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CONSOLIDATED RENTAL CAR FACILITY  
CONCESSION AGREEMENT AND FACILITY LEASE  
at Honolulu International Airport  
Island of O'ahu  
State of Hawaii

THIS CONSOLIDATED RENTAL CAR FACILITY CONCESSION AGREEMENT AND FACILITY LEASE (hereinafter "**Agreement**") made as of this \_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**"), by and between the STATE OF HAWAII, by and through its Director of Transportation, hereinafter called the "**State**," and \_\_\_\_\_ doing business as (**INSERT BRAND/TRADE NAMES**), and no other brand or trade names, at Honolulu International Airport, in the State of Hawaii, whose business and/or post office address is \_\_\_\_\_ hereinafter called the "**Concessionaire**;"

WITNESSETH:

WHEREAS, State, pursuant to Chapters 171, 261, and 263 of the Hawaii Revised Statutes, is vested with control and jurisdiction over the operation of airports within the State of Hawaii; and

WHEREAS, State operates said airports in the State of Hawaii, in part, to provide for the servicing of aircraft and the comfort, accommodation, and convenience of air travelers; and

WHEREAS, State has solicited bid proposals to operate nonexclusive rental car concessions at Honolulu International Airport in the State of Hawaii; and

WHEREAS, bid proposals were received from qualified bidders, which were carefully analyzed and fully reviewed, and State determined that Concessionaire was one of the highest responsible bidders and awarded this Agreement to Concessionaire to operate a rental car concession on a nonexclusive basis; and

WHEREAS, Concessionaire desires to secure and enter into this 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 State to meet the needs of air travelers, passengers, and visitors at, and customers and users of, Honolulu International Airport; and

WHEREAS, in conjunction with its nonexclusive rental car concession, Concessionaire desires to lease certain premises in the consolidated rental car facility at Honolulu International Airport;

WHEREAS, State desires to enter into this Agreement to make available rental car concession services to passengers at Honolulu International Airport;

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

ARTICLE I. DEFINITIONS

A. "Airport" means the Honolulu International Airport, Honolulu, Island of O'ahu, State of Hawaii.

B. "Automobile" means a non-chauffeured, self-propelled motor vehicle moving on four wheels for passenger transportation with a maximum capacity of fifteen (15) passengers (including driver). U-haul, freight or cargo trucks, vans and trailers, and motor homes do not qualify and shall not be rented or stored on the Premises.

C. "Bond Documents" means the documents and authorizations relating to the issuance, financing, investment, application, and retirement of the Bonds, including, without limitation, the Bond Statute, as supplemented and amended from time to time, and the Master Indenture, as supplemented and amended from time to time.

D. "Bonds" means the \_\_\_\_\_ Bonds, all as further described in the Bond Statute, and any additional bonds of the State to which the CFCs are to be pledged from time to time.

E. "Bond Statute" means \_\_\_\_\_.

F. "CFC" or "Customer Facility Charge" means that fee to be collected by Concessionaire from its customers that rent or otherwise enter into a similar arrangement for the use of an Automobile with Concessionaire at the Airport, as such fee may be determined by the State prior to, subsequent to, or during the term of this Agreement (which shall include any and all adjustments of such fee) for the benefit of the State and for any lawful purpose as determined by the State to include, but not to be limited to, the construction, renovation, repair, operating and maintenance costs of existing and future facilities that are allocable or attributable to the operations of the rental car concessions at the Airport and the other airports within the State of Hawaii in which State has vested control and jurisdiction.

G. "CFC Statute" means the provisions of section 261-7, HRS, which authorize rental motor vehicle customer facility charges on rental motor vehicle customers, as described therein and as the same may be amended.

H. "Common Use Transportation Expenses" mean \_\_\_\_\_.

I. "Concession" means the right and obligation to operate a nonexclusive concession on the Premises for the rental or other similar use of Automobiles, subject to the terms of this Agreement.

J. "Concession Agreement and Facility Lease Documents" means all of the following: (1) Notice to Bidders, (2) Instructions to Bidders, (3) Bid Intent Package, including the Notice of Intention to Bid, (4) the Bid Proposal Package, including the Bid Proposal, (5) this Agreement, (6) Concession Bond, (7) Performance Bond, and (8) any and all other appropriate documents and attachments.

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

L. "Concessionaire" means the entity identified above to whom this Agreement is awarded and who enters into this Agreement with the State in accordance with such entity's Bid Proposal as set forth in the Concession and Facility Lease Documents.

M. "Concessionaire Access Date" means the date on which the State authorizes Concessionaire to access the Consolidated Facility for the purpose of commencing construction of the Concessionaire Improvements therein pursuant to Article VI.A.3 (Concessionaire Construction) hereof.

N. "Concessionaire Delay" means any delay attributable to the acts or omissions of Concessionaire or Concessionaire's officers, agents, employees, contractors, consultants, sub-Concessionaires, or licensees from time to time.

O. "Concession Recovery Fees" means \_\_\_\_\_

P. "Concessionaire Improvement Plans" shall have the meaning set forth in Article VI.A.7 (Construction of Concessionaire Improvements) hereof.

Q. "Concessionaire Improvements" shall have the meaning set forth in Article VI.A.7 (Construction of Concessionaire Improvements) hereof.

R. "Concessionaire Improvement Substantial Completion" shall have the meaning set forth in Article VI.A.7 (Construction of Concessionaire Improvements) hereof.

S. "Concessionaire's Proportionate Share" means the percentage determined by dividing the aggregate square footage of the Premises by the aggregate square footage of the Consolidated Facility, which is acknowledged and agreed to be \_\_\_\_\_ (\_\_\_\_%) as of the Effective Date hereof, or otherwise as determined by the State from time to time.

T. "ConRac Agreement" means a Consolidated Rental Car Facility Concession Agreement and Facility Lease for a nonexclusive rental car concession at the Airport together with a lease of certain premises at the Consolidated Facility to an On-Airport Rental Car Company which agreement may be in a form substantially similar to this Agreement.

U. "Consolidated Facility" means the consolidated rental car facility to be constructed at the Airport and consisting collectively of the Consolidated Facility Property, the Consolidated Facility Improvements (which include the QTA), and the ground transportation area.

V. "Consolidated Facility Improvements" shall have the meaning set forth in Article VI.A. (Consolidated Facility Improvements) hereof and shall include: (i) a customer service area anticipated to comprise approximately \_\_\_\_\_ square feet (inclusive of back office space) located on Level 2 of the Consolidated Facility Improvements; (ii) a ready/return area for vehicle rental and return parking use and storage anticipated to comprise approximately \_\_\_\_\_ square feet located on Levels 1, 2, and 3 of the Consolidated Facility Improvements; (iii) a three-level QTA structure (as defined herein below) anticipated to comprise approximately \_\_\_\_\_ square feet per level; and (iv) an overflow vehicle storage area on Level 4 of the Consolidated Facility Improvements anticipated to comprise approximately \_\_\_\_\_ square feet.

W. "Consolidated Facility Plans" shall have the meaning set forth in Article VI.A. (Consolidated Facility Improvements) hereof.

X. "Consolidated Facility Property" means the real property and the land underlying the Consolidated Facility, all as specifically described in **Exhibit A** attached hereto and made a part hereof, and as more specifically depicted in **Exhibit A-1** attached hereto and made a part hereof.

Y. "Consolidated Facility Substantial Completion" shall have the meaning set forth in Article VI.A.3 (Concessionaire construction) hereof.

Z. "County" means the City and County of Honolulu.

AA. "CUTS" means the Common Use Transportation System serving the Airport.

BB. "DCAB" means the State of Hawaii, Disability and Communication Access Board.

CC. "Debt" shall have the meaning set forth in Article \_\_\_\_\_ hereof.

DD. "Debt Service" means principal and interest payments on the Bonds, from time to time, and any related required costs, payments, or deposits in connection with any of the foregoing, including, without limitation, costs of issuance, credit and liquidity fees, financing costs and charges, and reserves, and further including, specifically, the amounts of any required deposits into each of the funds specifically referenced and defined in the Bond Documents from time to time, together with all deposits required in connection with any of the foregoing from time to time (except to the extent that any such costs, payments, deposits, credit and liquidity fees, or reserves are funded from the initial proceeds of the Bonds and comprise part of the principal and interest payments, it being understood and agreed that there shall be no "double counting" of any such amounts for purposes hereof).

EE. "Default Rate" means \_\_\_\_\_

FF. "Director" means the Director of Transportation, Department of Transportation, State of Hawaii, or the Director's designated representative.

GG. "Disadvantaged Business Enterprises" or "DBE" 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, one 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 the State of Hawaii, Department of Transportation, as a Disadvantaged Business Enterprise.

HH. "Eligible Costs" mean those costs and expenses which may be paid with CFCs as described in and authorized by section 261-5.6, HRS, as the same may be amended, and which include, but are not limited to, management, operations, and maintenance fees for rental motor vehicle customer facilities including, but not limited to, common use transportation systems serving those facilities, and debt service payments on bonds relating to the use of the rental motor vehicle customer facility charge for airport capital improvements program project.

II. "Expiration Date" means the thirtieth (30th) anniversary from the Payment Commencement Date or an earlier termination as provided in this Agreement.

JJ. "FAA" means the United States Federal Aviation Administration, or its successor agency.

KK. "Facility Rent" means an amount equivalent to the sum of: (i) any and all Debt Service on the Bonds used to fund the Consolidated Facility and related improvements for the applicable payment period under this Agreement; (ii) an amount equal to Concessionaire's Proportionate Share of any and all Debt Service and related costs on the Bonds used to fund the Consolidated Facility, for the applicable payment period under this Agreement (the foregoing clauses (i) and (ii) of Facility Rent are sometimes separately referred to herein, collectively, as "Debt Service Facility Rent"); (iii) Concessionaire's Proportionate Share of Operating Expenses (which includes common use transportation expenses), and Impositions; and (v) any and all other costs and expenses for which Concessionaire is expressly responsible or liable under this Agreement.

LL. "Gross Receipts" means all revenues paid or due to Concessionaire arising out of or in connection with its operations at the Airport, including, without limitation: (a) all time and mileage revenues and all revenues from the sale of personal accident insurance, or any insurance of a similar nature; (b) all concession recovery fees; (c) sums received by the Concessionaire for damage to Automobiles or Concessionaire's property or premises, or from loss, conversion, or abandonment of Automobiles (without mark-up or additional fees); and (d) all other revenues paid or due to Concessionaire arising out of or in connection with its operations at the Airport. Gross Receipts shall not include: (i) amounts of any federal, State of Hawaii, or municipal taxes; (ii) CFCs collected by Concessionaire; (iii) amounts for credits, refunds, or adjustments to customers for transactions made at the Airport at the time of, or prior to, the close-out of the rental transaction and shown on the customer contract (without mark-up or additional fees); (iv) sums received by reason of Concessionaire's disposal of personal property (capital assets) (without mark-up or additional fees); (v) sums received by Concessionaire from its customers for traffic tickets, parking tickets, highway tolls, towing charges, impound fees, and other similar governmental fines and charges actually paid by Concessionaire on behalf of such customers

(without mark-up or additional fees); and (vi) sums received by Concessionaire for pass-through charges collected by Concessionaire from its customers with respect to damage repair, parts replacement, and extraordinary cleaning of vehicles, and towing and transporting of damaged vehicles, rented by such customers, and replacement of keys for such vehicles (without mark-up or additional fees). The retroactive adjustment by Concessionaire of Gross Receipts designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any purpose, is prohibited. Concessionaire shall not be credited with nor allowed to have any reduction in the amount of the Gross Receipts which results from any arrangements for a rebate, kickback, or hidden credit given or allowed to any customer; provided, however, that Concessionaire may allow customary discounts on sales of commodities and products to its own employees and to volume purchasers pursuant to Article X. A. (Quality and Price Control) hereof.

MM. "Ground Rent" means an amount equivalent to Concessionaire's Proportionate Share of the fair market rent of the Consolidated Facility Property, which fair market rent shall be calculated based upon \_\_\_\_\_ square feet, which is deemed to be the total area of the Consolidated Facility Property as of the Effective Date hereof. Concessionaire's Ground Rent during the initial five (5) years from the Payment Commencement Date of this Agreement shall be the sum of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) per year (calculated by multiplying \$\_\_\_\_\_ by \_\_\_\_\_, being the square footage of the Consolidated Facility Property, and then multiplying the product thereof by Concessionaire's Proportionate Share). Ground Rent payable hereunder shall be subject to adjustment on the fifth (5th) anniversary of the Payment Commencement Date hereunder, all in accordance with Exhibit B attached hereto and made a part hereof. The State reserves the right to re-measure the total area of the Consolidated Facility at any time and from time to time from and after the Effective Date hereof, and in the event that any such subsequent re-measurement indicates that the actual total area of the Consolidated Facility differs from the measurement set forth above, the State shall so notify Concessionaire in writing, the Ground Rent payable hereunder shall be modified to account for such difference, and the parties shall execute a written amendment to this Agreement confirming the actual total area of the Consolidated Facility, as so re-measured, and the modified Ground Rent thereafter payable hereunder. The total area of the Consolidated Facility and the Ground Rent payable during the initial five (5) years from the Payment Commencement Date of this Agreement shall be confirmed in writing by the State and Concessionaire in a form substantially similar to Exhibit C attached hereto and made a part hereof.

NN. "HRS" means Hawaii Revised Statutes.

OO. "Impositions" mean any and all charges, assessments, taxes, and other fees which are charged, assessed, or otherwise imposed upon the Consolidated Facility by any private or public authority.

PP. "Incumbent Concessionaire" means a rental car concessionaire currently operating a nonexclusive rental car concession at the Airport.

QQ. "Incumbent Concessionaire Agreement" means each separate concession agreement and facility lease and each separate related baseyard lease (if applicable) between

State and each Incumbent Concessionaire for the operation of the nonexclusive rental car concession at the Airport, on the premises set forth therein (hereinafter referred to as "Incumbent Premises"), currently held on a holdover, month-to-month basis.

RR. "Master Indenture" means \_\_\_\_\_

SS. "Minimum Annual Guaranteed Fee" or "MAG" means that amount referred to as the MAG set forth in Concessionaire's Bid Proposal Package, including the Bid Proposal.

TT. "On-Airport Rental Car Company" means a rental car company that (i) is a party to a valid ConRac Agreement with the State, and (ii) is operating its rental car concession at the Airport in the Consolidated Facility.

VV. "Operating Expenses" mean any and all costs and expenses incurred in operating and maintaining the Consolidated Facility and which includes, but is not limited to, the costs and expenses of the common use transportation system.

WW. "Payment Commencement Date" means the earlier of: (i) the day on which Concessionaire commences operation of its Concession at the Premises, or (ii) one year following the Concessionaire Access Date.

XX. "Percentage Fee" means the amount equal to ten percent (10%) of Concessionaire's Gross Receipts.

YY. "Performance Deposit" means \_\_\_\_\_

ZZ. "Premises" means and includes all those areas described in Article III (Premises) of this Agreement, which may be amended from time to time, and which State authorizes and makes available for use by Concessionaire for purposes of the Concession.

AAA. "QTA" means the quick-turnaround area of the Consolidated Facility Improvements used by Concessionaire for washing, cleaning, fueling and light maintenance of Concessionaire's Automobiles.

BBB. "RAC Consortium" means \_\_\_\_\_

CCC. "State" means the State of Hawaii, by and through its Director of Transportation.

DDD. "Term" means the period commencing from the Effective Date up to and including the Expiration Date.

EEE. "Transportation Security Administration" or "TSA" means the United States, Department of Homeland Security, Transportation Security Administration, or its successor agency.

FFF. "UST" means an underground storage tank used exclusively to store heating oil, gasoline, used oil or such other items as are permitted under applicable laws in connection with the Concession at the Consolidated Facility and/or the Premises.

## ARTICLE II. CONCESSION AGREEMENT AND FACILITY LEASE

A. Concession Agreement. This Agreement sets forth the obligations and privileges of Concessionaire with respect to the operation of the nonexclusive Concession from the Consolidated Facility at the Airport.

B. Facility Lease. This Agreement sets forth the obligations and privileges of Concessionaire with respect to the use and occupancy of the Premises at the Airport. In the event Concessionaire's Concession rights granted by the State hereunder are terminated (as provided in Article XIII (Termination by State) hereof or any other provision of this Agreement) or is not extended or renewed as provided in Article IV.E (Option to Require Re-Bidding; No Assurance of Continued Participation) hereof, the Concessionaire and the State agree that this Agreement shall terminate as of the expiration of the Concession, and no further action or document shall be required.

## ARTICLE III. PREMISES

The State, for the Term, and for and in consideration of the rentals, fees, and other charges to be paid by Concessionaire, as prescribed and set forth in Article V (Concessionaire Payments) hereof, and upon the agreements, covenants, promises, provisions, requirements, restrictions, terms, and conditions as are hereinafter more particularly set forth, all on the part of Concessionaire to be kept, observed, and performed, does hereby grant, demise and let unto Concessionaire, and Concessionaire does hereby lease and hire from the State, the exclusive right to occupy and use that certain space within the Consolidated Facility at the Airport, designated as \_\_\_\_\_, containing an area of approximately \_\_\_\_\_ square feet, more or less, as shown and delineated on the map labeled **Exhibit D**, attached hereto and made a part hereof, and hereinafter referred to as the "**Premises.**" Subject to the conditions and provisions in this Agreement, Concessionaire shall also have the right to the nonexclusive use of the common areas of the Consolidated Facility which are those areas not reserved by the State or demised to another party.

## ARTICLE IV. TERM

A. Term. The term of this Agreement shall be from the Effective Date up to and including the Expiration Date, unless sooner terminated in accordance with the terms and provisions hereof. Notwithstanding the Term of this Agreement, the Concession itself shall be initially for a period of ten (10) years from the Payment Commencement Date, unless the same shall be extended or renewed as provided in Article IV.E (Option to Require Re-Bidding; No Assurance of Continued Participation) hereof. Further, in the event the Concession is not extended after a rebid as provided in Article IV.E (Option to Require Re-Bidding; No Assurance of Continued Participation) hereof, the State shall have the right to terminate this Agreement upon not less than thirty (30) days' written notice to Concessionaire as provided in said Article IV.D.



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 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 Airport terminal complexes affecting the Concession, and (5) the potential disruption and adverse impact on the State's overall concession program at the Airport. 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 (Term), for a period of time not exceed one (1) year from the date of expiration.

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 this Agreement but shall create a month-to-month tenancy on the same terms and conditions of this 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 this Agreement in effect at the Holdover Start and (3) provide defense, indemnity and liability protection to the State as required by the terms of this Agreement in effect at the Holdover Start.

b. Modifications. The Concessionaire's obligation to pay the rents, fees and charges in effect at the Holdover Start shall, at a minimum, be modified as follows: 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 (1) 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.

C. Surrender of the Premises. At the expiration or earlier termination of this Agreement, Concessionaire shall return the Premises in good condition and repair, subject to ordinary wear and tear, and Concessionaire shall remove all personal property, trade fixtures, and equipment, if any, of Concessionaire (but excluding the Concessionaire Improvements, unless

otherwise directed by the State) from the Premises prior to the date of expiration or earlier termination. Concessionaire shall repair any and all damage to the Premises caused by Concessionaire's removal of the personal property, trade fixtures, and equipment, if any. All such removal and repair required of Concessionaire pursuant to this Article IV.C (Surrender of the Premises) shall be at Concessionaire's sole cost and expense. If Concessionaire fails to remove any items required to be removed by Concessionaire hereunder or fails to repair any resulting damage prior to or within ten (10) days after expiration or earlier termination of this Agreement, then the State may (but shall not be obligated to) remove said items, and repair any resulting damage, and Concessionaire shall pay the cost of any such removal and repair, together with interest thereon at the Default Rate from and after the date such costs were incurred until receipt of full payment therefor. Concessionaire shall also furnish to the State (as to existing Concessionaire Improvements if not previously delivered to the State), and the State shall have the right to use, a full set of the "as-built" plans and specifications for all Concessionaire Improvements, and all final reports prepared by or for Concessionaire on the environmental or physical condition of the Premises. Without limiting the foregoing, upon expiration or earlier termination of this Agreement, at the State's option, any USTs on the Premises shall be deemed conveyed to the State, or shall be required to be removed by Concessionaire at Concessionaire's sole cost and expense. Concessionaire shall confirm any such conveyance of USTs by a bill of sale for such USTs to the State, if requested by the State. Concessionaire shall perform any removal required by the State in accordance with all Environmental Laws (as defined in Article XXII.A.4 [Environmental Laws] hereof) and otherwise in accordance with Article XXII (Hazardous Substances) hereof.

D. Reversion to the State. On the last day of the Term or upon any earlier termination of this Agreement or Concessionaire's right to possession of the Premises under this Agreement, fee simple title to all Concessionaire Improvements therein, to the extent not theretofore vested in the State pursuant to the terms of this Agreement, shall revert to the State without the necessity of any further action by either party hereunder; provided, however, that upon the State's request, Concessionaire shall execute and deliver to the State (in recordable form) all documents necessary to evidence such conveyance, including, without limitation, a bill of sale. Concessionaire shall deliver to the State Concessionaire's executed counterparts of any service and maintenance contracts that are in Concessionaire's possession and are then affecting the Premises and Concessionaire Improvements, true and complete maintenance records for the Premises and Concessionaire Improvements, all original licenses and permits then pertaining to the Premises and Concessionaire Improvements, permanent certificates of occupancy then in effect for the Premises and Concessionaire Improvements, and all assignable warranties and guarantees then in effect which Concessionaire has received in connection with any work or services performed or equipment installed in the Premises and Concessionaire Improvements, together with a duly executed assignment of any of the foregoing to the State (but as to any service and maintenance contracts, only to the extent the State requests assignment), and all financial reports, documents, books, and records whatsoever relating to the maintenance or condition of the Premises and Concessionaire Improvements.

E. Option to Require Re-Bidding; No Assurance of Continued Participation. Notwithstanding anything herein to the contrary, the State shall have the right and option, to be exercised in its sole and absolute discretion, to require the re-bidding of this Agreement as to the Concession rights granted hereunder once every ten (10) years during the Term hereof, and, in

such event, Concessionaire may be required to re-bid for the rights and license granted hereunder as part of the State's then-applicable public bidding process therefore (and, in the event that Concessionaire elects not to re-bid as aforesaid, the State shall be entitled in such instance to terminate this Agreement in the event that the State determines to award the rights and license granted hereunder to a third party). The terms of such re-bidding may include, without limitation, a modified Minimum Annual Guaranteed Fee, a modified Percentage Rent, a modified definition of "Gross Receipts" hereunder, a modified Ground Rent, a modified Facility Rent, and such other terms as the State shall deem appropriate. Concessionaire hereby acknowledges and agrees that the State has advised Concessionaire of the State's right and option to require the periodic rebidding of this Agreement as aforesaid, and Concessionaire further acknowledges that the State has not given Concessionaire any assurances that Concessionaire will be given the opportunity to continually participate in the Consolidated Facility or the Airport pursuant to this Agreement. In the event that Concessionaire is outbid in connection with any such periodic re-bidding, the State shall have the right to terminate this Agreement upon not less than thirty (30) days' written notice to Concessionaire. In the event that Concessionaire is the successful bidder in any such periodic re-bidding, Concessionaire and the State shall execute a written amendment to this Agreement confirming the modified terms and provisions applicable hereto.

