirements of county, state and federal agencies.

b. Each building site shall be completely enclosed by fences, with gate installed where necessary for access. Fences shall be installed on the lease boundary lines, except on the side of the building site that faces the common-use service road.

The fence line shall be consistent with existing fencing, and its location shall be subject to the prior written approval of the Department. The design of fences and gates shall be subject to the written approval of the Department prior to installation.

c. All ground areas not covered by fuel storage facilities, paving, or landscaping shall be covered only with gravel the installation and specification of which shall be subject to the written approval of the Department prior to installation.

K. General Provisions.

1. Conformance of Existing Improvements. All existing buildings and improvements on the airport shall be exempt from the provisions of this procedure for the duration of their present leasehold terms; provided, however, that no changes, alterations, or extentions shall be made to any existing improvements except in accordance with this procedure.

2. Continuity of Procedure.

a. This procedure shall apply to all development of airports operated by the Department.

b. This procedure may be revised as required by the Department to retain flexibility to permit the adoption of new techniques, materials, criteria, etc.

3. Variances.

a. The provisions of this procedure and any request for variances from them are to be

interpreted, administered and enforced by the Director.

b. Any tenant or prospective tenant may request a variance.

c. Requests for variances shall be made in writing to the Director.

d. The Director shall either approve or disapprove requests for variance within thirty days from filing.

(1) If approved, the variance shall be issued immediately.

(2) If disapproved, the Director shall provide a written statement setting forth the reasons for disapproval.

DEPARTMENT OF TRANSPORTATION
ASSIGNMENT OF LEASE AND PREMIUM EVALUATION POLICY
ANNEX I

Reference

Chapter 171-36(a)(5), Hawaii Revised Statutes (HRS)

☐No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;☐

Prior Approval

Any assignment of lease of Department of Transportation (DOT) property must have the prior written approval of DOT. Prior to giving its consent to an assignment, DOT must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the proposed assignment and purchase agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statements of the proposed assignee or any other such statements acceptable to the appropriate division, which statements shall be no older than one year prior to the date of the purchase agreement and audited or certified as correct by a financial officer of the proposed assignee. A consent to assignment by DOT shall not release the lessee (assignor) of any obligation to performed by the lessee or liability for acts or occurrences related to or resulting from the lessee's use or occupancy of the DOT property whether occurring before or after such consent unless the particular division is convinced that the assignee's financial responsibility is equal to or greater than the assignor.

No assignment of lease of DOT property shall be entered into until the Attorney General's Office (LEG) has first reviewed the proposed assignment and purchase agreement and the Director of Transportation (DIR) and the Board of Land and Natural Resources (Land Board) have given their approval. Such an assignment shall be entertained only if it meets one of the criteria set forth in Section 171-36(a)(5), HRS, except that the prerequisite stated in Section 171-36(a)(5)(A), HRS, shall be inapplicable to any DOT property.

Qualifications of Assignee

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

If a qualification questionnaire was required to be submitted by a lessee or concessionaire as a precondition of the lease or concession contract, the assignor shall submit a qualification questionnaire filled out by the prospective assignee in order that the appropriate division can evaluate whether the assignee has the required experience and background to assume the lease or concession contract.

Consideration to be Paid

Prior to review by LEG and approval by DIR and the Land Board, the lessee (assignor) must present the appropriate division with a written copy of the proposed purchase which includes the total consideration to be paid by the assignee whether by cash, credit or otherwise and any other cost data that the particular division may require.

Adjustment of Rental

In those leases wherein the DOT has the right to revise the rent of the demised premises upon an assignment, the lessee (assignor) shall also be required to present its cost data so that the appropriate division may review and analyze that information to determine whether the rent for the premises should be increased. The analysis shall accompany the request for review by LEG and the Land Board submittal.