F. Reconstitution of On-Airport Rental Car Companies. Notwithstanding anything herein to the contrary, in the event that any On-Airport Rental Car Company from time to time ceases to operate at the Consolidated Facility at any time during the Term hereof, the State shall have the right to require that a replacement On-Airport Rental Car Company be substituted therefor (subject to such replacement On-Airport Rental Car Company executing a valid ConRac Agreement with the State). In the event that no replacement On-Airport Rental Car Company is substituted therefor, the available counter space, back office space, ready/return parking spaces, Automobile storage spaces, QTA space, and vehicle staging areas may be reallocated among the remaining On-Airport Rental Car Companies based upon their respective market share percentages, or as such remaining On-Airport Rental Car Companies may otherwise agree, but subject in all cases to the prior review and approval of the Director. In the event that the remaining On-Airport Rental Car Companies fail to agree on such reallocation, the State may, but shall not be required to, reallocate such available counter space, back office space, ready/return parking spaces, Automobile storage spaces, QTA space, and vehicle staging areas in accordance with the respective market share percentages of such remaining On-Airport Rental Car Companies. Further, the State reserves the right to periodically reallocate counter space, back office space, ready/return parking spaces, Automobile storage spaces, QTA space, and vehicle staging areas in accordance with the respective market share percentages in the State's discretion in accordance with the guidelines set forth in Appendix 1 attached hereto and made a part hereof.

## ARTICLE V. CONCESSIONAIRE PAYMENTS

A. Payments. The Concessionaire shall pay to State, without notice or demand, as and for the privilege of, and occupancy of the Consolidated Facility related to, doing the Concession business at the Airport, for and during the term of this Agreement, free from any and all claims, deductions, or set offs against State, and at such times and in such manner as

hereinafter provided for the term of the Concession, as applicable, the Ground Rent, the Facility Rent, the Concession Fee, and any and all other fees, charges, and payments due under this Agreement.

B. Ground Rent. Ground Rent for the Premises shall be payable commencing on the Payment Commencement Date and thereafter during the Term in accordance with the terms and provisions of **Exhibit B** attached hereto and made a part hereof. Ground Rent shall be payable in monthly installments in advance equal to one twelfth (1/12) of the applicable annual amount, commencing on the Payment Commencement Date and on the first day of each and every calendar month of the Term thereafter; provided, however, if the Payment Commencement Date is not the first day of any calendar month or the Expiration Date is not the last day of any calendar month, the monthly installment of Ground Rent for such month shall be adjusted ratably (based on the number of days of such month within the Term). The Payment Commencement Date shall be established and set forth in a confirmation to be executed by the parties.

C. Facility Rent.

1. Condition requiring payment In addition to the Ground Rent payable by Concessionaire hereunder, Concessionaire shall pay Facility Rent; provided, however, that Facility Rent shall only be payable by Concessionaire hereunder to the extent that total CFC collections from all On-Airport Rental Car Companies for the applicable payment period hereunder are less than the total amount of Facility Rent attributable to such payment period, and (ii) funds then contained in the CFC Revenue Fund (as such term is defined in the Bond Documents) are first applied towards such excess Facility Rent, but are less than the total amount of such Facility Rent excess for the applicable payment period. Any and all Facility Rent shall be paid by Concessionaire as and when the same become due and payable, and in any event within thirty (30) days following the State's invoice therefor.

2. Facility Rent Statement As soon as reasonably practicable following the end of each Agreement year during the Term hereof, the State shall provide Concessionaire with a statement (the "**Facility Rent Statement**") indicating (i) the total amount of Debt Service, Operating Expenses, Impositions, and related costs attributable to such calendar year, (ii) the total CFC collections received by the State and attributable to such calendar year, and (iii) the available balance of the CFC Revenue Fund for such calendar year. If such Facility Rent Statement indicates that the total amount of Debt Service, Operating Expenses, Impositions, and related costs for such calendar year exceeds the sum of (A) the total amount of CFC Collections attributable to such calendar year, plus (B) the then-available CFC Revenue Fund sums for such calendar year applied thereto, Concessionaire shall pay to the State any such deficiency (herein, a "**Rent Deficiency**") within sixty (60) days after Concessionaire receives the Facility Rent Statement for such calendar year, and such sums shall be deemed additional rent hereunder. Any such Rent Deficiency which remains unpaid from and after such 60-day period shall bear interest at the Default Rate hereunder from the date due until paid. If such Facility Rent Statement indicates that the total amount of Debt Service and related costs for such calendar year is less than the total amount of CFC collections attributable to such calendar year, the State may apply such excess CFC collections, at the State's discretion, first to other Eligible Costs and then as otherwise permitted under the terms and provisions of the CFC Statute, the Bond Statute, or the Master Indenture, as the case may be (provided, the State shall advise Concessionaire of any

excess CFC collections which are to be applied to items other than Eligible Costs). The CFCs generally and CFC collections specifically shall be governed by Article V.J (Customer Facility Charge) hereof and the CFC Statute. The State hereby acknowledges that under each ConRac Agreement between each concessionaire, and the State, each On-Airport Rental Car Company will be required to pay its share of any Rent Deficiency payable hereunder directly to the State, and the State, without limitation of the State's other rights and remedies hereunder for the non-payment of any such Rent Deficiency or other sums, and without limitation or modification of the liability of Concessionaire and each such On-Airport Rental Car Company for the payment of such Rent Deficiency or other sums hereunder, hereby agrees to accept payment of such Rent Deficiency from each such On-Airport Rental Car Company.

3. Alternate facility rent. In the event that the Bonds are retired, are paid in full, or are otherwise discharged prior to the maturity date established at the time of their initial issuance (each, an "**Early Discharge**") from any monies other than CFC Revenue Fund monies pursuant to the Bond Documents at any time prior to the Expiration Date hereof such that there is then no additional Debt Service thereafter coming due and payable hereunder, the State shall continue to impose the CFC until the Expiration Date hereof, CFC proceeds shall continue to be collected and remitted to the State by the On-Airport Rental Car Companies in accordance with the applicable ConRac Agreement until the Expiration Date hereof, and Concessionaire shall pay hereunder in lieu of, and in substitution for, such Debt Service, and as a component of Facility Rent, rent for the Premises equivalent to the fair rental value (as defined in Exhibit E attached hereto) therefor (the "**Alternate Facility Rent**"). Concessionaire's Proportionate Share of Alternate Facility Rent shall be due and payable to the State at the same time and in the same manner as the Ground Rent otherwise payable hereunder; provided, however, that Concessionaire may offset against the amount of Alternate Facility Rent due to the State (or any assignee of the State) hereunder the aggregate CFC proceeds that have theretofore been paid to the State by the On-Airport Rental Car Companies, net of any amounts that have been committed by the State (or any assignee of the State) to pay other Eligible Costs, for the applicable payment period; it being understood that the Alternate Facility Rent shall be deemed another Eligible Cost under this Agreement.

4. Modified alternate facility rent. In the event of an Early Discharge from CFC Revenue Fund monies such that no additional Debt Service shall thereafter be due and payable, the Alternate Facility Rent shall not be based on the fair rental value as set forth in Article V.C.4 (Alternate facility rent) above. Rather, Concessionaire shall pay hereunder in lieu of, and in substitution for, such Debt Service, and as a component of Facility Rent, rent for the Premises in an amount equal to the interest component of Debt Service on the Bonds which would otherwise have been due and payable if there had not been an Early Discharge, with interest calculated as if the principal outstanding on the Bonds as of the date of Early Discharge were amortized on a straight-line basis over what would have been the remaining term of the Bonds (herein, the "**Modified Alternate Facility Rent**"), it being acknowledged by the State and Concessionaire that such Modified Alternate Facility Rent, plus the CFC Revenue Fund and/or CFC Discretionary Fund moneys that were used for the Early Discharge, are equal to the fair rental value for the Premises for the remainder of the Term. Modified Alternate Facility Rent shall not be deemed another Eligible Cost for purposes hereof, and the On-Airport Rental Car Companies shall not offset CFCs collected and remitted to the State against Modified Alternate Facility Rent, it being understood, however, that the CFC may still be imposed and the proceeds

thereof collected and remitted for purposes of paying other Eligible Costs. Modified Alternate Facility Rent shall be due and payable to the State at the same time and in the same manner as the Ground Rent otherwise payable hereunder.

D. Concession Fee. In addition to the Ground Rent and the Facility Rent payable by Concessionaire hereunder, Concessionaire shall also pay the Minimum Annual Guaranteed Fee (MAG) and the Percentage Fee as hereinafter provided:

1. MAG payment. Concessionaire shall pay to the State on the Payment Commencement Date and on the first day of each calendar month thereafter during the Term, in equal monthly installments in advance, but not more than one (1) year in advance, without demand, setoff, reduction, or credit, an amount equal to one-twelfth (1/12) of the MAG applicable for the Agreement year in which such month falls. The MAG for the first Agreement year shall be \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_). The MAG for each Agreement year thereafter shall be the greater of (i) \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_), or (ii) eighty-five percent (85%) of the amount of the MAG and the Percentage Fee, as described in Article V.D.2 (Percentage Fee) hereof, collectively, due to the State from Concessionaire hereunder for the previous Agreement year, but shall never be less than the MAG for the first Agreement year. The MAG shall be adjusted ratably for any partial Agreement year (based upon the number of days in the year falling within the Term). If the MAG is not determined at the time a payment is required, then Concessionaire shall continue to pay installments at the rate last payable until the actual amount is determined, at which time (i) Concessionaire shall pay any excess MAG owed (but in no event later than ten (10) days after the State's request), or Concessionaire shall be entitled to a credit against the next MAG owed in the amount of any excess paid, and (ii) the monthly installment shall be readjusted to be one-twelfth (1/12) of the actual MAG.

2. Percentage Fee. With respect to each Agreement year, and in addition to the MAG payable hereunder, Concessionaire shall pay to the State the Percentage Fee which shall be an amount equal to ten percent (10%) of Gross Receipts for such Agreement year which are in excess of the MAG applicable to such Agreement year. On or before the twentieth (20<sup>th</sup>) day of each calendar month during the Term (other than the month in which the Payment Commencement Date falls), and on or before the twentieth (20<sup>th</sup>) day of the calendar month immediately following the expiration or other termination of this Agreement, Concessionaire shall pay to the State the amount, if any, by which (i) the Percentage Fee for the Agreement year in which such month falls attributable to Gross Receipts for the period from and after the commencement of such Agreement year through and including the last day of the calendar month immediately preceding the month during which said payment is required to be made exceeds, (ii) the sum of the installments of MAG paid for such period. An example of such payments is shown on Exhibit E attached hereto. If an Agreement year ends on a date other than the last day of a calendar month, and Gross Receipts are not calculated separately for that portion of the month falling in each Agreement year, then Gross Receipts for such calendar month shall be prorated and included in Gross Receipts for each of the Agreement years in which such calendar month falls based on the number of days in such month falling within the particular Agreement year. If the Annual Report (as hereinafter defined) of Gross Receipts required pursuant to Article V.E.6.b. hereof shows that the additional Percentage Fee is owed, because the Percentage Fee attributable to the Agreement year or partial Agreement year to

which the statement of Gross Receipts applies exceeds the amount of all payments theretofore made by Concessionaire to the State in respect of the Percentage Fee for such Agreement year or partial Agreement year, then Concessionaire shall pay the balance of the Percentage Fee owed to the State concurrently with the submission of said Annual Report. If the Annual Report shows that Concessionaire has overpaid the Percentage Fee, then the State shall credit the amount of such overpayment against installments of the Percentage Fee next coming due and payable hereunder until exhausted (provided, if this Agreement has then expired or otherwise terminated, the State shall refund such overpayment within sixty (60) days following the State's receipt of such Annual Report).

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

1. Promote Business. Use its best efforts in every proper manner to maintain, develop, and increase the Concession business conducted by Concessionaire hereunder.

2. No Diversion. Not divert, nor cause to be diverted, any business that would reduce revenues to the Airport.

3. All Sales Recorded. Shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether for cash or credit. The Concessionaire shall issue to each customer a receipt or sales slip for each transaction, which transaction must be recorded on numbered receipt or sales slip.

4. All Transactions Recorded. Shall record at the time of the Automobile rental transaction or at the time Concessionaire otherwise enters into a similar arrangement for the use of an Automobile, all Automobile rentals or other transactions conducted as a part of the Concession, including the number of Automobile rental transactions, the number of Automobile rental transaction days, and any other data or unit of measure pertaining to the transactions conducted as a part of the Concession as requested by State, which may be reasonably necessary to quantify transaction activity of Concessionaire at the Airport.

5. Storage Obligation. Prepare and keep for a period of not less than three (3) years following the end of each Agreement year, and in accordance with accepted accounting practices, true and accurate accounts, books, data, and records of Concession operations, which shall, among other things, show all rentals, Automobile rental transactions and transaction days, sales made and services performed for cash, credit, or otherwise (without regard to whether paid or not), and, also, the Gross Receipts of said Concession operation, and the aggregate amount of all sales and services and orders, of all Concessionaire's business authorized under this Agreement.

6. Reports.

a. Monthly report deadline. The Concessionaire shall submit to State on or before the twentieth (20<sup>th</sup>) day of each and every month following each month of the Term, including the 20<sup>th</sup> day of the month following the end of said Term by expiration or sooner termination, at the place fixed for the fee payment, a written statement using forms prescribed or

approved by the Director, to be certified as correct by Concessionaire, or by a person duly authorized by Concessionaire to so certify, showing in accurate detail, the amount of Gross Receipts for the preceding month (the “**Monthly Report**”).

b. Annual report deadline. The Concessionaire shall further submit to State on or before the ninetieth (90<sup>th</sup>) day following the end of each Agreement year during the Term, at the place fixed for the fee payment, a written statement certified as correct by Concessionaire, or by a person duly authorized by Concessionaire to so certify, showing in accurate detail the amount of Gross Receipts during the preceding agreement year, using forms prescribed or approved by the Director and in the detail as may be required by the Director (the “**Annual Report**”).

Said Annual Report shall include a breakdown of Gross Receipts on a month by month basis and an opinion of an independent certified public accountant which shall include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the State by [**name of Concessionaire**], for the year ended \_\_\_\_\_ relating to its operations at Honolulu International Airport pursuant to the Consolidated Rental Car Facility Concession Agreement and Facility Lease dated \_\_\_\_\_ between the State and [**name of Concessionaire**]. Our examination was made in accordance with generally accepted auditing standards and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances. In our opinion, the accompanying statement showing Gross Receipts of \$\_\_\_\_\_ dollars presents accurately and fairly the amount of Gross Receipts, as defined in the Consolidated Rental Car Facility Concession Agreement and Facility Lease, for the year ended \_\_\_\_\_."

c. Form and style. The statements referred to herein shall be in such form (e.g., no larger than eleven [11] inches by seventeen [17] inches in size) and style and contain such details and breakdowns as State may require. The State may, in its sole discretion, and if Concessionaire so requests, consent to Concessionaire's transmission of its Monthly Report (but not its Annual Report) electronically, and to its maintaining its books and records in computerized form, provided that it is convenient and possible and that:

(1) Gross Receipts reports.

(a) Monthly Reports are transmitted by disc or modem transmission to the State’s data center, in either case in a manner compatible with the State’s computer system and approved in writing by the State, and

(b) Print copies of such Monthly Report are furnished to the State within thirty (30) days after request (which request may be made at any time within one (1) year after the electronic reports are furnished by Concessionaire to the State.



(2) Books and records.

(a) Concessionaire's computerized books and records shall provide the same level of information as the print books and records described above, are retained for the full record retention period provided for herein, and are made accessible for the State's inspection on request, and

(b) Print copies of any of such books and records are made available to the State's agents who are engaged in inspecting Concessionaire's books and records, as provided herein, promptly upon request.

Consent by the State to either electronic transmission of Monthly Reports or computerized record keeping, once given, may be revoked by the State on prior written notice to Concessionaire if Concessionaire fails to comply with the foregoing requirements.

d. State's right to prepare. Without prejudice to any remedies herein provided for such default, if Concessionaire shall fail to promptly furnish any such Monthly Report, Annual Report (including the certified public accountant's annual verification report as described above) State may have such report prepared on Concessionaire's behalf by an accountant to be selected by State at the sole expense of Concessionaire. Concessionaire shall furnish to such accountant all records requested for the purpose of preparing such reports, and Concessionaire shall pay to State all expenses incurred by State in securing such reports.

e. Estimate of Gross Receipts. State may make assessments upon Concessionaire, by recourse to such procedures selected by State, which would produce a reasonable Gross Receipts expectation upon which the Percentage Fee may be computed. In the event that records have not been prepared and kept in accordance with the provisions set forth herein, State will, in addition to all other payments required herein, including any Percentage Fee based on a reasonable amount of Gross Receipts estimated by State, be entitled to demand and receive from Concessionaire an additional payment of ten percent (10%) of the greater of (i) the applicable MAG or (ii) the applicable Percentage Fee.

7. Audited Financial Statements. Submit to State upon State's request a complete set of 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, hereinafter collectively referred to as the "**Concessionaire's Financial Statements.**" State may request Concessionaire to submit Concessionaire's Financial Statements if any of the following occur:

a. Assignment or sublease. Concessionaire requests State's consent to an assignment or sublease;

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

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

d. Monetary claim. Concessionaire submits a rent, financial, or other type of monetary claim under or pursuant to this Agreement; and

e. State determination. State reasonably believes (based on State's written findings) that the submission of Concessionaire's Financial Statements is necessary to effectively assess and monitor Concession operations. If State evaluates any claims by Concessionaire of financial hardship or distress or requests by Concessionaire for financial relief under this Agreement, State may, if it deems necessary after reviewing Concessionaire's Financial Statements and any other financial information submitted by Concessionaire, require Concessionaire to (i) post additional performance security in the form of additional surety bonds or (ii) increase the amount of the Concession Bond (as defined herein). If State determines that Concessionaire should provide State with additional performance security regarding Concessionaire's ability to fully perform its obligations under this Agreement, Concessionaire shall provide such additional performance security, such as separate and additional surety bonds or a Concession Bond with increased dollar coverage, within five (5) business days after receiving State's written notice.

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

9. Financial Records Inspection.

a. Access to records. Concessionaire hereby grants unto State, at all reasonable times, access to all of the following created, kept, maintained, updated, and prepared by or on behalf of 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, collectively the "**Records**").

b. Right to audit. Concessionaire shall ensure that State receives a written response to State's request to audit all or any portion of Concessionaire's Financial Statements or Concessionaire's Records within forty-eight (48) hours of Concessionaire's receipt of State's request. At any reasonable time thereafter, not to exceed five (5) days, Concessionaire shall permit a complete audit to be made by State's accountant or by a certified public accountant retained by State, of Concessionaire's entire business affairs relating to the Concession business for the Term, including without limitation, Concessionaire's Financial Statements and the Records. All of Concessionaire's Financial Statements and the Records shall be available for inspection by State and any auditor or accountant retained by State in the State of Hawaii.

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

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

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 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 Concessionaire.

f. Audit cost reimbursement. If such audit by State's accountant or by a licensed independent certified public accountant retained by State discloses that Concessionaire has underpaid rent by two percent (2%) or more for any period under examination, State will, in addition to the remedies provided in Article V.E.6 (Reports) hereof, 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. Termination. If such audit by State's accountant or by a licensed independent certified public accountant discloses that Concessionaire has underpaid rent by five percent (5%) or more for the period under examination, State will have the right, in addition to all other rights State may have under this Agreement, upon ten (10) days' written notice to Concessionaire, to terminate this Agreement.

h. Gross receipts reports from other concessionaires. State agrees to deliver, without representation or warranty whatsoever, to Concessionaire on a monthly or other basis statements of gross receipts from other concessionaires operating from the Consolidated

Facility to the extent such information is in the possession of the State and is available for such dissemination. Concessionaire hereby waives any right it may have to confidentiality as to its Gross Receipts under this Agreement.