Payment to DOT

All leases shall have an assignment clause that provides that the DOT shall receive from the lessee (assignor) a premium based on the amount by which the net consideration paid for the assignment, whether by cash, credit or otherwise exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee. The Engineering News-Record Construction Cost Index (CCI) (available at www.enr.com) and the Consumer Price Index for All Urban Consumers (CPI-U) (available at ttp://stats.bls.gov/cpihome.htm) will be applied to determine the adjusted depreciated costs. The value of the lessee's/assignor's inventory of merchandise should be deducted from the gross consideration paid to determine the net consideration. Intangibles such as goodwill, business name recognition, etc., are not deductible. (See Schedule A.)

To encourage long-term occupancy and discourage speculation, the premium for an assignment of a lease issued or awarded under Chapter 102 or 171, HRS, shall be the percentage of the excess payment (the selling price less the unamortized purchase price less the adjusted depreciated cost of all improvements, renovations and trade fixtures constructed or installed by the assignor) determined under Schedule A hereto, unless otherwise specifically provided in the lease, in accordance with the following schedule:

Years	Percentage
1 – 5	50%
6 – 10	45%
11 – 15	40%
16 – 20	35%
21 – 25	30%
26 – 30	25%
31 – 35	20%
36 – 40	15%
41 – 45	10%
46 – 50	5%
51 – 55	0%

The premium on subsequent assignments shall also be the percentage of the excess payment in accordance with the above schedule. For the purposes of the foregoing formula, the unamortized purchase price on subsequent assignments is the purchase price paid by the assignor when the lease was assigned to assignor less amortization on a straight line basis over the term of the lease remaining at the time of the assignment to assignor.

In addition to other remedies available to DOT under the lease, including, without limitation, the payment to DOT of the amount of the performance bond posted by lessee, DOT may, if the lessee has not performed lease covenants to improve or use the property for its specific uses, impose a surcharge of at least ten percent (10%) of the greater of the minimum guaranteed annual rental or the percentage rental for the year in which the lessee fails to so perform, provided the minimum guaranteed annual rental shall be no less than the minimum guaranteed annual rental for the second year of the lease term. The lessee may also be required to pay an amount equal to the minimum guaranteed annual rental for the second year of the lease term.

Depreciation of improvements, renovations and trade fixtures will be determined on a straight line basis. The whole term of improvements or renovations shall be defined as the period beginning with the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner and shall be based upon the anticipated life of the trade fixture. (See Schedules B and C)

All lessees shall be required to furnish the appropriate divisions with the actual costs of construction of all improvements and renovations within thirty (30) days after their completion as well as the purchase price and other costs of all fixtures acquired for the lessee's operations on, related to or connected with the premises, within thirty (30) days after such costs are incurred. Lessees shall be required to furnish evidence satisfactory to the divisions of the actual costs including, without limitation, furnishing copies of construction contracts, receipts and/or purchase agreements. Lessees shall also be required to furnish the appropriate division with an inventory of all equipment and personal property placed on the premises. The appropriate division shall maintain records of all costs incurred by the lessee for construction of improvements and renovations as well as installation of trade fixtures, equipment and personal property submitted by the lessee and shall include with said records, a copy of the Engineering News-Record Construction Cost Index (CCI) and Consumer Price Index for All Urban Consumers (CPI-U), as published by the U.S. Department of Labor's Bureau of Labor Statistics, for the year and month that construction and/or installation are completed.

In cases where the lessee has constructed or directed the construction of its own improvements, the lessee may be given the option of paying for an appraiser to determine the valuation of the improvements constructed, provided that the .appraiser shall be selected by DOT.

If the lessee is a partnership, limited liability partnership, joint venture, limited liability company or corporation, the sale or transfer of twenty percent (20%) (or a percentage of less than twenty percent (20%) if such percentage represents a controlling interest in the lessee) or more of ownership interest or stocks by dissolution, merger or any other means must be reported to DOT and shall be deemed an assignment subject to the payment of a premium in accordance with the above schedule. However, transfers will not include (i) transfers of ownership among the lessee's shareholders when such transfers involve less than fifty percent (50%) of the ownership interest or (ii) transfers of ownership to persons who are not shareholders of the lessee at the time of the transfer, but who become both shareholders and employees of the lessee, and the transfer is of less than fifty percent (50%) of the ownership interest.