10. Operating Expenses and Impositions.

a. Concessionaire's share. Concessionaire shall pay, as part of the Facility Rent payable by Concessionaire hereunder, Concessionaire's Proportionate Share of Operating Expenses and Impositions incurred by the State for or in connection with the Consolidated Facility.

b. Invoicing. The State shall have the right to invoice Concessionaire quarterly for Concessionaire's Proportionate Share of Operating Expenses and Impositions payable by Concessionaire under this Agreement, and Concessionaire shall pay to the State, as a component of Facility Rent hereunder, those amounts for which Concessionaire is invoiced within thirty (30) days after receipt of said invoice. Alternatively, at the State's election, the State shall have the right to invoice Concessionaire monthly for Concessionaire's Proportionate Share of the Operating Expenses and Impositions, as reasonably estimated by the State. Any monies paid in advance to the State by Concessionaire shall not accrue interest thereon. At the end of each Agreement year or other fiscal year, the State shall deliver a statement to Concessionaire setting forth the difference between the actual Concessionaire's Proportionate Share of the Operating Expenses and Impositions and the total amount of monthly payments theretofore paid by Concessionaire to the State for such Agreement year or other fiscal year (the "**Annual Operating Expense and Tax Statement**"). Concessionaire shall thereafter pay to the State the full amount of any difference between Concessionaire's actual obligation over the total amount of Concessionaire's estimated payments within thirty (30) days after receipt of said Annual Operating Expense and Tax Statement. Conversely, in the event Concessionaire's estimated payments exceed Concessionaire's actual obligation, the State shall credit said overpayment against Concessionaire's monthly obligation for Concessionaire's Proportionate Share of the Operating Expenses and Impositions in the forthcoming year. In the event that this Agreement expires on a date other than the end of a billing period, Concessionaire's obligation with respect to any amounts owed to the State shall survive the expiration of the Term, and shall be invoiced to Concessionaire when the same have been accurately determined or, at the State's option, such amounts shall be reasonably estimated by the State to reflect the period of time the Agreement was in effect during such billing period.

c. No waiver. Any delay or failure of the State in (i) delivering any estimate or statement described in this Article V.E.10, or (ii) computing or billing of Concessionaire's Proportionate Share of the Operating Expenses and Impositions shall not constitute a waiver of its right to require an increase in Facility Rent, or in any way impair the continuing obligations of Concessionaire under this Article V.E.10. In the event of any dispute as to any component of Concessionaire's Proportionate Share of the Operating Expenses and Impositions due under this Article V.E.10, Concessionaire, an officer of Concessionaire, or Concessionaire's certified public accountant (in no event shall Concessionaire hire or employ an accounting firm or any other person to audit the State as set forth under this Article V.E.10 who is compensated or paid for such audit on a contingency basis; in the event Concessionaire hires or employs an independent party to perform such audit, Concessionaire shall provide the State

with a copy of the engagement letter, and such accounting firm or other person enters into a confidentiality agreement reasonably acceptable to the State) shall have the right, after reasonable notice and at reasonable times, to inspect the State's accounting records at the State's designated accounting office only with respect to those items comprising part of Operating Expenses or Impositions hereunder. If, after such inspection, Concessionaire still disputes such Concessionaire's Proportionate Share of the Operating Expenses and Impositions, then, upon Concessionaire's written request therefor, a certification (the "**Certification**") as to the proper amount of all Operating Expenses and Impositions and the amount due to or payable by Concessionaire shall be made by an independent certified public accountant selected by the State; provided, however, that such certified public accountant shall not be the accountant who conducted the State's initial calculation of the Operating Expenses and Impositions to which Concessionaire is now objecting. Such Certification shall be final and conclusive as to all parties. If the Certification reflects that Concessionaire has overpaid Concessionaire's Proportionate Share of the Operating Expenses and Impositions for the period in question, then the State shall credit such excess to Concessionaire's next payment(s) of Concessionaire's Proportionate Share of the Operating Expenses and Impositions. Conversely, if Concessionaire has underpaid Concessionaire's Proportionate Share of the Operating Expenses and Impositions, Concessionaire shall pay such underpayment to the State within ten (10) days following the State's written demand therefor. Concessionaire agrees to pay the cost of such Certification and the investigation with respect thereto, and no adjustments in Concessionaire's favor shall be made, unless it is determined that the State's original Annual Operating Expense and Tax Statement was in error in the State's favor by more than five percent (5%). Concessionaire waives the right to dispute any matter relating to the calculation of Concessionaire's Proportionate Share of the Operating Expenses and Impositions under this Article V.E.10 if any claim or dispute is not asserted in writing to the State within sixty (60) days after delivery to Concessionaire of the original Annual Operating Expense and Tax Statement with respect thereto. Notwithstanding anything herein to the contrary, Concessionaire shall maintain strict confidentiality of all of the State's accounting records to which Concessionaire is granted or otherwise provided access hereunder, and shall not disclose the same to any other person or entity except for Concessionaire's professional advisory representatives (such as Concessionaire's employees, accountants, advisors, attorneys, and consultants) with a need to know such accounting information, who agree to similarly maintain the confidentiality of such financial information.

d. Imposition determination. For purposes of determining Impositions hereunder, if under applicable law any Imposition may at the option of the taxpayer be paid in installments, the State may elect to pay such Imposition in installments as the same from time to time become due under applicable law, together with such interest as may accrue thereon as the result of such installment payment. Any Impositions (other than Impositions payable in installments as referred to herein or which are assessed against the leasehold estate) relating to a fiscal or taxing period of the public authority imposing the Imposition which falls partly within the Term and partly after the Expiration Date or earlier termination of this Agreement, shall be considered as accruing from day to day during such fiscal or taxing period so that the amount thereof shall be adjusted and prorated between the State and Concessionaire as of the Expiration Date or the earlier termination of this Agreement. Commencing on a date no later than eighteen (18) months prior to the Expiration Date, Concessionaire shall pay into an escrow, at an escrow company which the State selects, an amount sufficient to pay that portion of

such Impositions which were not payable prior to the Expiration Date, (i) which accrued during the Term, (ii) which relate to fiscal or taxing periods falling entirely within the Term, or (iii) which relate to the leasehold estate (even if the fiscal period for which they are payable or assessed extends beyond the Term). The terms of said escrow shall be subject to review and approval by the State. Alternatively, Concessionaire shall furnish the State a letter of credit or other performance security in amount and form acceptable to the State as security for payment of such Impositions. Concessionaire shall have no liability for that portion of such Imposition (other than those payable in installments as referred to herein or which are assessed against the leasehold estate) which relates to the period after the Expiration Date. No proration shall be made of Impositions relating to Concessionaire's leasehold estate (regardless of the fiscal period for which assessed or payable), all such Impositions being the sole responsibility of Concessionaire. For purposes hereof, if any Imposition subject to deposit in escrow has not yet become due and payable or the rate or amount thereof has not become fixed at the Expiration Date, then the estimated amount of the Imposition for the purposes of calculating the aforementioned escrow deposit shall be based upon one hundred ten percent (110%) of the amount or rate of the same relevant Imposition for the immediately preceding fiscal or taxing period of the public authority.

e. Survive termination. The terms and provisions of this Article V.E.10 shall survive the expiration or earlier termination of this Agreement.

F. Utilities. As part of the Consolidated Facility Improvements to be constructed hereunder by or at the direction of the State, the State shall cause utility lines and connections to be brought to the Premises. Concessionaire shall thereafter be responsible for connecting, at its sole cost and expense, the Premises to the available utility lines and connections and to obtain from the applicable utility service providers utilities for all required services; provided, however, Concessionaire may not enter into any agreement with any other municipality or local government to provide utility services without notice to, and approval by, the State of the conditions for furnishing such utility service. Concessionaire shall promptly pay for all utility services directly to the appropriate utility companies. The State has no responsibility to furnish Concessionaire with any utilities and makes no representations or warranties as to the availability of utilities, except as expressly provided to the contrary herein. The State shall, however, supply water, gas, electricity, and sewer service to the common areas of the Consolidated Facility (subject to inclusion of the costs thereof as part of Operating Expenses hereunder). The State does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies, or any other causes. Any such interruption of utility service shall never be deemed an eviction or disturbance of Concessionaire's use and possession of the Premises or any part thereof, or render the State liable to Concessionaire for damages, or relieve Concessionaire from the performance of Concessionaire's obligations under this Agreement.

G. Additional Payments. Concessionaire covenants and agrees that the payments and rents specified in this Article V shall be absolutely net to the State, except as expressly provided in this Agreement, to the end that this Agreement shall yield net to the State the entire payment and rent, and so that all costs, fees, interest, charges, maintenance and operating expenses, utility charges, water rates, electricity charges, gas charges, and Impositions levied,

assessed upon, or related to the Premises, or any part thereof, or the use or occupancy thereof, or upon any buildings or improvements at any time situated thereon, or levied or assessed upon the leasehold interest created hereby, during the Term, shall be deemed additional rent due and payable by Concessionaire hereunder.

H. Interest on Overdue Amounts. Payments and rent and any additional rent or other charges not paid when due shall bear interest at the Default Rate from the due date until paid; provided, however, that interest on overdue taxes or insurance premiums or other additional rent not payable to the State shall not accrue unless and until the State has expended such amounts following Concessionaire's failure to pay them.

I. Reimbursement of Eligible Costs. Subject to the terms and provisions hereof, Eligible Costs incurred by Concessionaire will be reimbursed by the State upon submission of properly completed invoices from Concessionaire. Concessionaire shall submit invoices in a format acceptable to the Director. The State retains the right to reject payment of any invoice, or portion thereof, that contains unauthorized, improper, or insufficiently documented costs and/or charges, including costs and/or charges that require prior written approval from the Director in order to be deemed Eligible Costs where such approval was not first obtained. The State will process invoices within thirty (30) days after receipt thereof, and will also instruct such parties as may be necessary to remit payment to Concessionaire within sixty (60) days after receipt of a properly completed invoice.

J. Customer Facility Charge. Concessionaire agrees to collect the CFC from each customer that rents or otherwise enters into a similar arrangement for the use of an Automobile with Concessionaire. The determination of the amount of the CFC, the application of the CFC to the rental transaction or transaction days or other unit of measure, the commencement date of the CFC, the locations of Concessionaire that are subject to the CFC, and all other financial and administrative matters relating to the collection, and remittance of a CFC by and from Concessionaire will be determined by State from time to time and communicated to Concessionaire by written notice, which imposition date will be no earlier than forty-five (45) days after the date of submission of the notice to Concessionaire.

K. [Reserved]

L. General Payment Provisions. All payments of money required to be made by Concessionaire to State hereunder shall be made when due in legal tender of the United States of America at State's office at the Airport, or at such other place as State may designate in writing. Any amount payable which shall not have been paid when due shall bear interest at the rate of twelve percent (12%) per annum, which interest shall be paid by Concessionaire in addition to such amount payable.

1. Accrued Fees. The termination of this Agreement by the lapse of time, Concessionaire's limited right of termination, or otherwise shall not relieve Concessionaire of its obligation to pay any fees or charges accrued during a period in which this Agreement is in effect which are unpaid at the time of any such termination.

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

M. Additional Charges. In addition to the right of State to terminate this Agreement pursuant to Article XIII. (Termination by State) hereof, State may levy on and collect from Concessionaire a charge of Two Hundred and Fifty and No/100 Dollars (\$250.00) per day for each day Concessionaire is in violation of any of the terms of this Agreement provided that there shall be no levy unless the violation continues beyond the period specified in Article XIII. (Termination by State) hereof for remedial action; and provided further that separate charges may be levied for violations of separate provisions even though the violation may be concurrent. Payment of the additional charge shall be due on demand from State.

N. Partial Relief from Obligation. Based on §102-10, HRS, if, during the term of this Agreement, there has been a reduction of fifteen percent (15%) or more in the volume of Concession business at the Premises of Concessionaire for a period of sixty (60) days or more, computed on the average monthly Gross Receipts for the eighteen (18) months just prior to the period or for as long as Concessionaire has been in the business under this Agreement, whichever period is shorter, and such reduction, as determined by State, is caused by construction work conducted by State during the period of time on, within, or contiguous to the Premises, with the approval of the Governor of the State of Hawaii, the State in its sole discretion may modify any of the terms of this Agreement, including the agreed upon rent or fee, for a period which will allow Concessionaire to recoup the amount lost by such reduction, provided further that this provision shall not apply to this Agreement if the application hereto may impair any contractual obligations with bondholders of State, or with any other parties. If §102-10, HRS, is revised or amended, the provisions contained in this Article V.N. (Partial Relief from Obligation) will be revised or amended to conform to such changes to §102-10, HRS. If Concessionaire elects to receive or receives the relief described in this Article V.N. (Partial Relief from Obligation), Concessionaire shall not be entitled to combine this relief with any other relief allowed under this Agreement, including Article V.O. (Relief Due to Economic Emergency) hereof.

O. Relief Due to Economic Emergency.

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

a. Reduction. The Concessionaire suffers a thirty percent (30%) reduction in Gross Receipts for a period of sixty (60) days or more, computed on Concessionaire’s average monthly Gross Receipts for the eighteen (18) months just prior to the date from which Concessionaire requests relief or as long as Concessionaire has been in business under this 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 Concessionaire will suffer the required thirty percent (30%) reduction in Gross Receipts; and



b. Conditions. Either of the following two conditions occurs:

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

(2) The Director finds that, from and after the date Concessionaire requests relief, there has been a significant decrease in airline passenger arrivals (hereinafter, "**deplanements**") at the Airport of twenty percent (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 Concessionaire requests financial relief or as long as Concessionaire has been in business under this Agreement, whichever period is shorter,

c. Concessionaire's financial hardship claim. The Concessionaire must submit a written request for relief to State claiming financial hardship or distress and make available to State such financial information as may be required by State pursuant to Article V.E.7 (Audited Financial Statements) and Article V.E.8 (Other Reports) hereof.

d. State determines amount and extent of relief. The State may, if it deems necessary after reviewing Concessionaire's financial statements and any other financial information submitted by Concessionaire, modify the financial terms of this Agreement, at State's sole discretion, including, without limitation, waiving a proportionate monthly amount of the MAG in the applicable Agreement year during which the Sudden Event occurs until (a) the decrease in deplanements from the Airport is cumulatively less than twenty percent (20%) as compared to the same time of the previous year for at least sixty (60) consecutive days, or (b) the decrease in Concessionaire's Gross Receipts is cumulatively less than fifteen percent (15%) as compared to the same time of the previous year for at least sixty (60) consecutive days.

e. State may terminate relief at any time. The State may, at any time, at State's sole discretion: (a) terminate any financial relief granted by State to 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 State to Concessionaire.

f. State may impose additional conditions for the granting of relief. In granting any financial relief to Concessionaire, State may impose such other requirements as State deems necessary, including, without limitation, additional reporting requirements to ensure that State is able to timely monitor and assess Concessionaire's Gross Receipts and Concessionaire's financial condition.

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

## ARTICLE VI. CONSTRUCTION, MAINTENANCE AND REPAIR

### A. Consolidated Facility Improvements.

1. Commence construction. The State shall, with reasonable diligence and at its own cost and expense (except as expressly provided to the contrary herein and subject to the State's receipt of funds attributable to the Bonds), and as soon as reasonably practicable following the Effective Date, commence the construction upon the Consolidated Facility Property of the Consolidated Facility Improvements more specifically described and depicted in, and in substantial accordance with, those certain plans and specifications as are more specifically described and referenced on Exhibit G attached hereto and made a part hereof (the "**Consolidated Facility Plans**"). The Consolidated Facility Improvements shall include, if applicable and to the extent reflected on the Consolidated Facility Plans, (i) any and all USTs to be installed as part of the initial construction of the Consolidated Facility, and title to such USTs shall immediately pass to Concessionaire upon substantial completion thereof, subject to Article IV.C. (Surrender of the Premises) hereof, and (ii) any and all on-site and off-site preparation and improvements necessary or desirable in connection with the Consolidated Facility Improvements, including, without limitation, earthwork, roadwork, off-site transportation-related improvements, wetland mitigation, the extension of utilities, storm water drainage, and water retention or detention for the Consolidated Facility Property. The State shall thereafter diligently pursue completion of the Consolidated Facility Improvements, subject to force majeure delays and delays attributable to the acts or omissions of Concessionaire. The State shall not be liable for any delays in the completion of the Consolidated Facility Improvements.

2. No warranty of information. The State does not warrant the accuracy of any of the information provided by third parties as part of the Consolidated Facility Plans or the Consolidated Facility Improvements and shall have no liability arising out of any inaccurate information provided by third parties as part thereof; provided, to the extent that the State has actual knowledge of any such inaccurate information, the State shall so advise Concessionaire and such third parties and shall direct such third parties to correct such inaccurate information. The State's approval of the Consolidated Facility Plans and/or the State's construction of the Consolidated Facility Improvements shall not impose upon the State or its officials, officers, employees, or agents any liability or obligation with respect to the design or construction of the Consolidated Facility Improvements, or the compliance of the Consolidated Facility Improvements with any applicable laws; provided: (i) except to the extent arising from any acts or omissions of Concessionaire, any On-Airport Rental Car Company, or any of their respective members, officers, employees, agents, contractors, or representatives, and subject to the availability of adequate CFC collections therefor, the State shall be responsible for correcting any latent defects in, or any non-compliance with applicable laws resulting from, the initial design or construction of the foundation, roof, structural components, or exterior walls of the Consolidated Facility for a period equal to the greater of (A) one (1) year following Consolidated Facility Substantial Completion, or (B) the period of any third party warranty applicable to such

portion of the Consolidated Facility; (ii) with respect to any other matters, the State shall reasonably cooperate with Concessionaire (at no cost or expense to the State) with respect to any action, claim, or proceeding Concessionaire may elect to bring against the architect, engineer, general contractor(s), or any subcontractor(s) in connection with the design or construction of the Consolidated Facility Improvements, or any portion thereof; (iii) subject to the State's obligations under clause (i) above, the State shall assign to Concessionaire, or otherwise make available to Concessionaire the benefit of, any and all warranties and guarantees received by the State, together with other rights and remedies of the State, if any, in connection with the design and construction of the Consolidated Facility Improvements, or any portion thereof; and (iv) upon the written request of Concessionaire, but subject to the State's obligations under clause (i) above, the State shall commence and pursue on behalf of Concessionaire (and at Concessionaire's sole cost and expense) any action, claim, or proceeding reasonably necessary to enforce the rights of Concessionaire and/or the State hereunder as against the architect, engineer, general contractor(s), or any subcontractor(s) in connection with the design or construction of the Consolidated Facility Improvements, or any warranties, guarantees, or other claims relating thereto. Without limitation of the State's obligations under clause (i) above, but subject to the provisions thereof, the State shall be responsible for correcting, or causing to be corrected, any latent defects to the extent attributable to the initial design or construction of the Consolidated Facility Improvements for a period equal to the greater of (A) one (1) year following Consolidated Facility Substantial Completion, or (B) the period of any third party warranty applicable to the Consolidated Facility, and the State shall assign to Concessionaire, or otherwise make available to Concessionaire the benefit of, any and all warranties and guarantees received by the State, together with other rights and remedies of the State, if any, in connection with any such latent defects in the initial design or construction of the Consolidated Facility Improvements.

3. Concessionaire construction. The State shall (i) authorize Concessionaire to access the Consolidated Facility for the purpose of commencing construction of its respective improvements therein on the Concessionaire Access Date (meaning such time as the Consolidated Facility Improvements are sufficiently completed, as determined by the State in the State's sole discretion, such that Concessionaire is reasonably able to so commence construction of its respective Concessionaire Improvements hereunder), (ii) endeavor to notify Concessionaire in writing at least sixty (60) days prior to the Concessionaire Access Date, and (iii) notify Concessionaire in writing promptly upon Consolidated Facility Substantial Completion. For purposes of the Consolidated Facility Improvements, "**Consolidated Facility Substantial Completion**" shall be deemed to occur at such time as the Consolidated Facility Improvements have been sufficiently completed, other than minor punch list items or items which will not materially and adversely affect the use or occupancy of the Consolidated Facility, such that Concessionaire is reasonably and lawfully able to take possession of the Premises. Within ten (10) business days after the State notifies Concessionaire in writing that Consolidated Facility Substantial Completion has occurred, the State and Concessionaire shall conduct a joint inspection of the Premises and shall agree upon a written list of the "punch list" items identifying touch-up work, minor repairs, and incomplete items necessary to complete the Premises in substantial accordance with the Consolidated Facility Plans. As soon thereafter as reasonably practicable, the State shall promptly commence work on the "punch list" items and shall diligently pursue such work to completion, subject to force majeure delay and delays attributable to Concessionaire, any of the other On-Airport Rental Car Companies, or any of their respective

officers, agents, employees, agents, contractors, guests, invitees, or licensees. In the event that Concessionaire fails to participate in a joint inspection of the Premises within the aforementioned 10-business day period, Concessionaire shall be deemed to have accepted the Consolidated Facility Improvements as completed in accordance with the Consolidated Facility Plans. In addition, promptly following the date on which the State notifies Concessionaire in writing that Consolidated Facility Substantial Completion has occurred, the State and Concessionaire shall execute the Confirmation in substantially the form attached as **Exhibit H** hereto and made a part hereof.

4. State not required. Except for the Consolidated Facility Improvements as specified herein, the State shall not be required to perform any work or construct any improvements, furnish any services or facilities, perform any maintenance, or make any repairs or alterations or environmental remediation or clean-up in or to the Premises throughout the Term hereof.

5. No State warranty. Except as expressly provided to the contrary in this Article VI. (Construction, Maintenance and Repair), and subject to the State's obligation to construct the Consolidated Facility Improvements in accordance with the Consolidated Facility Plans, the State makes no warranty, either express or implied, as to the condition of the Premises or that the Premises shall be suitable for Concessionaire's purposes or needs.

6. Compliance with ADA; DCAB. Concessionaire shall cause any Concessionaire Improvements constructed by or at the direction of Concessionaire to comply with Title III of the provisions of the Americans with Disabilities Act of 1990, as hereafter amended from time to time, and regulations promulgated thereunder, whether or not such obligation is also imposed upon the owner of the Premises, and the other provisions of this Agreement. Such modifications and improvements shall be made pursuant to the provisions of this Article VI.A.7 (Construction of Concessionaire Improvements) hereof. Without limiting the foregoing, to ensure compliance with the requirements outlined in "Design and Construction Requirements as required under section 103-50, HRS, Concessionaire shall obtain prior written approval for Concessionaire Improvement Plans (as defined in Article VI.A.7.a (Construction commencement) hereof) and Concessionaire's Improvements (as defined in Article VI.A.7 (Construction of Concessionaire Improvements) hereof) including all initial and subsequent construction, repair, refurbishment, or installment of improvements at, in, or, over or under the Premises from DCAB. All of Concessionaire's Improvement Plans shall be first submitted to the State and DCAB for written approval before Concessionaire awards, issues, or lets any and all contracts for the construction of Concessionaire's Improvements and/or enters into any and all contracts for the purchase of any personal property to be installed at, in, on, over, or under the Premises.

7. Construction of Concessionaire Improvements. Concessionaire covenants and agrees and it is an express condition of this Agreement that Concessionaire shall, with due diligence and at Concessionaire's sole cost and expense (except as expressly provided to the contrary herein and except for such cost allocations by and among the On-Airport Rental Car Companies as may be agreed to by such parties), commence the construction within the Premises of the improvements described herein (collectively, the "**Concessionaire Improvements**"), all in accordance with this Article VI.A.7 (Construction of Concessionaire Improvements), and other

terms and provisions of this Agreement. The Concessionaire Improvements shall consist of, without limitation, (i) kiosks, interior traffic control devices, security systems, Concessionaire communications and display devices, (ii) interior proprietary signage, office furniture, communications systems, and other equipment in the customer service center portion of the Premises, (iii) interior proprietary signage and office furniture at the QTA, and (iv) proprietary identification of parking spaces within the overflow vehicle parking area, and are more specifically described and delineated in the Consolidated Facility Plans. Without limiting any other provision contained herein, Concessionaire, at a minimum, shall adhere to and completely comply with and satisfy State's: (i) Development Standards for Leased Airport Property (**Appendix A**); and, (ii) Tenant Improvement Guidelines (**Appendix B**), hereinafter referred to collectively as the "**Development Standards**", all of which are attached hereto and hereby made a part hereof, including any and all subsequent amendments and other design development guidelines adopted by State.

a. Construction commencement. Concessionaire may not commence construction of the Concessionaire Improvements in the Premises without the State's prior written approval of the plans and specifications relating thereto (the "**Concessionaire Improvement Plans**"), which approval shall not be unreasonably withheld, conditioned, or delayed, and receipt of all necessary State of Hawaii, County, and other governmental approvals, licenses, and permits in connection therewith.

b. Concession to notify State prior to construction commencement. Following approval of its Concessionaire Improvement Plans hereunder, and subject to compliance with the other terms and provisions hereof, Concessionaire shall notify the State in advance of the date Concessionaire will commence construction of its Concessionaire Improvements in the Premises and its proposed construction schedule with respect thereto.

c. Plan approval prior to construction. Prior to commencement of construction (and to the extent required), Concessionaire will procure the approval of the final Concessionaire Improvement Plans by any and all federal, state, municipal, and other governmental authorities, offices, and departments having jurisdiction in the Premises, including, without limitation, the District Airport Engineer of the FAA. The State will cooperate with Concessionaire in procuring such approval, provided that the State shall have given its prior approval to such final Concessionaire Improvement Plans.

d. No representation by State. Neither the approval by the State of the Concessionaire Improvement Plans, nor any other action taken by the State with respect thereto under the provisions of this Agreement, shall constitute an opinion or representation by the State as to the sufficiency of said Concessionaire Improvement Plans, or such design standards as the State shall have in effect from time to time, compliance with any laws, or ability of Concessionaire to receive any permits from any department or agency of the State of Hawaii or other jurisdictions, nor impose any present or future liability or responsibility upon the State. Approval shall not constitute approval of the State of Hawaii or its departments or agencies for any construction, extension, or renovation of any public utilities or public ways which may be necessary to service the Premises. In any case where more than one standard, code, regulation, or requirement applies to construction or the Concessionaire Improvement Plans, the strictest shall control.

e. Concessionaire action prior to execution of contracts. Prior to the execution of any contracts for construction, engineering, or architectural services, Concessionaire shall furnish to the State the names of the person or entity whom Concessionaire desires to employ and the proposed form of contract. The State shall have the right to approve the architect, engineer, and general contractor, including any proposed contract for their services, which approval shall not be unreasonably withheld or delayed. Such architect, engineer, and general contractor shall be licensed in the discipline being contracted for, experienced in design and construction of improvements comparable to those for which its services are being required by Concessionaire, and airport-related work, not be listed on any local, state, or federal non-responsible bidders' list, and not be debarred under any state or federal statute, regulation, or proceeding. In addition, all such contracts shall include the matters required by this Article VI. (Construction, Maintenance and Repair), as applicable, and other provisions of this Agreement and shall include such other terms as may be reasonably requested by the State regarding construction practices at the Airport. Upon their execution, and prior to commencement of construction, Concessionaire shall deliver to the State copies of its contracts with the design architect and engineer and the general contractor. Concessionaire shall simultaneously deliver to the State collateral assignments of said contracts, together with instruments executed by the architect, engineer, and by the general contractor under which each consents to the aforesaid assignment and agrees to continue to supply the same services to the State or the State's designee provided by their respective contracts with Concessionaire, in the event that (i) Concessionaire fails to comply with any such requirements, and (ii) the State gives the architect, engineer, or the general contractor, or any of them, written notice within sixty (60) days after the occurrence of such failure, and (iii) at the time of the State's notice of such failure, the State or the State's designee demands continuance of such services on the same terms contained in the respective contracts and expressly agrees to assume and be bound by such respective contracts; provided that the State shall not be liable for or obligated to cure prior defaults of Concessionaire.

f. Performance and payment bonds. Concessionaire shall also deliver to and for the benefit of the State, no later than thirty (30) days prior to commencement of construction of Concessionaire Improvements, dual performance and payment bonds. Performance and payment bond or bonds are required by the State and shall comply with the provisions of applicable State of Hawaii statutes. The surety bond or sureties issuing the bond must be acceptable to the State of Hawaii Comptroller and must be in the form provided by the State of Hawaii. The surety for the bond shall be on the U.S. Treasury list of acceptable sureties with underwriting capability equal or better than the contract value and have a Best's Key Rating Guide of "B+", Class "XI" or greater, or the equivalent. The bond shall name the State of Hawaii as co-obligee.

g. Detailed budget. At least thirty (30) days prior to the commencement of any construction on the Premises, Concessionaire shall deliver to the State a detailed budget for such Concessionaire Improvements itemizing all estimated costs of construction, and indicating all sources (including loans and equity) of funds to pay the aforesaid construction costs, and demonstrate to the reasonable satisfaction of the State that it has sufficient funds to complete the construction of any and all improvements to be constructed, and that said funds will be disbursed in a manner so as to provide reasonable assurances against the foreclosure of any mechanic or materialman's lien against the Premises or Concessionaire's leasehold estate. If Concessionaire finances construction with a loan, no provision of any loan

instruments or documents may conflict with the terms of this Agreement or require the State to amend this Agreement.

h. Timely completion of improvements. Once commenced, Concessionaire shall diligently prosecute construction, and Concessionaire shall substantially complete the Concessionaire Improvements within the time required by this Agreement. For purposes of the Concessionaire Improvements, "**Concessionaire Improvement Substantial Completion**" shall mean the completion, in accordance with the Concessionaire Improvement Plans and applicable laws, of all Concessionaire Improvements, other than minor punch list items, and shall include issuance of a certificate of substantial completion by the architect and engineer in a customary form reasonably required by the State. If any work does not comply with the provisions of this Agreement, the State may, by notice to Concessionaire, require that Concessionaire stop the work and take steps necessary to cause corrections to be made.

i. Concessionaire to pay all costs. Concessionaire shall pay all costs of the construction incurred by Concessionaire when due, and shall require all contractors to deliver sworn statements of persons furnishing materials and labor before any payment is made and waivers of lien for all work for which payment is made, in order to prevent attachment of mechanic's liens or other liens by reason of work, labor, services, or materials furnished with respect to the Premises.

j. Insurance coverage during construction. During the course of construction, Concessionaire, at its sole expense, will carry or cause to be carried, the insurance required to be carried pursuant to Article VIII (Insurance) hereof.

k. State inspection during construction. During the course of the construction, the State, and its architects, engineers, agents, and employees on behalf of the State with responsibilities relating to the Premises may enter upon and inspect the Premises for the purpose of verifying that the Concessionaire Improvements are proceeding in accordance with the requirements of this Agreement. With respect to any such entry and inspection on behalf of the State, persons requiring entry shall present proper identification to Concessionaire. No right of review or inspection shall make the State responsible for work not completed in accordance with the Concessionaire Improvement Plans or applicable laws. Concessionaire shall keep at the Premises all Concessionaire Improvement Plans, shop drawings, and specifications relating to such construction, which the State may examine at all reasonable times and, if required by the State, Concessionaire shall also furnish the State with copies thereof.

l. Exterior lights. Without limiting any other requirements of the FAA, the State shall install such general obstruction or warning lights on the exterior of the Premises (collectively, the "**Exterior Lights**") as may then be required to conform to FAA standards or to conform to standards prescribed by the State and any other governmental agency having jurisdiction over the Premises as of the date of Consolidated Facility Substantial Completion. The State shall thereafter be responsible for maintaining, operating, repairing, and replacing any such Exterior Lights during the Term hereof, and shall be further responsible for installing any additional or replacement obstruction or warning lights on the exterior of the Premises as may thereafter be required to conform to FAA standards or to conform to standards prescribed by the State and any other governmental agency having jurisdiction over the Premises

which are first enacted or which first become effective after the date of Consolidated Facility Substantial Completion, except to the extent that any of the same would constitute a capital repair or replacement pursuant to Article VI.A.8 (Maintenance and Repair) hereof, and subject in each case to inclusion of the costs thereof as part of Operating Expenses hereunder from time to time.

m. Concessionaire responsible for work performed. Any work performed at the direction of Concessionaire or any On-Airport Rental Car Company, even though performed by contractors, shall be the responsibility of Concessionaire or the On-Airport Rental Car Company directing such work. During any construction by Concessionaire or any other On-Airport Rental Car Company, Concessionaire or such On-Airport Rental Car Company, as the case may be, shall be solely responsible for the support, maintenance, safety, and protection of the facilities of the State resulting from such construction activities, and for the safety and protection of all persons or employees and of all property therein. All work shall be performed in accordance with (and all Concessionaire Improvements, when completed, shall comply with) the Concessionaire Improvement Plans and other documents submitted to and approved by the State, with such design standards as the State shall have in effect from time to time, Airport and construction conditions in effect at the time of construction, and any other applicable federal, state, or local laws, and with the project requirements set forth in this Article VI (Construction, Maintenance and Repair). Concessionaire shall also comply with the additional legal requirements set forth in **Exhibit I** attached hereto. In the case of any conflict between the terms of **Exhibit I** attached hereto and the terms of this Article VI (Construction, Maintenance and Repair), the stricter provisions shall control. Once work is completed, Concessionaire shall furnish "as built" plans and specifications to the State.

8. Maintenance and Repair.

a. Concessionaire to maintain Consolidated Facility and Premises. Concessionaire shall, at all times during the Term hereof, at its sole cost and expense, operate and keep the Premises (and, together with the RAC Consortium (as defined in Article XXI.A (Execution) hereof, the Consolidated Facility) in good condition and repair, in a safe, secure, clean and sanitary condition, and in full compliance with any and all applicable laws and such rules, regulations and standards as the State shall maintain in effect from time to time, including, without limitation, the State's Operation and Maintenance Standards attached as **Exhibit J** hereto and made a part hereof. Concessionaire shall be responsible for all maintenance, repair and replacements of and to the Premises of any kind or nature whatsoever (except to the extent that the same are the express responsibility of the State as provided in Article VI.A.8 (Maintenance and Repair) below). Concessionaire's obligations shall include, without limitation, the following: (i) maintaining the Premises and making all repairs to all equipment thereon, including, without limitation, all engines, boilers, machinery, pipes, ducts, conduits, plumbing, heating, ventilating and air-conditioning systems and installations, wiring, gas, steam and electrical fittings, USTs, and all other equipment of every nature whatsoever; (ii) maintaining, replacing, and repairing the interior portions of the Premises, including all fixtures, appurtenances, plate glass, windows, window glass, walls, floors, docks, ceilings, and doors; (iii) maintaining and repairing the movable and removable fixtures of Concessionaire located in or appurtenant to the Premises, including, without limitation, any Concessionaire Improvements installed hereunder; and (iv) keeping the Premises and the Consolidated Facility Property free



from filth, overloading, danger of fire or any pest or nuisance, and repairing and/or replacing any damage or breakage done by Concessionaire, or any of its respective officers, agents, employees, contractors, guests, invitees, or licensees, including, without limitation, damage done to the Premises or the Consolidated Facility Property by equipment installations of Concessionaire. Except for items which are the State's responsibility under Article VI.A.8 (Maintenance and Repair) below, if any portion of the Premises or any system or equipment in the Premises which Concessionaire is obligated to maintain or repair cannot be fully repaired or restored, Concessionaire will promptly replace such portion of the Premises or such system or equipment. Concessionaire will maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor, such contract and contractor to be reasonably approved by the State. Concessionaire shall, in connection with the performance of its obligations hereunder, comply with the requirements of Article VI.A.8 (Maintenance and Repair) hereof. In the event that Concessionaire fails to perform any of its obligations hereunder, and fails to cure or commence to cure such failure within fifteen (15) days after written notice from the State, or to thereafter diligently proceed to complete such cure, the State may (but shall not be obligated) to enter the Premises at any time to undertake any maintenance, repairs, alterations, improvements or additions as the State shall direct or deem necessary for the maintenance, repair, safety, protection, preservation, or improvement of the Premises, or as the State may be required to do by any governmental department or agency, or by the order or decree of any court or by any other proper authority. Any and all costs and expenses of such repairs, alterations, improvements or additions made by the State hereunder shall be due and payable by Concessionaire to the State within thirty (30) days following the State's invoice therefor, and if not paid within such 30-day period, shall bear interest at the Default Rate until paid.

b. State to repair and maintain structure. Subject to the provisions of this Agreement, except for damage caused by, or replacement or repairs required as a result of, any act or omission of Concessionaire, or any of its respective officers, agents, employees, contractors, guests, invitees, or licensees, and subject to inclusion of the costs thereof as part of Operating Expenses from time to time (except as hereinafter provided), the State will (i) repair and maintain the structural portions of the Consolidated Facility, including the foundations, bearing and exterior walls (excluding glass), subflooring and roof (excluding skylights), and the unexposed electrical, plumbing, and sewer systems, including those portions of such systems which are located outside the Premises, gutters and downspouts on the Consolidated Facility, and the base building heating, ventilating, and air conditioning systems which serve the Premises (but specifically excluding, in each instance, the QTA), (ii) maintain the landscaping on, adjacent to, and surrounding the Premises in accordance with the landscaping standards and requirements of the State applicable to the Airport from time to time (but specifically excluding, in each instance, the QTA); and (iii) perform such other general maintenance, repair, and replacement of the common areas of the Consolidated Facility, including, without limitation, the parking facilities or areas, access roads, driveways, truck ways, sidewalks, and passageways associated therewith (but specifically excluding, in each instance, the QTA), as may be reasonably required from time to time. In addition, the State will be responsible for performing any capital repairs or replacements of the Consolidated Facility, including, without limitation, the foundation, roof, structural components, and exterior walls thereof, which are reasonably required during the Term hereof, subject to inclusion of the costs thereof as part of Operating Expenses to the extent permitted hereunder. Concessionaire will promptly report in writing to the State any defective

condition known to Concessionaire which the State is required to repair under this Article VI.A.8 (Maintenance and Repair). Any maintenance, repairs, or replacements to the Consolidated Facility, or any portion thereof, including, without limitation, the foundation, roof, structural supports, and exterior walls thereof, which are required due to damage caused by, or as a result of, any act or omission of Concessionaire, or any of its respective officers, agents, employees, contractors, guests, invitees, or licensees, shall be performed by the State at the sole cost and expense of Concessionaire and such costs and expenses shall be due and payable by Concessionaire to the State within thirty (30) days following the State's invoice therefor, and if not paid within such 30-day period, shall bear interest at the Default Rate until paid. The State may, but shall not be required, to enter the Consolidated Facility, inclusive of the Premises, at all reasonable times upon reasonable prior notice (except in the event of an emergency) to perform any maintenance, repairs, or replacements which are the State's responsibility hereunder, or as the State may be required to do by any applicable laws, governmental department or agency, or by the order or decree of any court or by any other proper authority. For purposes hereof, the determination of whether a repair item constitutes a capital repair or replacement hereunder shall be made in accordance with applicable generally accepted accounting principles ("GAAP"), Internal Revenue Code provisions, and prevailing industry practices, as the case may be. Notwithstanding anything herein to the contrary, in no event shall the State be required to maintain, repair, and/or replace, at any time or from time to time, the QTA, or any portion or portions thereof. Notwithstanding anything herein to the contrary, in the event that any such repair, maintenance, or replacement costs which are the obligation of the State hereunder are reimbursed or reimbursable from the an operations and maintenance fund or a maintenance reserve fund, as the case may be, such costs shall not also be included as part of Operating Expenses hereunder (it being understood and agreed that there shall be no "double counting" of any such costs for purposes hereof).

c. Dispute resolution. In the event of any dispute as to whether a specific repair or replacement constitutes a capital repair or replacement hereunder, the State and Concessionaire agree to negotiate such matter in good faith for a period not to exceed thirty (30) days in an attempt to reach agreement on such matter. In the event that the State and Concessionaire have failed to reach agreement on such matter upon the expiration of such 30-day period, such disputed matter shall be submitted to an independent third party architect or engineer who is reasonably acceptable to each of the State and Concessionaire and who (i) does not regularly represent and is not otherwise affiliated with either the State or Concessionaire, (ii) is duly licensed and in good standing, (iii) is familiar with current industry practices and standards governing capital repairs and replacements in the context of commercial properties comparable to the Consolidated Facility, and (iv) has at least ten (10) year's experience within the previous fifteen (15) years as an architect or engineer working in the greater Honolulu metropolitan area. Within thirty (30) days following such selection, such architect or engineer shall make a determination as to whether the disputed matter constitutes a capital repair or replacement hereunder, which determination shall be made in accordance with applicable GAAP, Internal Revenue Code regulations, and prevailing industry practices, as the case may be. The determination of such architect or engineer made in accordance with this Article VI.A.8 (Maintenance and Repair) shall be final and binding upon the State and Concessionaire.

9. Premises Lighting and Signage. Except for the Exterior Lights which are the responsibility of the State as expressly provided in Article VI.A.7.1 (Exterior Lights) above,

Concessionaire shall be solely responsible for the illumination of the Premises, which shall comply with all FAA and State requirements. Any signs installed by Concessionaire on the Premises shall be limited to the purpose of identifying Concessionaire (including, without limitation, the trade names, trademarks, logos, and brand names), and not for any third party advertising. The number, general type, size, design, and location of such signs, and any modifications or replacements thereof, shall be subject to the prior written approval of the State in each instance, which approval shall not be unreasonably withheld or delayed so long as such signage complies with applicable laws and applicable Airport signage standards, and is otherwise consistent with the appearance and architectural integrity of the Premises. Signage shall be approved separately or as part of the Concessionaire Improvement Plans. No exterior or roof signs are permitted. All signage shall comply with such design standards and terminal development guidelines as the State shall have in effect from time to time.

10. Covenant Against Liens. No party, including Concessionaire, shall have any right to file any liens against the Premises, the Consolidated Facility, or any other property of the State of Hawaii, and Concessionaire shall keep the Premises and the Consolidated Facility Improvements free and clear of liens or claims of liens in any way arising out of the construction, improvement, or use thereof by Concessionaire. Concessionaire shall promptly take such steps as are necessary to release any claim for lien or attempted claim for lien from the Premises arising out of the construction, improvement, or use thereof by Concessionaire. Concessionaire shall not be deemed to be in default hereunder in the event any lien shall attach or shall exist which is prohibited by or which is contrary to or in violation of the provisions of this Agreement, (a) if such lien shall arise as a matter of law, but the amount of said lien be not yet due and payable, or (b) if any such lien shall arise and Concessionaire shall continuously, diligently, and in good faith contest the same, or the validity thereof, by appropriate legal proceedings which shall operate to prevent the foreclosure of any such lien, provided that Concessionaire shall give advance written notification to the State that it is the intent of Concessionaire to contest the validity or collection thereof and Concessionaire shall also comply with the further following provisions of this Article VI.A.10 (Covenant Against Liens). In the event Concessionaire contests any such lien, Concessionaire shall give a satisfactory indemnity to the State or deposit with the State a letter of credit, cash, or security reasonably satisfactory to the State in an amount equal to the amount of the claim or lien, plus such interest and penalties, court costs, or other charges as the State, any fee mortgagee, or title insurer may reasonably estimate to be payable by Concessionaire at the conclusion of such litigation or is required to provide insurance over any potential lien. In the event such letter of credit, cash or securities shall be so deposited, the same shall be held until such claim or other imposition shall have been released and discharged and shall thereupon be returned to Concessionaire, less any amounts expended by the State to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the State by virtue of the contest of such lien.

11. Ownership of Improvements. The State shall own all Consolidated Facility Improvements and Concessionaire Improvements now existing or hereafter constructed (excluding the trade fixtures, trade equipment, supplies and personal property of Concessionaire), except USTs. All USTs installed hereunder by the State or Concessionaire (or the RAC Consortium, as the case may be) shall be the personal property of Concessionaire (or the RAC Consortium, as the case may be), subject to the provisions of Article IV.C. (Surrender of the Premises) hereof.

12. Alterations. Concessionaire shall have the right from time to time after the completion of the initial Concessionaire Improvements in accordance with the provisions of [Article VI.A.7 (Construction of Concessionaire Improvements) hereof, and at Concessionaire's sole cost and expense, to make alterations and changes ("**Alterations**") in or to the Premises (except as hereinafter provided), provided Concessionaire shall not then be in default in the performance of any of Concessionaire's covenants or agreements in this Agreement; and further provided that Substantial Alterations may be made only with the written consent of the State, which consent shall not be unreasonably withheld or delayed. "**Substantial Alterations**" means any Alterations (i) to infrastructure improvements, (ii) to the structure of the Premises or any portion thereof, (iii) to other items required to be shown on the Concessionaire Improvement Plans for such Alterations or Substantial Alterations, as the case may be, and approved by State, or (iv) which would cost more than ten percent (10%) of the replacement cost of the Concessionaire Improvements. The provisions of (Article VI.A.7 (Construction of Concessionaire Improvements) shall apply to and shall be complied with by Concessionaire as a condition to the performance of any Alteration or Substantial Alteration. The State's approval of the Concessionaire Improvement Plans for Alterations or Substantial Alterations, as the case may be, shall not be required for those aspects of the Concessionaire Improvement Plans to the extent such approval would not be required for initial Concessionaire Improvements. Furthermore, all Alterations and Substantial Alterations shall be subject to the following:

a. Alterations require State consent. No Alteration or Substantial Alteration of any kind shall be made without the written consent of the State (which may be withheld in its sole discretion) which would (i) change the general design, use, or character of the Premises, (ii) reduce or impair, to any material extent, the value, rentability, or usefulness of the Premises, or constitute waste, or (iii) give to any owner, lessee, or occupant of any other property or to any other person or corporation any easement, right-of-way, or any other right over the Premises.

b. Concessionaire progress on alteration. Any Alteration or Substantial Alteration shall be made with reasonable dispatch and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, and in accordance with the orders, rules, and regulations of the National Board of Fire Underwriters or any other body or bodies hereafter exercising similar functions. If any work does not comply with the provisions of this Agreement, the State may, by notice to Concessionaire, require that Concessionaire stop the work and take steps necessary to cause corrections to be made.

c. Concession to demonstrate financial capacity. Concessionaire shall demonstrate to the State's satisfaction financial capacity to pay the entire cost of any Substantial Alteration or, in lieu thereof, furnish to the State cash or other security reasonably satisfactory to the State, in an amount at least equal to one hundred twenty percent (120%) of the estimate of cost of such Substantial Alterations, guaranteeing the completion and payment of the cost thereof free and clear of all liens, conditional bills of sale, and chattel mortgages, except that security for demolition and new construction shall be furnished as provided in Article VI.A.7.f (Performance and payment bonds) hereof.

d. State approval prior to demolition. After completion of Concessionaire Improvements, Concessionaire shall not demolish such Concessionaire Improvements without the prior written consent of the State. If the Premises will not be occupiable after such demolition, and in the State's opinion there is a reasonable risk of non-payment of rent until new improvements are constructed, then prior to the commencement of demolition Concessionaire shall deposit with the State an amount which will provide for the payment of rent for the period from the commencement of demolition to the anticipated date of completion of such new improvements, or in lieu thereof, security satisfactory to the State. In connection with any such demolition, Concessionaire shall otherwise comply with all of the other provisions of this Article VI. (Construction, Maintenance and Repair) as though said demolition were a Substantial Alteration. Concessionaire shall proceed diligently with its demolition and all demolition shall be completed within a reasonable time.

## ARTICLE VII. PERFORMANCE DEPOSIT

A. Performance Deposit. Concessionaire shall deposit with the State, on or before the Concessionaire Access Date (and as a condition thereof), cash security (except as otherwise provided in Article VII.B (Letter of Credit) hereof) for the full and prompt performance by Concessionaire of all of Concessionaire's obligations hereunder in the initial amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) [three (3) months of Ground Rent] (the "**Performance Deposit**"). If Concessionaire defaults under this Agreement, the State may use all or any part of the Performance Deposit to make any defaulted payment, to pay for the State's cure of any defaulted obligation, or to compensate the State for any loss or damage resulting from any default. To the extent any portion of the Performance Deposit is so used, Concessionaire shall, within five (5) days after demand from the State, restore the Performance Deposit to its full amount. The State may keep the Performance Deposit in its general funds and shall not be required to pay interest to Concessionaire on the Performance Deposit. If Concessionaire shall perform all of its obligations under this Agreement and return the Premises to the State at the end of the Term in the condition required hereunder, the State shall return all of the remaining Performance Deposit (or the original remaining Letter of Credit, as hereinafter defined, as the case may be) to Concessionaire, within thirty (30) days after the end of the Term. The Performance Deposit shall not serve as an advance payment of rent or a measure of the State's damages for any default under this Agreement.