Qualifying Leases

All leases entered into after July 1, 2004 are subject to the payment of a premium percentage in accordance with the above schedule. The above policy does not apply to leases entered into between May 24, 1989 and June 30, 2004 unless consideration is paid by the lessee to amend the lease to incorporate the above policy. The terms of any existing lease that has been let through public auction cannot be amended.

For all leases entered into or assigned prior to May 24, 1989, the assessment of an assignment premium shall only apply to those leases wherein it has been determined by the Office of the Attorney General that the assessment of the assignment premium is applicable.

SCHEDULE A. Assignment of Lease Calculations

1. Subtract the amount, if any, attributable to inventory from the gross consideration for the assignment to obtain the net consideration.

2. Calculate the Adjusted Depreciated Cost of Improvements and Renovations (see Schedule B).

3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule C).

4. Determine the amount, if any, by which the net consideration for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee by subtracting the amounts derived in Steps 2 and 3 above from the net consideration.

5. Then multiply the excess amount, if any, determined in Step 4 above, by the appropriate premium percentage.

6. The result is the premium due DOT.

Example

A lease is being assigned 57 months after completion of the improvements at a gross consideration of $650,000, $50,000 of which is attributable to inventory.

The initial cost of the improvements was $500,000 while the current year/month CCI and base year/month CCI are 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was $1,510 with the current year/month CPI-U and base year/month CPI-U being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Gross Consideration:	$650,000
	Inventory:	$ 50,000
	Net Consideration:	$600,000
2.	Adj Cost Imp/Ren:	$591,887
	Depreciation:	- 82,690
	Adj Dep Cost Imp/Ren:	(509,197)
3.	Adj Cost Trade Fixtures:	1,705
	Depreciation:	- 1,012
	Adj Dep Cost Trade Fixtures:	(693)
4.	Excess:	$ 90,100
5.	Appropriate Premium Percentage:	x (e.g.) *50%*
6.	Premium Due DOT:	$ 45,055

SCHEDULE B. Adjusted Depreciated Cost of Improvements and Renovations

1. Adjusted Cost of Improvements and Renovations

Multiply the actual cost of the improvements and renovations, if any, by the most recent year/month Engineering News-Record Construction Cost Index (CCI) and divide the result by the CCI of the year/month construction was completed (base year/month) to get the adjusted cost of improvements and renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements and renovations by the whole term of the improvements and renovations, the whole term being the period beginning on the date the improvements and renovations are completed until the expiration date of the lease. Multiply the adjusted cost of the improvements and renovations by the depreciation percentage to determine the depreciation.

3. Adjusted Depreciated Cost of Improvements and Renovations

Subtract the depreciation from the adjusted cost of improvements and renovations. The balance is the adjusted depreciated cost of improvements and renovations.

Example

Actual cost:	$500,000
CCI (most recent):	121.1
CC! (base):	102.3
Expired term:	57 mos.
Whole term:	408 mos.

1. Adjusted Cost of Improvements and Renovations:

Actual Cost x CCI (most recent) / CCI (base)

$500,000 x 121.1/102.3 = $591,887

2. Depreciation:

$591,887/408 mos. x 57 mos. = $82,690

3. Adjusted Depreciated Cost of Improvements and Renovations:

$591,887 - $82,690 = <u>$509,197</u>

SCHEDULE C. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture

Multiply the actual cost of the trade fixture by the most recent year/month Consumer Price Index for All Urban Consumers (CPI-U)* and divide the result by the CPI-U of the year/month in which the purchase was made (base year/month).