B. Letter of Credit. Alternatively, and in lieu of the Performance Deposit hereinabove provided, Concessionaire may deposit with the State, upon Concessionaire's execution and delivery of this Agreement, as Performance for the full and prompt performance by Concessionaire of all of Concessionaire's obligations hereunder, an irrevocable, unconditional, transferable letter of credit (the "**Letter of Credit**"), in substantially the form attached as Exhibit L hereto and made a part hereof, in favor of the State from a bank approved by the State (which bank shall have a Fitch rating of "A+" or better, shall have a branch office located in the Honolulu, Hawaii metropolitan area, and shall not appear on any "troubled" or "distressed" bank or financial institution lists maintained or published by the Federal Deposit Insurance Corporation ("FDIC"), any other governmental entity or agency with jurisdiction over the issuing bank, or any generally-recognized private bank rating entity or company). The Letter of Credit shall provide for Performance in the initial amount of \_\_\_\_\_

\_\_\_\_\_00 Dollars (\$\_\_\_\_\_.00). Whether or not this Agreement or Concessionaire's right to possession hereunder has been terminated, (a) in the event of a default under any of the terms, covenants and conditions of this Agreement, (b) in the event Concessionaire has filed (or there has been filed against Concessionaire) a petition for bankruptcy protection or other protection from its creditors under any applicable and available law which has not been dismissed or discharged, or in the event Concessionaire files a general assignment for the benefit of its creditors, or (c) the issuing bank is placed in receivership or similar position by the FDIC or any other governmental entity or agency with jurisdiction over the issuing bank, or otherwise appears on any "troubled" or "distressed" bank or financial institution lists maintained or published by the FDIC, any other governmental entity or agency with jurisdiction over the issuing bank, or any generally-recognized private bank rating entity or company, then, in any such event, the State may at once and without any notice whatsoever to Concessionaire be entitled to draw down on the Letter of Credit and apply such resulting sums toward the cure of any default by Concessionaire under this Agreement or toward any damages to which the State is entitled pursuant to the terms of this Agreement.

C. Letter of credit expiration, automatic extension. The foregoing Letter of Credit shall provide for an original expiration date not earlier than twelve (12) months following the date of issuance and shall be automatically extended without amendment for additional successive twelve (12) month periods from the original expiration date or any future expiration date thereof through the expiration or earlier termination of this Agreement, unless not less than sixty (60) days prior to any such expiration date, the issuing bank sends to the State by certified/registered mail, return receipt requested, or by overnight courier written advice that the bank has elected not to consider the Letter of Credit renewed for any such additional 12-month period. In the event such bank so advises the State that such Letter of Credit will not be so renewed, or in the event that the issuing bank is placed in receivership or similar position by the FDIC or any other governmental entity or agency with jurisdiction over the issuing bank or otherwise appears on any "troubled" or "distressed" bank or financial institution lists maintained or published by the FDIC, any other governmental entity or agency with jurisdiction over the issuing bank, or any generally-recognized private bank rating entity or company, the State shall promptly thereafter notify Concessionaire thereof in writing, and Concessionaire shall obtain a substitute Letter of Credit from a bank reasonably approved by the State meeting all of the terms and conditions described in this Article VII (Performance Deposit), which substitute Letter of Credit ("**Substitute Letter of Credit**") shall be reasonably satisfactory to the State and delivered to the State no later than thirty (30) days prior to the expiration date of the Letter of Credit then in effect. In the event Concessionaire fails to deliver such Substitute Letter of Credit to the State at least thirty (30) days prior to the expiration date of the Letter of Credit then in effect (or within ten (10) days following the date of the State's notice advising Concessionaire that the issuing bank was placed in receivership or similar position or otherwise appears on any "troubled" or "distressed" bank or financial institution lists, as the case may be), the State shall in such instance have the right, without further notice to Concessionaire, to immediately draw down on the entire amount of the Letter of Credit then available to the State; and in such instance, the State shall retain such resulting sum as a cash Performance Deposit and the State shall have the right to use such cash Performance Deposit to the same extent that the State would be entitled to draw down on the Performance Deposit or the Letter of Credit pursuant to the terms of this Article VII (Performance Deposit) (and Concessionaire shall replenish such cash Performance Deposit in the same manner as required for the Letter of Credit); provided, in the event that a Substitute Letter

of Credit meeting the conditions set forth herein is subsequently submitted by Concessionaire, the cash Performance Deposit then being held by the State hereunder shall be returned to Concessionaire as soon as reasonably practicable following the State's receipt of such Substitute Letter of Credit. The State shall not, unless required by law, keep the cash Performance Deposit separate from its general funds or pay interest thereon to Concessionaire. No trust relationship is created herein between the State and Concessionaire with respect to such Performance Deposit, and the Performance Deposit may be commingled with other funds of the State

C. Performance Bond. With the prior written approval of the State, Concessionaire may deliver to the State, in lieu of the Performance Deposit hereinabove provided, a performance bond acceptable to the State in accordance with terms similar to those for a Concession Bond as provided and described in Article XIX (Concession Bond) hereof, but subject to any other terms and conditions the State may require, in the amount of the Performance Deposit (the “**Performance Bond**”).

D. State transfers. If the State transfers its interest in the Premises or this Agreement, the State may transfer the Performance Deposit or the Letter of Credit, as the case may be, to its transferee. Upon such transfer, the State shall have no further obligation to return the Performance Deposit or the Letter of Credit, as the case may be, to Concessionaire, and Concessionaire's right to the return of the Performance Deposit or the Letter of Credit, as the case may be, shall apply solely against the State's transferee.

E. Ground Rent increase. If Ground Rent is increased hereunder at any time during the Term hereof, the Performance Deposit, the Letter of Credit, or the Performance Bond, as the case may be, shall be increased by the same percentage as the percentage of increase of the Ground Rent so that Concessionaire at all times during the Term hereof has on deposit with the State a sum equal to three (3) monthly installments of Ground Rent payable hereunder. In no event, however, shall the Performance Deposit, the Letter of Credit, or the Performance Bond, as the case may be, be subject to reduction hereunder. Concessionaire shall deposit with the State the increased amount of the Performance Deposit, the Letter of Credit, or the Performance Bond, as the case may be, within thirty (30) days after the date on which the Ground Rent has so increased.

F. Letter of credit separate from any other surety, bond, guaranty. With respect to any Letter of Credit deposited hereunder, such Letter of Credit shall be separate and independent from any letter of credit, bond, or other performance deposit or guaranty provided pursuant to this Agreement.

## ARTICLE VIII. INSURANCE

[Insurance provisions to be inserted]

## ARTICLE IX. DAMAGE OR DESTRUCTION

A. Damage and Destruction.

1. State's right to terminate. If the Premises are totally destroyed by storm, fire or other casualty, or damaged to the extent that, in the State's reasonable opinion, the damage cannot be restored, or if the damage is not covered by standard "all risks" property insurance (or such other property insurance as may be maintained by the State from time to time), the State shall have the right to terminate this Agreement effective as of the date of such destruction or damage by written notice delivered to Concessionaire on or before thirty (30) days following the State's notice described in the next sentence, and rent and fees shall be accounted for as between the State and Concessionaire as of that date. The State shall provide Concessionaire with written notice no later than sixty (60) days following the date of such damage of the estimated time needed to restore and whether the State elects to restore hereunder.

2. State restoration. If the Premises are damaged by any such casualty but the State does not elect to terminate this Agreement as provided in Article IX.A.1. (State's right to terminate) above, this Agreement shall remain in full force and effect. The State shall notify Concessionaire in writing no later than sixty (60) days after the date of such damage that such damage will be restored (and will include the State's good faith estimate of the date the restoration will be complete), and the State shall promptly commence to diligently restore the shell and core portions of the Premises (including the Consolidated Facility Improvements, as the same may be modified to conform to applicable laws then in effect, but excluding any Concessionaire Work Items, as hereinafter defined) to substantially the same condition as before such damage occurred (any such activity being a "**State Restoration**") as soon as reasonably practicable, subject to force majeure events and delays attributable to the acts or omissions of Concessionaire. Concessionaire may not terminate this Agreement (and shall otherwise remain liable for the performance of all of its obligations hereunder in accordance with the terms and provisions hereof), except as expressly provided in Article IX.A.6 (Damage in last year of term) below, in the event of any such casualty. Ground Rent and Concessionaire's Proportionate Share of Operating Expenses and Impositions (but specifically excluding any other components of Facility Rent) shall be reduced or abated on a pro rata basis during the period of such State Restoration to the extent that the Premises is not habitable as a result of such casualty; provided, notwithstanding anything herein to the contrary, in no event shall Facility Rent (other than Concessionaire's Proportionate Share of Operating Expenses and Impositions as aforesaid) or CFCs be subject to reduction or abatement hereunder.

3. Concessionaire restoration. In the event of damage to, or destruction of, any Concessionaire Improvements, Alterations, or other Concessionaire work, or of the fixtures and equipment within the Premises (collectively, the "**Concessionaire Work Items**"), by fire or other casualty, Concessionaire shall promptly, at its expense, repair, restore, or rebuild such Concessionaire Work Items to the condition existing prior to the happening of such fire or other casualty (any such activity being a "**Concessionaire Restoration**"). Rent shall not be reduced or abated during the period of such Concessionaire Restoration even if the Premises is not concessionable and the Concessionaire Work Items are not usable, and Concessionaire may not terminate this Agreement, except as expressly provided in Article IX.A.6 (Damage in last year of term) below.

4. Concessionaire compliance prior to restoration. Before Concessionaire commences or causes such Concessionaire Restoration, Concessionaire shall, in connection therewith, comply with the requirements of Article VI (Construction, Maintenance and Repair)



hereof. The State may waive (but shall not be obligated to do so) any requirements of Article VI (Construction, Maintenance and Repair) after taking into consideration the degree of damage or destruction and Concessionaire Restoration.

5. Insurance proceeds, additional security. Provided that the insurer does not deny liability as to the insureds, and provided Concessionaire is not then in default hereunder, all sums arising by reason of loss under the property insurance required in Article VIII (Insurance) shall be available to Concessionaire for the work. All proceeds shall be payable to the State which may disburse proceeds through an escrow on satisfaction of conditions established by the State (which may include retention requirements, waivers of lien and sworn statements, architect's certificates, and other evidence of satisfactory completion and payment for work) or payable directly to Concessionaire or contractors, at the State's option. Concessionaire shall deposit with the State any excess cost of the Concessionaire Restoration over the amount held by the State as proceeds of the insurance within thirty (30) days from the date of the determination of the cost of the Concessionaire Restoration; but in no event later than commencement of work. At all times the undisbursed balance remaining in the hands of the State shall be at least sufficient to pay for the cost of completion of the work free and clear of liens; any deficiency shall be paid to the State by Concessionaire. Concessionaire shall diligently pursue the repair or rebuilding of the Concessionaire Work Items (but in any event within the time period in which Concessionaire was required to complete the Concessionaire Improvements under Article VI (Construction, Maintenance and Repair) hereof. If Concessionaire does not repair or rebuild the Concessionaire Work Items or proceed diligently to repair or restore the Concessionaire Work Items and fails to cure or correct any such default after notice and expiration of applicable cure periods hereunder, or there are insurance proceeds remaining after repair or rebuilding, all insurance proceeds shall belong to and be payable to the State, and Concessionaire shall assign all such proceeds to the State.

6. Damage in last year of term. In case of damage or destruction of all or any material portion of the Premises which occurs during the last twelve (12) months of the Term, either Concessionaire or the State shall have the option of terminating this Agreement as of the date of such damage or destruction by notice in writing given to the other party within thirty (30) days after the occurrence of such damage or destruction. In such event, the State shall be entitled to the proceeds of any Concessionaire insurance covering any part of the Premises on account of such damage or destruction (excluding any insurance coverage for the Concessionaire Work Items), and Concessionaire shall assign all such insurance proceeds to the State.

7. Master Indenture governs. Notwithstanding anything in this Article IX. (Damage or Destruction) to the contrary, while the Bonds remain outstanding, the terms and provisions of the Master Indenture shall govern and control in the event of damage or destruction to the Premises.

## ARTICLE X. CONCESSION OPERATION

A. Quality and Price Control. The State, in entering into this Agreement, has foremost in mind providing the air traveler and the general public facilities, services, and products of the highest quality. The Concessionaire shall therefore be required to at all times

provide Concession patrons with late model Automobiles (not more than three (3) years old at any time), which Automobiles shall be maintained by Concessionaire in first class operating and mechanical condition and repair and in a clean and attractive condition.

The Concessionaire shall furnish all services authorized hereunder to its customers and patrons upon a fair and equal, and nondiscriminatory basis; and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Concessionaire may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions as Concessionaire may desire to Concessionaire's employees or volume purchasers.

B. Type of Operation.

1. First class. The Concessionaire shall maintain and operate the Concession in an orderly, proper, and first-class manner, which, in the sole judgment of State, does not annoy or disturb, or is not offensive to others at the Airport. The Concessionaire shall not solicit Concession business in any manner which would prove offensive to the public or which may result in deception or disguise of all actual costs or charges relating to the rental of Automobiles anywhere at the Airport except in a proper manner upon the Premises and by means of advertising elsewhere at the Airport first approved in writing by State.

2. Hours of operation. The Concession shall be maintained and operated during hours approved by State, seven (7) days per week (unless a different schedule for any part of the Concession operation shall be first approved in writing by State). The State may require that the Concession be maintained and operated in excess of the hours designated by State per day as is necessary or desirable to adequately serve the demands of air travelers for the Concession services.

3. No Diversion. Concessionaire shall not intentionally divert Automobile rentals to other locations. Intentional diversion shall include, without limitation, Concessionaire advising, directing, or otherwise suggesting to a customer or prospective customer arriving at the Airport that such customer or prospective customer rent an Automobile at any off-Airport location, whether from Concessionaire or some other rental car provider, regardless of the basis or reason for such advice, direction, or suggestion. All such intentionally diverted revenues shall be included in Gross Receipts.

C. [Reserved]

D. Personnel.

1. Manager. The Concessionaire shall retain an active, qualified, competent, experienced manager or other similarly authorized representative at the Airport to supervise all Premises operations. The Concessionaire's manager shall be authorized to represent and act for and on behalf of Concessionaire at all times. In the absence of the designated manager, one or more responsible subordinates shall be on duty at the Airport to perform and act on behalf of Concessionaire. The Concessionaire shall provide and continuously inform State of the names and contact numbers (telephone, facsimile, cellular/pager, and e-mail) of the manager and responsible subordinate(s).

2. Other personnel. The Concessionaire shall further employ and have on duty adequate personnel at all times, all of whom shall:

a. Appearance. Present a neat and clean appearance; and

b. Courtesy. Be courteous and efficient in the discharge of their duties at all times in order to promptly and efficiently serve the public and to provide the quality of the Concession operation as required herein.

3. Uniforms. The State reserves the right to require Concessionaire's employees to wear badges, uniforms, or other reasonable means of identification so as to render such employees readily identifiable with the Concession.

4. Conduct. No personnel employed by 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.

5. Customer service. Duty personnel shall be informed and knowledgeable about the Automobiles and services Concessionaire offers and carries, and be capable of resolving disputes on service or quality and value and handle and address complaints resulting from any aspects of Concessionaire's activities. The Concessionaire shall be immediately responsive to resolving or handling any complaint or problem that may be brought to the attention of Concessionaire.

6. Training. The employees of Concessionaire shall participate in a training or orientation regarding the Airport's hospitality awareness program.

a. 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 Concessionaires. Training shall include awareness and familiarity with applicable State's rules and regulations and State's Airport training program requirements, appearance guidelines, customer relations, and service greeting standards.

b. Knowledgeable. The Concessionaire's staff shall also be knowledgeable about the layout of the Airport and shall assist travelers when asked or approached, by answering questions about way finding and other Airport locations, and directing the traveler to the appropriate site, counter, office, or Airport personnel or others for further assistance. All of the employees of Concessionaire shall undergo or undertake any Airport established or required training or orientation and hospitality awareness program.

E. [Reserved.]

F. Airport Activities. The Concessionaire shall provide a management representative to participate in Airport organized meetings designed to communicate information regarding events and activities affecting the operation of the Airport, as well as to meet with any consultant, planner, or employee of State identified by State to discuss and review matters pertaining to the Airport or Concession and Premises activities. The Concessionaire shall

actively participate in the Airport's Concessionaires Committee and other similar groups established at the Airport which are organized to support Airport concessionaires in understanding and projecting the Aloha Spirit and Hawaiian hospitality, and giving quality customer service to air travelers, visitors, and residents, and encouraging participation in events and activities promoted or sponsored by these organizations and as specified in this Article X. (Concession Operation) hereof.

G. Use of Premises and/or Consolidated Facility in Compliance with Laws.

1. No impact to insurance. Concessionaire shall not use or occupy or permit the Premises and/or Consolidated Facility to be used or occupied, or do or permit anything to be done in or on the Premises and/or Consolidated Facility, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises and/or Consolidated Facility, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Concessionaire under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient, and normal operations of the Airport.

2. No violation of laws. Concessionaire shall not use or occupy the Premises and/or Consolidated Facility, or permit the Premises and/or Consolidated Facility to be used or occupied, in whole or in part, in a manner which may violate, and Concessionaire shall at all times comply with, any and all present and future, ordinary and extraordinary, foreseen and unforeseen, laws, statutes, rules, regulations, directives, ordinances, or requirements of any federal, state, or municipal governments or of any other governmental, public, or quasi-public authorities now existing or hereafter created (sometime hereinafter collectively, "**Laws**"), to the extent such governments or authorities have jurisdiction over the Premises and/or Consolidated Facility, whether or not the State also is liable for compliance.

3. Contest validity of laws. Concessionaire may, in good faith (and whenever necessary, in the name of, but without expense to, the State), and after having secured the State to its reasonable satisfaction by cash or by a surety company bond in an amount, from a company, and in form and substance reasonably satisfactory to the State, against loss or damage if the State shall be exposed to any as the result thereof, contest the validity of any such Laws and, pending the determination of such contest, may postpone compliance therewith, except that Concessionaire shall not so postpone compliance therewith as to subject the State to the risk of any fine or penalty, loss of any permit or license, adverse impact on the Airport or Airport operations, or prosecution for a crime, or to cause the Premises and/or Consolidated Facility or any part thereof to be condemned or to be foreclosed upon.

H. Commencement of Operations. Concessionaire shall (i) promptly take possession of the Premises, and commence the construction of the Concessionaire Improvements therein, upon the date on which the State authorizes Concessionaire to access the Consolidated Facility for the purposes set forth above, and (ii) commence operating the Premises, upon Concessionaire Improvement Substantial Completion, subject to force majeure delays.

I. Easement for Utilities. If reasonably requested by Concessionaire and the applicable utility company, the State shall grant to such utility company non-exclusive easements

on and under the Consolidated Facility Property and/or Premises for location of facilities to provide natural gas, electricity, or communications service required by Concessionaire in order to provide required utility service to the Premises, at such locations on State property as may be mutually agreed to by the State and Concessionaire; provided (a) Concessionaire shall pay the State's costs and expenses in connection with granting such easement, or required of grantor under such easement, and (b) the granting of such easements is permitted by the Bond Ordinance or other future ordinance.

J. Common Use Transportation System.

1. Concessionaire to operate and utilize. Concessionaire agrees that, commencing on the Payment Commencement Date (or such other date as may be directed by the State) and continuing for the remainder of the Term hereof, Concessionaire shall transport all rental car customers of Concessionaire between the Consolidated Facility and the passenger terminals exclusively by use of the common use transportation system, which system shall be operated by the RAC Consortium, and which system shall use the common buses or other vehicle designated by the State from time to time to serve the Consolidated Facility and the passenger terminals. Concessionaire shall fully cooperate with the State's efforts to impose this requirement on all off-Airport rental car companies.

2. [Reserved]

3. Specific performance. Concessionaire acknowledges and agrees that the prohibition on terminal curbside shuttle, pick-up, and drop-off operations other than through the common use transportation system is a critical element of the operations within the Airport. The failure of Concessionaire to comply with such prohibition vitally affects the safety and needs of the traveling public and the Airport and constitutes a material breach of this Agreement for which money damages are insufficient. Therefore, Concessionaire specifically acknowledges and agrees that the State shall, without limitation of its other rights and remedies, be entitled to seek an order of specific performance of the provisions of this Article X.J (Common Use Transportation System) issued by a court of competent jurisdiction in connection with any violation by Concessionaire of the terms and provisions hereof.

K. Restrictions on Concessionaire. Except as may otherwise be expressly provided in this Agreement, Concessionaire shall not, without the prior written consent of the State in each instance, which consent may be granted or withheld in the State's sole and absolute discretion:

1. Advertising. Place, construct, or maintain in or about the Premises and/or Consolidated Facility Property any advertisement media, including, without limitation, searchlights, flashing lights, loudspeakers, phonographs, televisions, radios, antennas, or other similar media or device;

2. Solicit. Solicit business or distribute handbills or other advertising or promotional materials in, on, or about the Premises and/or Consolidated Facility, the common use transportation system, or other buildings and structures in the area of the Airport, except that Concessionaire shall be entitled to engage in radio, television, and newspaper advertising as is customarily used for Concessionaire's type of business;

3. Animals. Keep or permit animals of any kind in or about the Premises and/or Consolidated Facility except dogs trained to assist sight-impaired or other disabled persons;

4. Sleeping quarters. Use or permit any portion of the Premises and/or Consolidated Facility to be used as living or sleeping quarters;

5. Selling. Sell, distribute, display, or offer for sale any item which, in the State's judgment, is inconsistent with the quality of operation of the Airport, or which may tend to detract from the image of the Airport;

6. Reflect unfavorably. Do or permit to be done anything in connection with Concessionaire's occupancy or advertising which, in the State's judgment, may reflect unfavorably on the State or the Airport, or may confuse or mislead the public as to any apparent partnership or similar relationship between the State and Concessionaire. Without limiting the foregoing, Concessionaire shall not have or acquire any property right or interest in the name "Honolulu International Airport" or any variation thereof;

7. Auctions. Except as expressly provided to the contrary in this Agreement, conduct any auction (except with the prior written consent of the State at the State's sole and absolute discretion), fire, bankruptcy, distress, clearance, or going-out-of-business sale on the Premises and/or Consolidated Facility or post any sign or advertisement regarding such activity in or about the Premises and/or Consolidated Facility;

8. No impairment. Use or permit the Premises and/or Consolidated Facility to be used in any manner or permit anything to be brought into or kept therein which would (a) violate the certificate of occupancy for the Premises and/or Consolidated Facility, (b) cause structural injury to any part of the Premises and/or Consolidated Facility, (c) impair or interfere with the proper operation and maintenance of improvements in the Airport, or (d) violate any of Concessionaire's other obligations under this Agreement or the obligations of any On-Airport Rental Car Company under such party's ConRac Agreement;

9. No artwork. Permit a work of visual art, as defined in 17 U.S.C. § 107, to be installed in the Premises and/or Consolidated Facility; or

10. No unauthorized parking. Permit parking on the Premises and/or Consolidated Facility of vehicles of persons (other than employees, agents, licensees, and invitees of Concessionaire at the Premises and/or Consolidated Facility), with no public parking being allowed.

#### ARTICLE XI. COMPLIANCE WITH LAWS

A. Generally. The Concessionaire shall, at all times during the term of this Agreement, comply with all applicable laws, statutes, rules, regulations, orders, and ordinances of all governmental authorities, including, without limitation, the United States of America, State of Hawaii, and the County, 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 Airport.

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

2. Contest. Notwithstanding the foregoing provisions, 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 Concessionaire's operation. The fact that 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 Concessionaire's obligation to pay the required rent and fees set forth in Article V. (Concessionaire Payments) hereof.

B. Compliance with Americans with Disabilities Act.

1. Concessionaire's warranty. The Concessionaire warrants that it shall conduct its Concession operation in accordance with the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. (hereinafter, collectively, the "**ADA**"), including, without limitation, modifying Concessionaire's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons.

2. Accessible services. The 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. The Concessionaire shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, State of Hawaii, or County disability rights legislation. The Concessionaire agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Concessionaire, its officers, employees, agents, servants, or assigns shall constitute a material breach of this Agreement.

3. Concessionaire's indemnification. Without limiting any other provision herein, the Concessionaire shall defend, indemnify, and keep and hold harmless State, its officers and employees, 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 resulting or arising from Concessionaire's failure to comply with Concessionaire's obligations hereunder with respect to the ADA.

C. Airport Performance. The Concessionaire shall comply with any and all of the performance requirements covering the airports of State and all applicable performance access procedures, rules, or regulations prescribed by State and/or the TSA.

1. Performance agreements. The Concessionaire shall enter into any performance agreements with State that may be required by State or the TSA for performance

purposes covering the airports of State, and said agreements shall become part of this Agreement and the covenants, terms, and conditions herein, although executed separately.

2. Failure to prevent violations. The Concessionaire accepts liability and responsibility (a) for Concessionaire's failure to comply with any Airport performance requirements and applicable performance access procedures, rules, or regulations prescribed by State and/or the TSA and (b) for any reimbursement to State for State making direct payment to any citing authority for any fines or penalties of any and all airport performance violations by Concessionaire, its contractors, agents, representatives, guests, or invitees. Failure to observe this performance requirement shall be cause for the assessment of additional charges under this Agreement and/or termination of this Agreement by State.

## ARTICLE XII. BOND FINANCING

Pursuant to the Bond Statute, the State anticipates the issuance of certain \_\_\_\_\_ Bonds, in connection with the design and construction of the Consolidated Facility and the Consolidated Facility Improvements hereunder. Such Bonds are being issued pursuant to and in accordance with the Master Indenture, together with any and all related documents executed in connection therewith, and shall be and remain subject to the applicable terms, conditions, and provisions thereof, as the same may be amended or modified from time to time.

## ARTICLE XIII. TERMINATION BY STATE

A. Events of Breach or Violation. The Concessionaire shall be in breach or violation of this Agreement, and State will have the right to terminate this Agreement, if any one or more of the following events (each an “**Event of Default**”) occur:

1. Transfer of interest. When, without the prior written approval or consent of State, any interest of Concessionaire under this Agreement is transferred or assigned, whether voluntarily or involuntarily, by reason of assignment, sublease of Premises 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 Concessionaire, without the prior written approval or consent of State, is changed by inter vivos stock transfer to one or more individuals or entities who are not stockholders at the inception of this Agreement, or if 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 this Agreement; or

3. Partnership dissolution. If 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 one 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 takes possession of all or substantially all of the property of Concessionaire, and such possession or control continues in effect for a period of at least fifteen (15) days without being contested by Concessionaire in good faith by proper legal proceedings within said 15-day period; or

5. Abandonment. When Concessionaire voluntarily abandons, deserts, or vacates the Premises or a significant portion of 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, Concessionaire is 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 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 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 Concessionaire's interest in the Premises because of any act or omission of Concessionaire, and said attachment, judgment, lien, or encumbrance is not discharged or contested by Concessionaire in good faith by proper legal proceedings within thirty (30) days; or

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

11. Failure to pay taxes. When Concessionaire fails to duly and punctually make payments due to any agency of the State of Hawaii or any political subdivision (county) of the State of Hawaii, including, but not limited to, payments for any permit, license, or this Agreement, 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 Concessionaire fails to provide, maintain, and upgrade, as necessary, the quality of Concession merchandise or services to the satisfaction of State, as required by Article X. (Concession Operation) hereof, within fifteen (15) days from and after receipt of written notice from State to correct or cure the condition objected to; or

13. Failure to perform. When Concessionaire fails to keep, perform, and observe each and every other agreement, promise, covenant, term, and condition set forth in this 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 Concessionaire's receipt of a written notice from State of such breach or violation by personal service or registered mail or certified mail to Concessionaire, except where fulfillment of Concessionaire's obligation requires activity over a period of time, and 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 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 of Hawaii 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 Concessionaire and such lien is not removed or enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days; or

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

17. Default under other agreement(s). If Concessionaire is in default under any other agreement which Concessionaire has with State including, but not limited to, any other concession or lease agreement with State.

B. Default and Termination. In the event of any breach or violation due to the occurrence of any of the events enumerated in Article XIII.A (Events of Breach or Violation) hereof, 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 Concessionaire.

1. Failure to correct violation. If Concessionaire fails to correct the violation(s) contained in the notice of default to the satisfaction of State, State may, without prejudice to any other remedy, elect to:

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

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

2. Prohibition from bidding. In the event that this Agreement is terminated by State because of a breach or violation as set forth in Article XIII. (Termination by State) hereof, Concessionaire will not be allowed to bid on or enter into any other concession

agreement, facility lease, or other contract or lease offered by State, 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 Letter of Termination and Notice to Vacate, as provided in Article XIII.B.1.b (Termination letter) hereof, the right to re-enter the Premises and 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 Concessionaire under this Agreement, and shall in no event constitute an acceptance of surrender.

D. Concessionaire's Rights Cease. Upon such termination by State, all rights, powers, and privileges of Concessionaire granted hereunder shall cease. Unless otherwise stated herein, Concessionaire shall immediately vacate the Premises and Concessionaire shall have no claim of any kind whatsoever against State, by reason of such termination, or by reason of any act by State incidental or related thereto.

E. Survival of Concessionaire's Obligations.

1. Concessionaire's obligations remain. In the event that this Agreement is terminated by State, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement as if there had been no termination.

2. Rent and Fees remain due. Subject to State's obligation to mitigate damages, the amount of the rent, fees and charges hereunder shall become due and payable to State to the same extent, at the same time, and in the same manner as if no termination 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. Fee amount subsequent to termination. The amount of damages due to State by Concessionaire for the period of time subsequent to termination shall be subject to an offset for any fees and charges received by State during the remaining term of this Agreement (as if no termination had taken place) from a succeeding operator of the Concession, and shall be determined as follows:

a. Ground Rent. With respect to the Concessionaire's Ground Rent obligation, the cumulative total thereof owed by Concessionaire less the amount paid by Concessionaire prior to the effective date of termination;

b. Facility Rent. With respect to the Concessionaire's Facility Rent obligation, the cumulative total thereof owed by Concessionaire less the amount paid by Concessionaire prior to the effective date of termination; or

c. MAG. With respect to Concessionaire's MAG obligation, the cumulative total thereof owed by Concessionaire less the amount paid by Concessionaire prior to the effective date of termination; or

d. Percentage Fee. With respect to Concessionaire's percentage of annual Gross Receipts, the percentage of Gross Receipts, (if in excess of said MAG,) to the extent that such Gross Receipts would have been received by Concessionaire during the balance of the term of this Agreement. For the purpose of computation hereunder, the amount of Gross Receipts shall be derived by dividing Concessionaire's total Gross Receipts during the twelve (12) months immediately preceding termination by three hundred sixty-five (365) days and then multiplying the result by the number of days in the balance of the term hereof.

e. No effect on State's rights. The State and Concessionaire agree that the damages specified above shall not affect or be construed to affect State's right to such damages in the event of termination where Concessionaire has not received any actual Gross Receipts under this Agreement.

F. Additional Rights of State. The State, upon termination of this Agreement, may occupy the Premises and will 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 Agreement. The State will 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 any uses and users including uses and purposes similar to those granted under this Agreement without affecting, altering, or diminishing the obligations of Concessionaire hereunder.

G. Termination before Commencement. If any of the events enumerated in Article XIII.A (Events of Breach or Violation) hereof occurs prior to the commencement of the term of this Agreement, Concessionaire shall not be entitled to enter into possession of the Premises or any portion thereof, and State, upon the occurrence of any such event, or at any time thereafter during the continuance thereof, with twenty-four (24) hours' notice to Concessionaire, may cancel or terminate the interest of Concessionaire under this Agreement, such cancellation or termination to be effective upon the date specified in such notice.

#### ARTICLE XIV. CONDEMNATION

A. Procedure. In the event that at any time during the Term of this Agreement, all or a portion of the Premises, or all access thereto, or Concessionaire's entire leasehold interest in all or a portion of the Premises pursuant to this Agreement, is taken or damaged by the exercise of power of eminent domain by any condemning authority ("**Condemnation Proceedings**"), then (whether or not this Agreement terminates by operation of law upon the exercise of such power), the share of any award resulting to the State or Concessionaire for the taking of their respective interests in and to the Premises or damages resulting to their respective interests by reason of the exercise of such power of eminent domain, shall be separately determined by the court having jurisdiction, not by the jury, and separate judgments with respect to such damages to the State and Concessionaire, respectively, and to each of their respective interests, shall thereafter be

made and entered. The State and Concessionaire shall make such requests and petitions to the court as are consistent with the foregoing procedure.

B. Total Taking. In the event that: (a) all of the Premises are sought to be taken by the exercise of the power of eminent domain; or (b) under the threat of condemnation, all of the Premises are conveyed to a condemning authority pursuant to an agreement between the State, Concessionaire, and such condemning authority; or (c) a portion of the Premises are taken by eminent domain or conveyed as aforesaid under threat of condemnation and the remainder of the Premises are not capable of being restored to a condition as may be reasonably required to fulfill the intent and purpose of this Agreement; or (d) all of the Premises are taken by the exercise of the power of eminent domain for occupancy by a condemning authority for a temporary period and such temporary period extends beyond the date of the termination of this Agreement; this Agreement shall terminate effective upon the date that the condemning authority legally acquires the right of possession to the Premises. In the event of termination of this Agreement as aforesaid, the Concession Fee, the Ground Rent, the Facility Rent, Impositions, and any other sum or sums of money and other charge whatsoever provided in this Agreement to be paid by Concessionaire shall be paid by Concessionaire up to the date of such termination. The amount of compensation and damages resulting to the State and Concessionaire and respectively and to their respective interests in and to the Premises and in and to and in connection with this Agreement in the event of termination of this Agreement as aforesaid shall be determined in accordance with the provisions of this Article XIV (Condemnation) hereof.

In the event of a taking of the Premises described in this Article XIV (Condemnation) and the termination of the Concession and this Agreement as aforesaid, the entire award shall be disbursed as follows:

1. The State shall first be paid that portion of the award which represents the value of the State's interest in the Premises and the Consolidated Facility Improvements.

2. The balance of any such award shall then be paid to Concessionaire after first deducting the following items a. and b.:

a. The amount of the Concession Fee, the Ground Rent, the Facility Rent, and any other amount due and owing up to the date the condemning authority legally takes possession of the Premises, which shall be paid to the State;

b. All Impositions which under the terms of this Agreement are provided to be paid by Concessionaire, which shall either be paid to the State to be used for the intended purpose or shall be applied directly to the payment of such Impositions.

C. Partial Taking. In the event that less than the entire Premises and access thereto or Concessionaire's leasehold interest in less than the entire Premises and access thereto is taken permanently by the exercise of the power of eminent domain, and if the remainder of the Premises are capable of being restored to a condition reasonably required to fulfill the intent and purpose of this Agreement, then in such event, this Agreement shall not terminate but shall remain in full force and effect and Concessionaire shall continue to perform and observe all of the obligations of Concessionaire hereunder, including the obligations to pay the Concession

Fee, the Ground Rent, the Facility Rent, and Impositions as provided herein, and shall restore the Premises to a condition required to fulfill the interest and purpose of this Agreement. However, effective as of the date the condemning authority legally acquires the right of possession to such portion of the Premises so taken and continuing thereafter during the remainder of the Term, the Ground Rent payable by Concessionaire during the remainder of the Term of this Agreement shall be adjusted solely by reducing the area of the Premises used in calculating Ground Rent by that portion of the land area of the Premises used in calculating Ground Rent which was taken by Condemnation Proceedings. The value of the Concessionaire's interest shall not include any money to pay Ground Rent in the future (and any such amount allocated to Concessionaire shall be paid to the State).

In the event of such a partial taking, the State shall first be paid that portion of the award which represents the value of its interest in and to the Premises as may have been taken as a result of such partial taking. Next, Concessionaire shall first be paid an amount of any award in trust sufficient to undertake the complete restoration of the Premises as may be necessary as a result of such partial taking, after deducting therefrom and paying to or applying for the benefit of the State the amounts set forth in Article XIV.A.2.a. and XIV.A.2.b hereof. Concessionaire shall be entitled to receive and retain any balance remaining of such award made as a result of such partial taking. If the proceeds are insufficient to complete restoration of the Premises, Concessionaire shall nevertheless perform such restoration at its cost, in accordance with the provisions of Article VI. (Construction, Maintenance and Repair) of this Agreement.

D. Temporary Takings. If the temporary use of the whole or any part of the Premises shall be taken by Condemnation Proceedings as hereinabove referred to for a period which does not extend beyond the Term of this Agreement, this Agreement shall not terminate by reason thereof and Concessionaire shall continue to pay in full the Concession Fee, the Ground Rent, the Facility Rent, Impositions, and other charges herein provided to be paid or assumed or reimbursed by Concessionaire, and, except only to the extent that Concessionaire is prevented from so doing by reason of any order of the condemning authority, Concessionaire shall continue to perform and observe all of the covenants, conditions, and obligations hereof which are herein provided to be observed or performed by Concessionaire, all to the same extent and with the same force and effect as if such temporary use or taking had not occurred. Any award for such temporary taking, whether paid or by way of damages, rent, or otherwise shall be received, held and disbursed in the manner following:

1. An amount equal to the sum of (x) the Ground Rent for the entire period of such temporary use or taking, plus (y) the estimated amount of the Facility Rent and Impositions for such period (computed on the basis of the most recently ascertainable information) shall be deposited with an escrow trustee acceptable to the State and shall be from time to time applied to the payment of Ground Rent, Facility Rent, and Impositions as the same from time to time become due and payable;

2. The amount jointly agreed upon by the State and Concessionaire as the estimated amount required to be expended upon the termination of such temporary use or occupancy to restore the Premises and Concessionaire Improvements as nearly as may be reasonably possible to the condition in which same was immediately prior to such taking, shall

be reserved and shall be used and available for use for such purposes (and if no agreement is reached, then the State may deduct and retain an amount reasonably estimated by the State); and

3. The remainder shall be paid over to and become the property of Concessionaire; however, the amount of any fee or rent or other charges then owing by Concessionaire to the State under the provisions of this Agreement, together with all unpaid Impositions, and the amount so deducted shall be paid to or upon the order of the State.

E. Taking Upon Possession. The Premises or any part thereof shall be deemed to be taken by Condemnation proceedings within the meaning of the foregoing provisions upon the transfer of possession thereof to the condemning authority; provided, however, any valuation of the State's or Concessionaire's interests shall be as of the date of the filing of Condemnation proceedings.

F. No Restriction. Nothing in this Agreement or the existence of this Agreement shall be construed to restrict or in any way interfere with the exercise of eminent domain by the County. Notwithstanding anything herein to the contrary, the State agrees that it shall not voluntarily commence or seek commencement of Condemnation proceedings against the Premises except to the extent that the State, in connection with such Condemnation proceedings (i) reimburses Concessionaire for the then-unamortized costs and expenses of any and all Concessionaire Improvements constructed in the Premises, or any portion thereof, by Concessionaire and each such On-Airport Rental Car Company (with such Concessionaire Improvements being amortized on a straight-line basis over a period of thirty (30) years at a rate equivalent to the Discount Rate, and (ii) makes available to Concessionaire reasonable alternate space for the provision of rental car services by Concessionaire to customers at the Airport.

G. Taking of Concessionaire's Entire Leasehold Interest. In the event of a taking of Concessionaire's entire leasehold interest hereunder, whether or not there is a taking of the underlying fee interest, the value of such leasehold interest shall be the difference between the fair cash rental value of the Premises as improved and the rent reserved under this Agreement (including Ground Rent and Facility Rent), and including payment of Impositions, discounted for the present value at the Discount Rate.

#### ARTICLE XV. WAIVER

A. State Waiver. No acceptance by State of 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 Concessionaire will be deemed a waiver of any right on the part of State to terminate this 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 Agreement or to exercise any right, power, or remedy consequent upon a breach hereof will constitute a waiver of any such breach or of such term, covenant, or condition. A waiver or assent by State, express or implied, of or to any breach or default of Concessionaire, in the performance of any of the covenants, provisions, requirements, stipulations, terms, or conditions of this Agreement will 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 State contained in this 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 XVI. TERMINATION BY CONCESSIONAIRE

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

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

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

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

D. Breach. The breach by State of, or its failure to perform, any of the material covenants or agreements contained in this Agreement, and either the failure of 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 State's obligations requires activity over a period of time, the failure of 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 State's control.

E. Damage. The damage or destruction of the Premises of the nature and to the extent described in Article IX. (Damage or Destruction) of this Agreement.

#### ARTICLE XVII. SUSPENSION OR ABATEMENT

Upon the occurrence or maturity of any of the termination events contained in Article XVI (Termination by Concessionaire) hereof, Concessionaire may, in lieu of termination and upon prompt written notice to State, either suspend this Agreement, or in the alternative, request a just abatement of such portion of the Concession Fee obligations of Concessionaire hereunder, as may be mutually agreed upon, in writing, by and between State and 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 Agreement.

#### ARTICLE XVIII. SUBORDINATION

A. Joint Use. This Agreement shall be subordinate in all respects to the provisions of any existing or future agreements between State and the United States government, or any agency thereof, relative to the aircraft operating areas of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. In the event of any such inconsistency between such agreement(s) and the operation of the Concession, this Agreement or the particular terms and conditions affected hereby shall be suspended or terminated without State being liable for any damages.

This Agreement shall be subordinate in all respects to the provisions of any existing or future Joint-Use Agreement between 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 Agreement and any existing or future Joint-Use Agreement, this Agreement or the particular terms and conditions affected hereby shall be suspended or terminated without State being liable for any damages.

B. National Emergency. During times of war, whether declared by Congress or not, or national emergency, State will 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 Airport. In the event any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the United States government, shall be suspended without State being liable for any damages.

C. Rights of Concessionaire. Nothing in this Article XVIII (Subordination) hereof shall detract from or limit, nor be construed to detract from or limit, the rights of Concessionaire set forth in Articles XVI (Termination by Concessionaire) and XVII (Suspension or Abatement) hereof, to seek damages or compensation from other than 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 Concessionaire under this Agreement.

#### ARTICLE XIX. CONCESSION BOND

A. Requirements. Within thirty (30) days after award of this Agreement or prior to the Effective Date of this Agreement, whichever first occurs, and throughout the term of this Agreement and including no less than ninety (90) days after the expiration or sooner termination of this Agreement, Concessionaire shall deliver to State, and keep and maintain in force and effect at all times, a concession bond acceptable to State in accordance with the terms specified in this Article XIX (Concession Bond) in an amount equal to three (3) months of the MAG for the appropriate year of this Agreement (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 Hawaii (hereinafter, the “**Surety**”);

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

3. State Attorney’s approval. Be in a form approved by an authorized representative of the Department of the Attorney General of the State of Hawaii;

4. Guarantee full performance. Require the Surety to guarantee to State that 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 Agreement that Concessionaire is required to perform;

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

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

B. Surety. If State, in its sole discretion, permits 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 Hawaii, such sureties must meet the requirements of all applicable State 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 this Agreement plus ninety (90) days, Concessionaire, at least sixty (60) days prior to the expiration date of the then-active Concession Bond, shall submit to State another Concession Bond providing the coverage required herein beyond the expiration date of the then-active Concession Bond.

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

E. Agreement Default. In the event that a replacement Concession Bond or another Concession Bond in the required amount and meeting the required terms is not received by State prior to the effective date and time of the bond cancellation or expiration, as stated, Concessionaire shall be deemed in default of this Agreement, regardless of whether or not a

notice of breach or default or time to correct breach or default has been provided to Concessionaire by State, and the full value shown on the face of the Concession Bond and an additional charge of Two Hundred and Fifty Dollars (\$250.00) per day that no Concession Bond coverage is in effect shall be immediately payable by Concessionaire to 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 Agreement and shall give State the right to assess the additional charge and/or terminate this Agreement pursuant to Article V.N. (Additional Charges) and Article XIII. (Termination by State), respectively, hereof.

## ARTICLE XX. SUBLEASE AND ASSIGNMENT OF PREMISES

A. General. Except as otherwise set forth in this Article XX (Sublease and Assignment of Premises), Concessionaire shall not, without the prior written consent of the State in each instance: (a) assign, transfer, mortgage, pledge, hypothecate, or encumber, or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it (including any sublease or easement); (b) allow to exist or occur any transfer of or lien upon the Premises, this Agreement, or Concessionaire's interest herein by operation of law; (c) sublet the Premises or any part thereof; or (d) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Concessionaire. The requirements of this Article XX (Sublease and Assignment of Premises) shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Concessionaire under any bankruptcy, insolvency or reorganization proceedings. The State may withhold its consent to any of the acts described in Article XX.A.(a) through (d) herein in its sole and absolute discretion; provided however, the State agrees not to withhold its consent unreasonably to a sublease or assignment to a Related Party (as defined in Article XX.B (Notice and Consent) hereof on the terms set forth in said Article XX.B. (Notice and Consent). Concessionaire shall not grant a leasehold mortgage without the State's prior written consent, which consent may be withheld or conditioned in the State's sole and absolute discretion.