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Adjusted Depreciation Cost of Trade Fixtures

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the adjusted depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

	Refrigerator	
Example	Actual cost:	$1510
	CPI (most recent):	118.1
	CPI (base):	104.6
	expired term:	*57* mos.
	Whole term:	*96* mos.
	(Anticipated life)	

1. Adjusted Cost of Trade Fixture:

Actual Cost x CPI-U (most recent) / CPI-U (base)

$1510 x 118.1/104.6 = $1705

2. Depreciation:

$1705 x 57 mos/96mos. = $1012

3. Adjusted Depreciated Cost of Trade Fixture:

$1705 - $1012 = <u>$693</u>

Should the State decide to consent to the sublease but limit the amount of rental charged to the sublessee, the maximum allowable sublease income may be determined by applying the following mathematical equation:

$$M - T - R(M - T) - E = 0$$

whereby,

M = maximum allowable sublease income

T = general excise tax

R = rate for management and vacancy loss (10%)

E = total allowances excluding management and general excise tax*

*when applicable

Solving for M:

$$M = \frac{E + T - RT}{1-R}$$

Effect of Termination or Involuntary Assignment

In the event that a lease or sublease becomes available to a new lessee or sublessee as a result of the involuntary termination of the lease or sublease by foreclosure of the lien of any mortgagee's interest in the leased or subleased premises (whether by court order or otherwise), the purchaser/assignee thereof and the interest so acquired shall not be subject to the requirements of this DOT Sublease Evaluation Policy. Subsequent subleases shall be subject to the requirements of this DOT Sublease Evaluation Policy

Department of Transportation
SUBLEASE EVALUATION POLICY
ANNEX II

Reference

Chapter 171-36(a)(6), Hawaii Revised Statutes

> "The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublease shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent downward,..." (Amended 1992)

Purpose

The purpose of the sublease evaluation policy is to discourage and dampen speculation. The basic rationale or philosophy behind the sublease evaluation policy is that the State, as mandated by statutes, should not allow anyone to make excessive "sandwich profits" from the use of State-owned land and will monitor it by participating in the distribution of such profits. The State does recognize the sublessor's right to earn a fair return for its investment.

When the State determines that "sandwich profits" are being realized, the State may take such action as it deems necessary, including, without limitation:

(1) limiting the amount of rent charged to the sublessee; or

(2) receiving thirty percent (30%) of the "sandwich profit" from the sublessor while permitting the sublessor to retain the remaining seventy percent (70%).

The State may reevaluate the "sandwich profit" on an annual basis

Procedure

At the time the lessee requests approval of a sublease, the lessee shall submit any and all information the DOT deems necessary to properly analyze the proposed sublease, including, without limitation, the proposed sublease document, floor plans of the leased premises and the premises to be subleased, plans for any and all proposed improvements, estimated operating and other costs, total investment of the lessee, the proposed payments to DOT for permitting the sublease and any other financial information.

As part of its analysis of the proposed sublease, the State will consider:

a. data found in the real estate market; including, without limitation, data relating to what other investors are experiencing for similar/comparable investments, and

b. those allowances and operating expenses that are properly attributable to the sub-leased premises.

To qualify as properly attributable to the subleased premises and therefore eligible for deduction from the effective sublease income (gross annual sublease income minus the general excise taxes paid and/or payable), such allowances (including, without limitation, reserves for replacement of limited life items) and operating expenses must be reasonable, legitimate, adequately justified by the lessee and approved by the State. The operating expenses are to be prorated on an annual basis. Operating expenses are the periodic expenditures necessary to maintain the real property and continue the production of the effective gross income and include, but are not limited to the following:

1. Fixed Expenses - Fixed Expenses are operating expenses that generally do not vary with occupancy and have to be paid whether the property is occupied or vacant (i.e., real estate taxes, building insurance costs, etc.).

2. Variable Expenses - Variable Expenses arc operating expenses that generally vary with the level of occupancy or the extent of services provided (i.e., utilities, painting, repair, maintenance, etc.).

3. Reserve for Replacement Allowances - Reserve for Replacement Allowances provides for the periodic replacement of building components that wear out more rapidly than the building itself and must be replaced periodically during the buildings economic life (i.e., roofing, carpeting, sidewalks, driveways, parking areas, etc.).

4. Lease Rental -The lease rental amount shall be the proportionate share of the total lease rent attributable to the subleased premises, based on the proportion the subleased area bears to the entire leased premises.