B. Notice and Consent. The term "**Related Party**" means: a person or entity controlling, controlled by, or under common control of, or in partnership with common control with, the original named Concessionaire under this Agreement, or which acquires all of the assets of the original Concessionaire, or which results from a merger or consolidation with the original Concessionaire. As used in the term "Related Party", "**control**" means ownership of the (a) managing partner interests in a partnership, (b) managing member interests in a limited liability company, or (c) more than fifty percent (50%) of the voting stock in a corporation. Concessionaire shall notify the State in writing ("**Notice of Subletting or Assignment**") of the proposed commencement date of the assignment or subletting, and shall include the name and address of the proposed sub-Concessionaire or assignee, a true and complete copy of the proposed sublease or assignment, and all related documents, and a financial statement of the sub-

Concessionaire or assignee, disclosures and information required by State as applicable to its form of business organization, representation and warranties and such other information as may be required by the State. Concessionaire agrees that the withholding by the State of its consent will be deemed reasonable if: (i) the proposed assignee or sub-concessionaire is not sufficiently financially responsible, experienced, and capable in the State's sole judgment to operate and use the Premises in accordance with the terms and conditions of this Agreement and in a manner required hereunder; (ii) the use of the Premises by the proposed assignee or sub-concessionaire would, in the State's judgment, adversely affect the operation of the Airport or the Premises; (iii) the proposed assignee or sub-concessionaire is in default under any agreement with the State; (iv) the proposed assignee or sub-concessionaire would not provide the same employment opportunities at the Premises, would not conduct aviation related business, or would not generate comparable economic benefits to the State or the Airport; (v) there is then in existence an Event of Default, or there exists a set of circumstances which, with the giving of notice or the passage of time, will constitute an Event of Default; (vi) any of the terms or provisions of the assignment or transfer submitted to the State are not the same as given the State in the Notice of Subletting or Assignment; or (vii) if, in the State's sole judgment and discretion, the assignee or sub-concessionaire is not capable of performing or is not sufficiently qualified to perform Concessionaire's obligations under this Agreement. Concessionaire may not assign its right, title and interest under this Agreement prior to Concessionaire Improvement Substantial Completion. Following approval by the State of any sublease or assignment, Concessionaire shall deliver the final form of sublease or instrument of assignment to the State no later than thirty (30) days prior to the proposed commencement of such sublease or assignment. Without limiting the foregoing, the provisions of State's sublease and assignment of lease policies and standards set forth in **Exhibit K** attached hereto and made a part hereof shall apply to subleases and assignments.

C. **Effect of Consent.** Consent by the State to any assignment or sublease shall not operate to relieve, release, or discharge the Concessionaire making such assignment or sublease of or from any obligations, whether past, present, or future, under this Agreement, and such Concessionaire shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Upon any such permitted assignment, the term "Concessionaire" as used in this Agreement shall refer to the assignee holding the interest and leasehold estate under this Agreement (except as otherwise specifically provided herein), provided that the assignor Concessionaire shall remain jointly and severally liable for the obligations of Concessionaire under this Agreement. Consent by the State in any one instance shall not be deemed to be a consent to or relieve Concessionaire from obtaining the State's consent to any subsequent assignment or subletting. Consent by the State shall be conditioned upon agreement by the sub-concessionaire or sub-concessionaires or assignees to comply with and be bound by all of terms, covenants, conditions, provisions, and agreements of this Agreement to the extent of the space sublet or assigned, and an agreement that the State shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting the State's interests and Concessionaire shall deliver to the State within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Concessionaire and assignee. Concessionaire shall pay all of the State's costs, charges, and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Concessionaire.

D. Changes in Ownership Interest in Concessionaire. Concessionaire acknowledges that the State is entering into this Agreement with Concessionaire based upon the information contained in its disclosure of direct and indirect ownership interests in Concessionaire furnished prior to execution of this Agreement or from time to time thereafter. If at any time there is a change in the direct or indirect ownership interests in Concessionaire which would change the information set forth in the prior disclosure statement, Concessionaire shall furnish the State an updated disclosure statement. At the State's election, in addition to any rights it may otherwise have under this Article XX (Sublease and Assignment of Premises), upon any such change in ownership interest, the State may treat such change as an assignment of this Agreement by Concessionaire subject to the State's approval.

## ARTICLE XXI. OPERATING AGREEMENT

A. Execution. Prior to or concurrently with the execution of this Agreement, Concessionaire and the other On-Airport Rental Car Companies then (or that will be) operating and occupying a portion or portions of the Consolidated Facility from time to time pursuant to a valid ConRac Agreement will enter into an operating agreement (the "**Operating Agreement**") establishing a consortium of the On-Airport Rental Car Companies (the "**RAC Consortium**") which provides, among other things, for (i) the maintenance, repair, and replacement of the Consolidated Facility; (ii) the operation, maintenance, repair, and replacement of the QTA pursuant to, and in accordance with, the terms and provisions of this Agreement and the other ConRac Agreements then (or to be) in effect; (iii) the hiring of a property manager, reasonably acceptable to the State, for the Consolidated Facility; (iv) the operation and maintenance of the common use transportation system and (v) the allocation and assumption of joint and several liability for rent and other sums due and payable by Concessionaire hereunder and rent and other sums due and payable by the other On-Airport Rental Car Companies then (or that will be) operating and occupying a portion or portions of the Consolidated Facility from time to time pursuant to a valid ConRac Agreement under such agreements.

B. Acceptable to the State. The Operating Agreement shall be reasonably acceptable to the State in form and substance and shall remain in full force and effect, and shall not dissolve or be terminated, during the Term. The Operating Agreement shall provide for execution of additional agreements or other operative documents to provide for the parties' rights and obligations relating to Concessionaire and the Premises. The Operating Agreement shall provide for the circumstance when a new On-Airport Rental Car Company replaces an existing On-Airport Rental Car Company when the existing On-Airport Rental Car Company's ConRac Agreement is terminated due to the new On-Airport Rental Car Company outbidding the existing one with respect to the minimum annual guaranteed fee under a ConRac Agreement, including admission of the new On-Airport Rental Car Company, withdrawal of the displaced On-Airport Rental Car Company, and a possible requirement that the new On-Airport Rental Car Company pay to the displaced On-Airport Rental Car Company the unamortized costs of improvements to the Premises made by the displaced On-Airport Rental Car Company, less costs of removal of the displaced On-Airport Rental Car Company's proprietary trade fixtures. Further, the Operating Agreement shall provide for the circumstance when, following a termination of a ConRac Agreement due to default by the On-Airport Rental Car Company thereunder, the State either replaces the On-Airport Rental Car Company with a new On-Airport Rental Car Company

by entering into a new ConRac Agreement or, until replacement, permits the terminated On-Airport Rental Car Company's spaces and areas to be re-allocated among the remaining On-Airport Rental Car Companies in a manner approved by the State. The Operating Agreement shall also provide for the circumstance where the State, at its sole option, may require the addition of another On-Airport Rental Car Company to the RAC Consortium from time to time. Once an On-Airport Rental Car Company's ConRac Agreement is terminated, State shall not permit it to occupy any portion of the Consolidated Facility.

C. Assignment of right. As security for Concessionaire's obligation to pay rent with respect to the Premises, Concessionaire hereby assigns to the State its right to receive amounts paid relating to occupancy, construction, maintenance, and operation of the Premises and/or the QTA ("**Revenues**") from the On-Airport Rental Car Companies under the Operating Agreement, including all extensions, amendments, or replacements of the Operating Agreement, together with all rents, income, issues, and profits now due or which may hereafter become due under the Operating Agreement, and together with any guaranties of obligations relating to the Premises, the QTA, or the Operating Agreement; provided, however, that the rents, income, issues, and profits are assigned only up to the amount of rent and other sums payable hereunder. Concessionaire agrees it will not, without the State's prior written consent: transfer, assign, or grant a performance interest in the Revenues under the Operating Agreement (provided that State may permit grant of a security interest in certain contract rights under the Operating Agreement to a trustee or any other person first approved by the State); provide for any cross-default between the Operating Agreement and any other agreement between Concessionaire and On-Airport Rental Car Companies; permit a termination of the Operating Agreement, except as expressly provided in the Operating Agreement; collect Revenues more than one (1) month in advance (except for the initial investment in the Operating Agreement); evict or dispossess any On-Airport Rental Car Company under the Operating Agreement; waive, cancel, release, modify, excuse, discount, set off, compromise, or discharge the On-Airport Rental Car Company under the Operating Agreement from any obligations under the Operating Agreement; amend or extend the Operating Agreement; or enter into any collateral agreement with the On-Airport Rental Car Companies relating to the Premises which is not included in the Operating Agreement.

D. Consistent with Agreement. The Operating Agreement shall acknowledge this Agreement, be consistent with this Agreement, and require Concessionaire and the other On-Airport Rental Car Companies to comply with the terms of this Agreement or such other ConRac Agreement. The Operating Agreement shall require the On-Airport Rental Car Companies to give notice to the State of any default by Concessionaire thereunder and provide the State with the option to elect to cure any such default within a period commensurate with any cure period given to Concessionaire under the Operating Agreement. In addition to the foregoing, the Operating Agreement shall prohibit the On-Airport Rental Car Companies from paying any amounts owed thereunder which have been assigned to the State more than thirty (30) days in advance, shall be expressly subordinated to this Agreement.

E. Prompt notification. The RAC Consortium shall promptly notify the State of any non-payment of Revenues (to the extent that the RAC Consortium has actual knowledge of any such non-payment of such Revenues) or other default by an On-Airport Rental Car Company

under the Operating Agreement or of any notice of default received by the RAC Consortium under the Operating Agreement.

F. Transfer by the State. The State shall have the right, at any time and at its sole option, to sell, transfer, or otherwise convey its right, title, and interest in and to this Agreement and/or all or any portion of the Consolidated Facility or the Premises, other than to an On-Airport Rental Car Company, an Off-Airport Rental Car Company, an affiliate of either an On-Airport Rental Car Company or an Off-Airport Rental Car Company, or a direct competitor of any On-Airport Rental Car Company, and in the event of any such sale, transfer, or conveyance by the State, the same shall operate to release the State from any future obligations and any future liability for or under any of the covenants or conditions, express or implied, herein contained in favor of Concessionaire, and in such event, and with respect to such obligations, covenants, and conditions, Concessionaire agrees to look solely to the successor in interest of the State in and to this Agreement. This Agreement shall not be affected by any such sale, conveyance or transfer.

## ARTICLE XXII. HAZARDOUS SUBSTANCES

### A. Defined Terms.

1. "**Claim**" shall mean any demand, cause of action, proceeding, or suit for damages (actual or punitive), injuries to person or property, damages to natural resources, fines, penalties, interest, or losses, or for the costs of site investigations, feasibility studies, information requests, health or risk assessments, contribution, settlement, or actions to correct, remove, remediate, respond to, clean up, prevent, mitigate, monitor, evaluate, assess, or abate the Release of a Hazardous Substance, or any other investigative, enforcement, cleanup, removal, containment, remedial, or other private or governmental or regulatory action at any time threatened, instituted, or completed pursuant to any applicable Environmental Law, or to enforce insurance, contribution, or indemnification agreements being made pursuant to a claimed violation or non-compliance with any Environmental Law against Concessionaire or against or with respect to any part of the Premises or any condition, use, or activity on the Premises (including any such action against the State), and any claim at any time threatened or made by any person against Concessionaire or against or with respect to the Premises or any condition, use, or activity on the Premises (including any such claim against the State), relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or in any way arising in connection with any Hazardous Substance or any Environmental Law.

2. "**Environmental Assessment**" shall mean a report (including all drafts thereof) of an environmental assessment of the Premises of such scope (including, but not limited to, the taking of soil borings and air and groundwater samples and other above and below ground testing) as may be recommended by a licensed consulting firm acceptable to the State and made in accordance with the recommendations of such consultant.

3. "**Environmental Damages**" shall mean all Claims, demands, liabilities (including strict liability), losses, damages, causes of action, judgment, penalties, fines, costs and expenses (including fees, costs, and expenses of attorneys (whether incurred at, before or after

any trial, proceeding, or appeal therefor, and whether or not taxable as costs), witnesses, consultants, contractors, experts ad laboratories, deposition costs, and copying and telephone charges), of any and every kind or character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable, made, incurred, suffered, brought, or imposed at any time and from time to time, whether before, on or after the Expiration Date (other than any Pre-Existing Condition) to the extent arising from one or more of the following:

a. the presence of any Hazardous Substance on the Premises on or before the Expiration Date in violation of or requiring clean-up under any Environmental Law, or any escape, seepage, leakage, spillage, emission, release, discharge, or disposal of any Hazardous Substance on or from the Premises, or the migration or release or threatened migration or release of any Hazardous Substance to, from, or through the Premises before, on, or after the Expiration Date, including, but not limited to, any matters set forth in the Existing Environmental Report (as hereinafter defined); or

b. any act, omission, event, or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport, or disposal of any Hazardous Substance which is at any time before, on, or after the Expiration Date present on the Premises; or

c. the breach of any representation, warranty, covenant, or agreement contained in this Agreement; or

d. any Claim, or the filing or imposition of any environmental lien against the Premises, because of, resulting from, in connection with, or arising out of any of the matters referred to in subsections 1 through 3 above, and including, but not limited to: (1) injury or damage to any person, property, or natural resource occurring on or off of the Premises, including, but not limited to, the cost of demolition and rebuilding of any improvements on real property; (2) the investigation or remediation of any such Hazardous Substance or violation of Environmental Law, including, but not limited to, the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring, or similar work required by any Environmental Law (including any of the same in connection with any foreclosure action or transfer in lieu thereof); (3) all liability to pay or indemnify any person or governmental authority for costs expended in connection with any of the foregoing; (4) the investigation and defense of any Claim, whether or not such Claim is ultimately defeated; and (5) the settlement of any Claim or judgment.

4. "**Environmental Law**" shall mean any Federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Substance, or the environment (including, but not limited to, ground or air or water or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. Section 6901 et seq., as amended by the



Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("**CERCLA**"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and any other local, state, or federal environmental statutes, and all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

5. "**Hazardous Substance**" shall mean any substance, whether solid, liquid, or gaseous, which is listed, defined, or regulated as a "hazardous substance," "hazardous waste", or "solid waste," or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or is a hazard to the environment or to the health or safety of persons.

6. "**On**" when used with respect to the Premises or any property adjacent to the Premises, means "on, in, under, above, or about."

7. "**Pre-Existing Condition**" shall mean the presence of any Hazardous Substance on the Premises prior to the date on which Concessionaire first enters onto the Premises and commences performance of the Concessionaire Improvements therein, as more specifically described and set forth in the Existing Environmental Report (as hereinafter defined) or the New Environmental Report (as hereinafter defined), as the case may be.

8. "**Release**" or "**Released**" shall have the meaning set forth in CERCLA, including, but not limited to, any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Substances into the environment, as "environment" is defined in CERCLA.

9. "**Response**" or "**Respond**" shall mean action taken in compliance with Environmental Laws to correct, remove, remediate, clean-up, prevent, mitigate, treat, monitor, evaluate, investigate, assess, or abate the Release of a Hazardous Substance or prevent or abate any public nuisance.

10. "**Special Waste**" shall have the meaning set forth in 415 ILCS 5/3.45, as amended from time to time.

B. Concessionaire's Obligations with Respect to Environmental Matters. During the Term: (i) Concessionaire shall at its own cost comply with all Environmental Laws; (ii) Concessionaire shall not handle, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon Hazardous Substance or authorize any of such activities on the Premises, including installation of any USTs, except as otherwise and expressly permitted herein, and in any case without prior written disclosure to the State (other than for Hazardous Substances expressly permitted herein; (iii) Concessionaire shall not take any action that would subject the Premises to permit requirements under RCRA or any other Environmental

Laws for storage, treatment, or disposal of Hazardous Substances; (iv) Concessionaire shall not dispose of Hazardous Substances in dumpsters provided by the State for Concessionaire's disposal of ordinary refuse; (v) Concessionaire shall not discharge Hazardous Substances into drains or sewers; (vi) Concessionaire shall not cause or allow the Release of any Hazardous Substances on, to or from the Premises; (vii) Concessionaire shall at its own cost arrange for the lawful transportation and off-site disposal at a properly permitted facility of all Hazardous Substances that it generates or Releases; (viii) Concessionaire keep such records and obtain such permits as may be required for Concessionaire's activities under Environmental Laws; and (ix) Concessionaire shall comply with any applicable Airport storm water pollution prevention plan and spill prevention control and countermeasures plan in effect from time to time.

1. Hazardous Substances used in fueling, washing, servicing and repairing cars. Notwithstanding the foregoing, Concessionaire may use and dispose of on the Premises those Hazardous Substances normally used in connection with fueling, washing, servicing, and repairing Automobiles, as well as cleaning products normally and customarily used in maintaining and cleaning the Premises, as part of the Concessionaires's use of the Premises so long as Concessionaire's use, storage, disposal, and transportation of such Hazardous Substances complies in all respects with all applicable Environmental Laws. Concessionaire shall establish and provide upon the request of the State written operating procedures for review and comment by the State covering the operation of fleet vehicles and the receipt, storage, and dispensing of Automobile fuel, including the operations and recordkeeping procedures applicable to fleet vehicles and the installation, maintenance, safety checks, and safety procedures applicable to storage and dispensing equipment. Concessionaire may also conduct such handling, storage, and disposal on the Premises of any Hazardous Substances which Concessionaire may lawfully transport in the ordinary course of its business operations; provided, however, that all such handling, storage, disposal, and transportation on the Premises shall comply in all respects with applicable Environmental Laws. Said procedures and equipment shall comply with the applicable laws and standards of the federal, state, and local governmental bodies having jurisdiction over said fuel and fuel dispensing procedures, equipment, or facilities.

2. Expiration date, Environmental Assessment. If any Claim is made or threatened, or upon the occurrence of the Expiration Date if requested by the State, Concessionaire will at its expense provide to the State, in each case as soon as is practicable under the circumstances, an Environmental Assessment made after the date of the State's request. Concessionaire shall select the environmental consulting firm to prepare such Environmental Assessment (which consulting firm shall be duly licensed and in good standing, and shall otherwise be reasonably acceptable to the State), will cooperate with such consulting firm making the such Environmental Assessment, and will supply to the consulting firm, from time to time and promptly on request, all information available to Concessionaire to facilitate the completion of the Environmental Assessment. Concessionaire shall use its best efforts to facilitate the State's communication with the consulting firm and, at the State's request, require that the consulting firm permit the State, in writing, to rely on its Environmental Assessment. If Concessionaire fails to furnish the State for its consideration and approval, within thirty (30) days after the State's request, with a copy of a proposed agreement with an acceptable environmental consulting firm to provide such Environmental Assessment, or if Concessionaire fails to furnish to the State such Environmental Assessment within the time hereinabove required, the State may cause any such Environmental Assessment to be made at

Concessionaire's sole expense and risk. The State hereby reserves the right to enter upon the Premises at any time and from time to time, upon reasonable notice (which may be written or oral), to make or cause to be made such Environmental Assessment. The State shall use reasonable efforts to coordinate access to the Premises with Concessionaire so as to minimize any disruption of Concessionaire's business created thereby, and shall be responsible for promptly repairing any damages to the Premises to the extent caused by the Environmental Assessment performed by or at the direction of the State. Concessionaire shall also cooperate in allowing and coordinating such access. The State may disclose any information the State ever has about the environmental condition or compliance of the Premises to persons or entities whom the State believes would use or need the information for a valid business or governmental purpose and any person to whom the State is required to disclose such information by law (including the Freedom of Information Act or similar requirements), but the State shall be under no duty to disclose any such information except as may be required by applicable law.

C. Copies of Notices. During the Term, Concessionaire shall promptly provide the State with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, State of Hawaii Department of Health, or other federal, state, or local agency or authority, or any other entity or individual, concerning (i) any Release of a Hazardous Substance on, to, or from the Premises, (ii) the imposition of any lien on the Premises, or (iii) any alleged violation of or responsibility under Environmental Laws.

D. Tests and Reports. Concessionaire shall deliver to the State, within ten (10) days after receipt by Concessionaire, any written report, citation, notice, or other writing, including, without limitation, any Environmental Assessment, having an effect on or relating to the environmental condition of Premises or relating to Concessionaire's compliance with or pursuant to any Environmental Laws. Concessionaire shall deliver to the State written reports and summaries of any substantive oral reports of any environmental consultants which impact the Premises (other than to a de minimis extent) upon Concessionaire's receipt thereof and shall immediately advise the State in writing of any Claim, any Release of a Hazardous Substance on, to, or from the Premises, or of the discovery of the existence of any Hazardous Substance on the Premises in violation of, or requiring Response under, any applicable Environmental Laws, as soon as Concessionaire first obtains knowledge thereof, including a full description of the nature and extent of the Claim or Hazardous Substance and all relevant circumstances. In addition, Concessionaire shall perform or cause to be performed a Phase I environmental assessment or other comparable environmental inspection of the Premises (the "**Final Environmental Report**"), which Final Environmental Report shall be at least substantially similar in scope to the Existing Environmental Report, at any time during the 120-day period prior to the scheduled Expiration Date hereof (or the anticipated termination hereof, if different), which Final Environmental Report shall be performed at Concessionaire's sole cost and expense. In the event that the Final Environmental Report shows any recognized environmental conditions or otherwise indicates the presence or suspected presence of any Hazardous Substances in, on, or under the Premises which were not otherwise contained or referenced in the Existing Environmental Report or the New Environmental Report, as the case may be, or were not

otherwise part of the Environmental Baseline hereunder (excepting those items which are the State's responsibility to the extent provided under Article \_\_\_\_ (\_\_\_\_) hereof), Concessionaire shall in such event also be required to remove and remediate any such recognized environmental conditions or other Hazardous Substances, as the case may be, required to be removed or remediated by, and in a manner otherwise consistent with, applicable Environmental Laws, and to perform any required restoration of the Premises in connection therewith, all in accordance with the terms and provisions of this Agreement and applicable Environmental Laws. In the event that Concessionaire fails to submit such Final Environmental Report to the State or perform any required remediation work, as the case may be, within sixty (60) days prior to the scheduled Expiration Date hereof (or the anticipated termination hereof, if different), the State shall have the right and option (but not the obligation) to perform or cause to be performed such Final Environmental Report or such required remediation work, as the case may be, at Concessionaire's sole cost and expense, in which event Concessionaire shall, in addition to its other obligations hereunder, reimburse the State for all costs and expenses of such Final Environmental Report or such required remediation work as the case may be, within thirty (30) days following the State's written invoice therefor. Notwithstanding anything to the contrary herein, Concessionaire's remediation, removal and clean-up obligations hereunder shall be limited to the applicable cleanup standard(s) allowed under Environmental Laws for sites consistent with the use of, and compatible with the current zoning of, the Premises.

E. Access and Inspection. The State shall have access to the Premises and to the books and records of Concessionaire relating to Hazardous Substances for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind, and quantity of all products, materials, and substances brought onto the Premises or made or produced thereon. The State shall have the right to enter the Premises upon reasonable prior written notice, except in an emergency, and conduct appropriate inspections or tests in order to determine Concessionaire's compliance with Environmental Laws; provided, the State shall use reasonable efforts to minimize any disruption of Concessionaire's business created thereby, and shall be responsible for promptly repairing any damages to the Premises to the extent caused by the State or the State's contractor in performing such inspections or tests. The State and its agents and representatives shall have the right to take samples, including, without limitation, (a) soil, water, and groundwater samples, in quantity sufficient for scientific analysis of all materials and substances present on the Premises, and (b) samples of products, materials or substances brought onto or made or produced on the Premises by Concessionaire or an occupant claiming by, through or under Concessionaire or otherwise present on the Premises.