The Fixed Expenses, Variable Expenses and the Reserve for Replacement Allowances shall be prorated based on the proportion the leasable area of the subleased premises bears to the total leasable area of the building.

(For a detailed explanation on allowable operating expenses, please refer to Chapter 19, "Income Estimates," **The Appraisal of Real Estate**, Ninth Edition or such later edition, as applicable, prepared by the Textbook Revision Committee of the American Institute of Real Estate Appraisers.)

A reasonable return on the sublessor's investment which includes recapture of the sublessor's investment and some amount of profit is allowed. The allowance is the result of multiplying the sublessor's total investment in the subleased area by the Investment Return Rate.

The "Investment Return Rate" used in this DOT Sublease Evaluation Policy will be the sum of the following rates:

a. **Treasury bonds rate**. The interest rate for thirty (30) year Treasury bonds in effect at the time the proposed sublease is being evaluated, as listed in the Wall Street Journal, or if not available, such similar publication as mutually agreed upon by the lessor and the lessee;

b. **Capital recapture rate**. The annual percentage rate which would enable the lessee to recover the lessee's investment in the improvements constructed on the leased premises over the term of the lease (hereinafter the "capital recapture rate"). For example, if the lease term is twenty-five (25) years, the capital recapture rate shall be four percent (4%) per year; and

c. **Premium rate**. A premium rate of two percent (2%).

The existing DOT lease rent attributable to the subleased area is also subtracted from the sublease income. Any balance remaining is the sandwich profit. If the State selects the option to approve the sublease rental, then the sandwich profit will be paid to DOT.

Should the State decide to consent to the sublease but limit the amount of rental charged to the sublessee, the maximum allowable sublease income may be determined by applying the following mathematical equation:

$$M - T - R(M - T) - E = 0$$

whereby,

M = maximum allowable sublease income

T = general excise tax

R = rate for management and vacancy loss (10%)

E = total allowances excluding management and general excise tax*

*when applicable

Solving for M:

$$M = \frac{E + T - RT}{1-R}$$

Effect of Termination or Involuntary Assignment

In the event that a lease or sublease becomes available to a new lessee or sublessee as a result of the involuntary termination of the lease or sublease by foreclosure of the lien of any mortgagee's interest in the leased or subleased premises (whether by court order or otherwise), the purchaser/assignee thereof and the interest so acquired shall not be subject to the requirements of this DOT Sublease Evaluation Policy. Subsequent subleases shall be subject to the requirements of this DOT Sublease Evaluation Policy

Format

COMPUTATION SHEET

DOT Lease No. _____, _____, Sublessor,

sublease to _____, Sublessee

Gross Annual Sublease Income (Including general excise tax and common areas maintenance charges)		$ XX,XXX
Less general excise tax		- X,XXX
Effective Income		$ XX,XXX
Less Allowances:		
Management and vacancy loss (Eff. Inc. x 10%)	$X,XXX	
Investment return* (Total Inv. x __%)	X,XXX	
Fixed Expenses* (e.g., real property taxes, building insurance costs, etc.)	X,XXX	
Variable Expense* (e.g., utilities, painting, repair, maintenance, etc.)	X,XXX	
Reserve for Replacement Allowances* (e.g., roofing, carpeting, sidewalks, driveways, parking areas, etc.)	X,XXX	
DOT Lease No. _____ rental (proportionate share of the lease rent for the leased premises attributable to the subleased area based on the proportion the subleased area bears to the entire leased premises)	X,XXX	
Total Allowances:		- X,XXX
SANDWICH PROFIT		$ X,XXX

*Prorated based an the proportion the leasable area of the subleased premises bears to the total leasable area of the building.

PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____
(full legal name and street address of Contractor)
as Contractor, hereinafter called Principal, and

_____
(full legal name and street address of bonding company)
as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____
(State/County entity)
its successors and assigns, hereinafter called Obligee, in the amount of _____
_____DOLLARS ($_____, to which payment Principal and surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the above-bound Principal has entered into a Contract with Obligee dated _____
_____ for _____
hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE, the condition of this obligations is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction to the Surety's performance obligation on this bond.

Signed this _____ day of _____, 20___.

(Seal) _____
Name of Principal (Offeror)

_____
Signature*

_____
Title

(Seal) _____
Name of Surety

_____
Signature*

_____
Title

*ALL SIGNATURES MUST BE
ACKNOWLEDGED BY A NOTARY PUBLIC

LABOR AND MATERIAL PAYMENT BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____
(full legal name and street address of Contractor)
as Contractor, hereinafter called Principal, and

_____
(full legal name and street address of bonding company)
as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____
(State/County entity)
its successors and assigns, hereinafter called Obligee, in the amount of _____
_____DOLLARS ($_____, to which payment Principal and surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the above-bound Principal has entered into a Contract with Obligee dated _____
_____ for _____
hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for he work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and material furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on the bond. If the full amount of the liability of the surety on the bond is insufficient to pay the full amount of the claims, then after paying the full amount due to the Obligee, the remainder shall be distributed pro rata among the Claimants.

Signed this _____ day of _____, 20__.

(Seal) _____
Name of Principal (Offeror)

_____
Signature*

_____
Title

(Seal) _____
Name of Surety

_____
Signature*

_____
Title

*ALL SIGNATURES MUST BE
ACKNOWLEDGED BY A NOTARY PUBLIC

CONCESSIONAIRE'S LISTING OF HAZARDOUS SUBSTANCES

CONCESSIONAIRE'S LISTING OF ENVIRONMENTAL PERMITS

APPENDIX C
ATTACHMENT 9

APPENDIX D – CONCESSION BOND

CONCESSION PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS, that_____
_____, as Principal,
and _____,
as Surety, are held and firmly bound unto the State of Hawai'i, its successors or assigns, in the full and just sum of _____
DOLLARS ($), in lawful money of the United States of America, for the payment of which to the State of Hawai'i, its successors or assigns, well and truly to be made, we do hereby bind ourselves and our respective heirs, executors, and administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounden Principal shall fully and faithfully perform and fulfill all of the covenants, terms and conditions in that certain Concession Agreement, dated _____, entered into by said Principal with the State of Hawai'i for the Wi-Fi Concession at Honolulu International Airport, Hilo International Airport, Kona International Airport at Keahole, Kahului Airport, and Lihu'e Airport (Airports), the State of Hawai'i, and shall promptly pay all just claims against the Principal, and shall hold harmless, indemnify and defend the State of Hawai'i, its officers and agents, successors or assigns, against loss or damage to property of the State of Hawai'i, or to the property of others, and from all claims, costs and liabilities for injury to or death of persons when such loss, damage, injury or death arises or results from any acts or omissions of the Principal, its officers, agents, employees, contractors and guests (including invitees and licensees) in connection with the operation and maintenance of the Wi-Fi Concession at the Airports, then this obligation shall be void, otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED:

(1) That no amendment, modification, change, extension, alteration, deduction or addition, permitted by said Concession Agreement, in or to the covenants and terms of the Concession Agreement, shall in any way affect the obligation of said Surety on this bond; and that said Surety does hereby waive notice of any such amendment, modification, change, extension, alteration, deduction or addition in or to the covenants, terms and conditions of the Concession Agreement.

(2) That suit on this bond may be brought before a court of competent jurisdiction without a jury in the event of a breach of any, or all, or any part of, the stipulations, agreements, covenants, terms or conditions contained in the Concession Agreement or in this bond, in accordance with the terms thereof.

WITNESS our hands and seals at _____,
State of _____, this _____ day of _____, 20__.

_____

_____

_____
Principal

_____

_____

_____
Surety

APPROVED AS TO FORM:

_____
Deputy Attorney General

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20__, before me appeared _____ to me personally known, who being by duly sworn, did say that _____ is (are) the _____ of _____ and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____ acknowledged said instrument to be the free act and deed of said corporation.

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

Doc. Description: _____
No. of Pages: _____

_____
Notary signature

My Commission Expires: _____