F. Obligation to Respond.

1. Claim, public health effect, nuisance. If the presence of Hazardous Substances at the Premises (1) gives rise to liability or to a Claim under any Environmental Law, (2) causes a significant public health effect, or (3) creates a nuisance, Concessionaire shall promptly, without cost or expense to the State (except as expressly provided to the contrary in Article \_\_\_\_ (\_\_\_\_) hereof), take all applicable action in Response, except as otherwise provided in this Article XXII.F. Without limiting the foregoing, if at any time any Hazardous Substance is discovered to exist on the Premises in violation of or requiring clean-up under any Environmental Law and regardless of the cause, (except if resulting from a Pre-Existing Condition or migration thereof from adjacent properties as set forth in Article \_\_\_\_ (\_\_\_\_))

below), then Concessionaire shall promptly, without cost or expense to the State (and based on a scope of work and timetable first reviewed and approved by the State), Respond to and dispose of the Hazardous Substance in compliance with all applicable Environmental Laws and solely under Concessionaire's name and provide the State with satisfactory evidence thereof; and

2. Cost estimate. Before performing the work, provide the State with a cost estimate, and if requested by the State, provide to the State within ten (10) days of the State's request (or earlier time period prescribed by the State in case of emergency) a letter of credit, financial performance, or other written assurance evidencing to the State's reasonable satisfaction that all necessary funds are readily available to pay the costs and expenses of the actions required by subsection (1) above and to discharge any assessments or liens established against the Premises as a result of the presence of the Hazardous Substance on the Premises. As soon as practicable after completion of such remedial actions (but not more than thirty (30) days after completion), Concessionaire shall obtain and deliver to the State an Environmental Assessment of the Premises made after such completion, which shall state that all required remedial action as stated above has been taken and successfully completed in compliance with all Environmental Laws, and that there is no evidence or suspicion of any contamination or risk of contamination on the Premises or any adjacent property in violation of any Environmental Law, with respect to any such Hazardous Substance.

a. Concessionaire failure to respond. The State may, but shall never be obligated to, upon not less than twenty (20) days' prior notice to Concessionaire (or such shorter time period prescribed by the State in case of emergency) and Concessionaire's failure to cure within such time period, Respond to or to cause the Response to the Hazardous Substance if Concessionaire fails to promptly commence such Response following discovery and thereafter diligently pursue the same as may be required in Article XII.F.1 (Obligation to Respond) hereof.

b. Concessionaire not responsible. Notwithstanding anything in this Article XXII (Hazardous Substances) to the contrary, it is acknowledged and agreed that, except to the extent caused by or arising from the acts or omissions of Concessionaire, or any of its respective officers, agents, employees, contractors, guests, invitees, or licensees, neither Concessionaire, nor any of its respective officers, agents, employees, contractors, guests, invitees, or licensees, shall have any liability for (nor shall Concessionaire be required under Article XXII.G (Environmental Indemnification) below to indemnify, defend, or hold harmless any Indemnified Party for): (i) any Pre-Existing Condition; (ii) any Release of Hazardous Substances by any third party on properties adjacent to the Premises which affect the Premises or otherwise require a Response with respect to the Premises; or (iii) any Release of Hazardous Substances on the Premises to the extent caused by or otherwise attributable to the acts or omissions of the State or its officials, officers, agents, employees, or contractors. To the extent required by applicable Environmental Laws, the State shall Respond to, and shall be entitled to access the Premises at any time or times upon reasonable prior notice (which may be oral) to Concessionaire to Respond to, any Hazardous Substances arising under subsections (i) or (iii) above (such actions arising under subsections (i) or (iii) above being referred to herein as "**State Response Actions**"); provided, the State shall use reasonable efforts to minimize any disruption of Concessionaire's business in connection with such Response Actions, and shall be responsible for promptly repairing any damages to the Premises to the extent caused by the State or the State's contractor in performing such Response Actions.

G. Environmental Indemnification. In addition to the indemnifications set forth in Article \_\_\_ hereof, and in accordance with the provisions of said Article \_\_\_, Concessionaire hereby indemnifies and agrees to defend and hold each Indemnified Party harmless from and against and, if and to the extent paid, reimburse such parties upon demand made in accordance with this Article XXII (Hazardous Substances) for, any and all Environmental Damages, including, without limitation, any and all Claims made in connection with the Premises, except to the extent expressly provided to the contrary in Article XXII.F.2.b (Concessionaire not responsible) hereof. Such indemnity shall not apply to a particular Indemnified Party to the extent that such indemnity is void under applicable law. Concessionaire's obligations under this Article XXII (Hazardous Substances) shall survive the termination or expiration of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

H. Other Rights. If any conflict exists between the provisions of this Agreement and the provisions of any other agreement between the State and Concessionaire relating to access to the Premises, Claims, or Environmental Damages, the stricter provision shall control. Nothing in this Agreement shall limit or impair any rights or remedies of the State against Concessionaire or any other person under any other agreement, any Environmental Law or otherwise at law or in equity, including, without limitation, any rights of contribution or indemnification. Rights under this Article XXII (Hazardous Substances) granted to the State shall be exercisable by the State's officers, employees, agents, licensees, contractors, and designees.

I. Underground Storage Tanks. Without limiting any other obligations it may have pursuant to any Environmental Law, Concessionaire shall comply with all federal, state, and local laws regarding the registration, installation, repair, operation, release from upgrading, removal, or abandonment-in-place of any UST existing on the Premises and/or the Consolidated Facility, either prior to or at any time on or after the Effective Date, and shall obtain all UST permits or approvals required pursuant to any Environmental Law. It is acknowledged and agreed that, following the initial installation thereof, Concessionaire shall be solely responsible for the use, operation, maintenance, repair, replacement, and removal of any and all such USTs hereunder and that the State assumes no liability or responsibility in connection therewith (provided, the State shall be responsible for correcting, or causing to be corrected, any latent defects to the extent attributable to the initial installation of such USTs for a period equal to the greater of (A) one (1) year following the initial installation thereof, or (B) the period of any third party warranty applicable thereto).

J. Disposal of Materials, Construction and Demolition Debris, Soil and Waste.

1. Concessionaire responsible. Without limiting other provisions of this Article XXII (Hazardous Substances) or any other provisions of this Agreement, Concessionaire shall be responsible for the proper disposal of all materials, construction and demolition debris, soil, and other waste generated by the business operations of Concessionaire, and its respective officers, agents, employees, contractors, guests, invitees, or licensees, including, but not limited to, the construction of capital improvements, or any activities as set forth in this Agreement, all in accordance with Environmental Laws. Concessionaire shall identify to the State any disposal site or transfer station for materials, debris, soil, or other waste of which Concessionaire is

disposing, prior to its disposal, and shall complete and execute any form required by the State identifying such site or station. Concessionaire shall not use or allow to be used for disposal or transfer any site or station not properly licensed. Any substitution, for whatever reason, shall be at Concessionaire's cost. Concessionaire shall pay the cost to remove waste to a properly licensed site or station. Concessionaire shall haul materials, including, but not limited to, fuel of any nature, any construction debris, soil, and other wastes in vehicles and containers complying with all applicable Environmental Laws.

2. Notification of State. Concessionaire shall notify the State of any community meetings, media involvement, or media coverage related to the loading, hauling, or disposal of materials, construction debris, soil, and other wastes under this Agreement in which Concessionaire is asked to participate.

3. Eligibility for future contracts. Non-compliance with the terms and conditions of this Article XXII (Hazardous Substances) may affect Concessionaire's eligibility for future contracts or leases.

K. Miscellaneous Records. Concessionaire must show evidence to the State of, and keep current throughout the Term of this Agreement, all permits of any kind (including waste hauling, special waste hauling, and disposal permits) and insurance certificates required by State and any federal, state, or other local governmental body or agency pursuant to any Environmental Law; copies of all load tickets, manifests, bills of lading, scale tickets, and other pertinent documents, including copies of all permits and licenses for the proposed transfer station or landfill; vehicle maintenance records; safety and accident reports; and records, reports, and permits required by by State and any federal, state, or other local governmental body or agency. All such records and accounts shall be subject to review by the State and shall be made available to the State within ten (10) days following written request of the Director, or other shorter reasonable period requested by the Director. The State's review of any such records and accounts shall in no way serve to limit Concessionaire's obligations or liability under the terms and conditions of this Agreement or any Environmental Law.

L. No Liability of the State. The State shall have no liability to Concessionaire (except as expressly provided in this Agreement), or any permitted sub-concessionaire or occupant of the Premises or any portion thereof, or any of their respective members, employees, agents, partners, shareholders, officers, directors, contractors, licensees, or invitees, or other persons whom Concessionaire has permitted entry or with whom Concessionaire has entered into a contract or understanding (oral or written) to use or occupy the Premises, as a result of Hazardous Substances now or hereafter located on the Premises; provided, the State shall be required to Respond to any State Response Actions to the extent provided under Article XXIIF.2 hereof.

M. No State Warranty. The State makes no representation or warranty as to the environmental condition of the Premises. Except for State Response Actions required under Article XXIIF.2 hereof and the State's liability to the extent arising in connection therewith, Concessionaire hereby waives any and all claims against the state, its officials, officers, employees, contractors, and agents which may currently exist or which may arise in the future by

contract, at common law, in equity, or under statute, now or then currently in effect, and which relate to environmental conditions on, under or near the Premises.

N. Waiver. Except as otherwise set forth or provided in this Article XXII (Hazardous Substances) or elsewhere in this Agreement, nothing contained in this Article XXII (Hazardous Substances) is intended to limit or waive any common law or statutory rights of the State or Concessionaire for liability to third parties for damage to property or injury to persons resulting from or arising in connection with Hazardous Substances located on the Premises and/or Consolidated Facility Property.

### ARTICLE XXIII. LITIGATION

A. Concessionaire Responsible. If State shall, without any fault, be made a party to any litigation initiated by or against Concessionaire arising out of Concessionaire's operation of this Concession, Concessionaire shall indemnify, defend, and keep and hold harmless and if appropriate or necessary, insure State and State's officers, employees, and agents, from and against any all claims, demands, actions, suits, causes of action, 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 State for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants, or conditions contained in this Agreement, State shall be entitled to recover all costs, fees, charges, and attorneys' fees incurred or imposed on State in connection with such actions.

B. Attorneys' Fees. For purposes of this 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 State's attorneys' services were rendered.

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

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

### ARTICLE XXIV. SUCCESSORS AND ASSIGNS

Each and all of the expressions, phrases, terms, conditions, provisions, stipulations, promises, covenants, agreements, requirements, and obligations of this 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 XXV. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, consent, request, demand, or other correspondence given under this 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 set forth on Page 1 of this Agreement; or (b) State at the following address: Department of Transportation, Airports Division, Honolulu International Airport, 400 Rodgers Boulevard., Suite 700, Honolulu, Hawaii 96819-1880, or (c) such other address as either Concessionaire or State may designate in writing as its new address for such purpose by notice given to the other in accordance with this Article XXV. (Notices). Any notice hereunder shall be deemed to have been given and received and effective (a) three (3) business days after the date when it is mailed, if sent by first-class, certified mail, or (b) two (2) business days after the date when it is mailed if sent by overnight courier, or (c) 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; however, neither party may give official or binding notice by facsimile.

## ARTICLE XXVI. INTERPRETATION OF AGREEMENT

A. Headings. The headings and captions preceding the articles and sections of this 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 Agreement.

B. Not against Drafter. This 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 Agreement. The language hereof, and in all parts of this Agreement, shall, in all cases, be construed simply according to its fair meaning, and not strictly for or against either State or Concessionaire.

C. Fair Meaning. Unless otherwise specifically stipulated, references in this Agreement relating to the number of days shall mean calendar days. The word "including" shall mean "including, without limitation". References to statutes, sections, ordinances, or regulations are to be construed as to include 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 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 meaning of the word "person" shall include corporation, partnership, firm, limited liability company, and association.

## ARTICLE XXVII. NO PARTNERSHIP

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

## ARTICLE XXVIII. 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 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 State, State may choose to comply with such prohibition, in whole or in part, and in so choosing, 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 Agreement (such as in Article V.P. (Relief Due to Economic Emergency) hereof), no abatement, diminution, or reduction of the fees, rents, or other charges payable by Concessionaire shall be claimed by or allowed to 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 Hawaii, 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, or sabotage, or by any other cause or causes beyond the control of State, nor shall this 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 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 XXVIII. (Force Majeure) shall preclude nor be construed to preclude the enforcement by Concessionaire of any of its rights contained in Article XVI. (Termination by Concessionaire) hereof, and Article XVII. (Suspension or Abatement) hereof.

#### ARTICLE XXIX. ENTIRE AGREEMENT

The parties hereto intend that this Agreement (including all of the exhibits and attachments that are made a part of this 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 hereto further intend that, in the event of any ambiguity or conflict between the terms or provisions of any documentation contained in this Agreement, the terms and provisions of this Agreement control. This Agreement constitutes the complete and exclusive statement of Agreement terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes thereto) may be introduced in any judicial, administrative, or other legal proceeding, including this Agreement.

#### ARTICLE XXX. AMENDMENTS

Neither this Agreement nor any 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 the respective officer(s) of both parties or other duly authorized person(s).

#### ARTICLE XXXI. INVALID PROVISION-SEVERABILITY

If any provision of this 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 Agreement, or the application of such provision to persons, entities, or circumstances other than those that were deemed to be invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

#### ARTICLE XXXII. NON-LIABILITY OF INDIVIDUALS

Neither State, the Director, nor any governmental agency of the State of Hawaii (including any as may succeed to the duties, powers, or functions of the Department of

Transportation, Airports Division), nor any agency, officer, or employee thereof, shall be charged personally by Concessionaire with any liability, or be held liable to Concessionaire under any term, condition, covenant, or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, hereof.

### ARTICLE XXXIII. NONDISCRIMINATION

A. 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. Use of Concession. 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 the Concession;

2. Concession services. That in the furnishing of Concession services, 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 this Concession services, or otherwise be subjected to discrimination;

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

4. Business owners. That 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 Airport or in connection with the award and performance of any ConRac Agreement covered by Title 49, CFR Parts 23 and 26;

5. Concession operation. That Concessionaire shall operate and maintain the Concession 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. Statements. That Concessionaire shall include the foregoing statements in any subsequent Agreement or other agreements it enters and cause those businesses to similarly include the statements in further agreements.

B. Breach. In the event of a breach of any of the foregoing nondiscrimination covenants, State may terminate this Agreement and re-enter and repossess the Premises and hold the same as if this Agreement had never been made or issued.

#### ARTICLE XXXIV. 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 Airport by the FAA, to ensure 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 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 XXXV. DISPUTES

A. All Disputes. All controversies and disputes between State and Concessionaire which arise under, or by virtue of, this 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 Concessionaire for a final decision concerning the controversy; provided that, if the Director does not issue a written decision within 120 calendar days after receiving a written request for a final decision, then within such longer period as may be agreed upon by the parties, Concessionaire may proceed as if an adverse decision had been received.

B. Notice of Decision. The Director shall furnish a copy of the decision to Concessionaire, pursuant to Article XXV. (Notices) herein.

C. Final and Conclusive. Any such decision by the Director shall be final and conclusive.

#### ARTICLE XXXVI. BROKERS

The Concessionaire warrants and represents to State that Concessionaire has not had any contact or dealings or any communication through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this 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, Concessionaire shall be responsible for such commission or fee and shall indemnify, defend, and hold harmless State from any and all claims, demands, actions, suits, causes of action, judgments, liabilities, losses, damages, costs, and expenses arising from 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 Article XXXVI (Brokers) hereof shall survive any termination or expiration of this Agreement.

## ARTICLE XXXVII. SURVIVAL OF OBLIGATIONS

A. State's Right to Enforce. Termination of this Agreement, whether by expiration or sooner termination, shall not affect the right of State to enforce any or all indemnities and representations and warranties given or made by Concessionaire to State under this Agreement, which through incorporation by reference includes this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof including, without limitation, Articles II. (Concession Agreement and Facility Lease), XXII.B. (Americans with Disabilities Act), XXII.B. (Concessionaire's Obligations With Respect to Environmental Matters), XIX. (Concession Bond), XXIII. (Litigation), and XXXVI. (Brokers) hereof. The Concessionaire specifically acknowledges and agrees that, with respect to each of Concessionaire's indemnities contained in this Agreement, Concessionaire has an immediate and independent obligation to defend 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 Concessionaire by State.

B. Accrued Obligations. The Concessionaire's obligation to make payments to State in respect of accrued charges (including those that have not yet been billed), which are accrued at the expiration or earlier termination of this Agreement, shall survive the expiration or earlier termination of this Agreement.

## ARTICLE XXXVIII. ACCORD AND SATISFACTION

A. Concessionaire's Instructions Void. Payment by Concessionaire or receipt by State of a lesser amount than the Concession Fee stipulated in this Agreement may be, at State's sole option, deemed to be on account of the earliest due of first (1<sup>st</sup>) any interest, service charges, and late fees and second (2<sup>nd</sup>) any stipulated Concession Fee (beginning with earliest owing Concession Fee), notwithstanding any instruction by or on behalf of 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 State may accept such check or payment without prejudice to State's right to recover the balance of such Concession Fee or rent or payment or pursue any other remedy available in this Agreement or by law.

B. Acceptance Does Not Invalidate Notice. The State may accept any partial payment from 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 XXXIX. JOINT AND SEVERAL LIABILITY

The obligations, covenants, promises, liabilities, warranties and representations of Concessionaire under this Agreement shall be joint and several by and among any and all entities and persons comprising Concessionaire.

## ARTICLE XL. ESTOPPEL STATEMENTS

A. Concessionaire Must Deliver. Within ten (10) days after request therefore by State, Concessionaire shall deliver, in recordable form, an estoppel statement certifying that this Agreement is in full force and effect, the date of Concessionaire's most recent payment of the Concession Fee, and that Concessionaire has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested by State.

B. Failure to Deliver. If Concessionaire fails to deliver the requested estoppel statement to State within the specified period, the following shall be deemed conclusive: (1) this Agreement is in full force and effect, without modification, except as may be represented by State; (2) there are no uncured defaults in State's performance and Concessionaire has no right of offset, counterclaim, or deduction against the Concession Fee payable under this Agreement; and (3) no more than one (1) month's Concession Fee has been paid in advance. Such conclusions shall be binding upon Concessionaire. Notwithstanding these conclusions, Concessionaire's failure to deliver the requested estoppel statement shall constitute a breach of this Agreement.

## ARTICLE XLI. AUTHORITY

If Concessionaire signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Agreement on behalf of Concessionaire does hereby covenant and warrant that Concessionaire is a duly authorized and existing entity, that Concessionaire has and is duly qualified to do business in the State of Hawaii, that Concessionaire has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Concessionaire are authorized to do so. Upon State's request, Concessionaire shall provide State with evidence reasonably satisfactory to State confirming the foregoing representations and warranties.

## ARTICLE XLII. CONSENTS

If State is required to be reasonable in granting or withholding consent or approval, but fails to do so, Concessionaire's sole and exclusive legal remedy is to seek specific performance, and in no event will State be liable for any monetary damages. All consents and approvals by State shall be in writing.

## ARTICLE XLIII. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original Agreement. Said counterparts shall together constitute one and the same document, binding all of the parties hereto notwithstanding that 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 Agreement, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

ARTICLE XLIV. GOVERNING LAW

This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the State of Hawaii.

ARTICLE XLV. WITHDRAWAL

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

B. Notice. State shall give Concessionaire written notice of any such withdrawal or recapture, and State's intent to cancel or terminate this Agreement as to the portion of the Premises so withdrawn or recaptured, not less than sixty (60) calendar days prior to the effective date of such cancellation or termination.

C. Leasehold Improvements. State shall pay to Concessionaire the then unamortized value of the Concessionaire Improvements built, constructed, erected, installed, or placed by Concessionaire, at Concessionaire's sole cost and expense, at, in, on, over, or under the portion(s) of the Premises being withdrawn or recaptured, all in accordance with the following formula:

$$\begin{array}{l} \text{Compensation} \\ \text{for Concessionaire} \\ \text{Improvements} \\ \text{Destroyed or} \\ \text{Made Unusable} \end{array} = \begin{array}{l} \text{*Adjusted} \\ \text{Depreciated} \\ \text{Cost} \end{array} \times \begin{array}{l} \text{Remaining Term} \\ \text{of the Agreement} \\ \text{Entire Term of the Agreement} \\ \text{From the Date of} \\ \text{Completion of Construction} \end{array}$$

\*Adjusted Depreciated cost is to be determined as follows:

- a. "Adjusted Cost" is the actual cost of said leasehold improvements multiplied by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings, as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CCI"), divided by the CCI of the year construction was completed;
- b. "Depreciation" is arrived at by dividing the age of the leasehold improvements by the term of the Agreement remaining when the leasehold improvements were completed and multiplying the quotient by the Adjusted Cost of the leasehold improvements; and,
- c. "Adjusted Depreciated Cost" is the difference between the Adjusted Cost of improvements and the Depreciation.



D. No Claim Against State. Concessionaire shall peaceably surrender the portion(s) of the Premises State desires to withdraw or recapture, and Concessionaire shall remove all Concessionaire Improvements and Concessionaire's trade fixtures, equipment, and other personal property so situated on the portion(s) of the Premises so withdrawn or recaptured, all in accordance with Article IV.C. (Surrender of Premises) hereof, if required by State, all at no cost to State. Concessionaire shall not, by reason of its surrender, be entitled to any claim against State for any of Concessionaire's cost of removal. Upon completion of the withdrawal, the Ground Rent charged to Concessionaire shall be reduced by an amount equal to the product of the square footage of the withdrawn portion(s) of the Premises and the applicable per square foot rental rate. Concessionaire shall not be entitled to any other payment (except as provided herein) for State's withdrawal or recapture of the requested portion(s) of the Premises. If Concessionaire is in breach of any provision of this Agreement, or has been or then is in default of this Agreement, State need not compensate Concessionaire for the unamortized value of the Concessionaire Improvements. In such event, Concessionaire shall be deemed to have waived its rights to the Concessionaire Improvements and any compensation that might be payable therefor.

E. Surrender of Entire Premises. If the surrender of the portion(s) of the Premises requested by State renders the remainder of the Premises unsuitable for the uses of Concessionaire under this Agreement, and State does not provide an alternate location, Concessionaire may surrender the remainder of the Premises and be relieved of any further obligation hereunder, except with respect to such other obligations of Concessionaire which are intended to survive the termination of this Agreement including, but not limited to those described in Article XXXVII (Survival of Obligations) hereof.

#### ARTICLE XLVI. CONDITIONS PRECEDENT

Notwithstanding anything in this Agreement to the contrary, it is hereby acknowledged, understood, and agreed that, in the event that the State fails to obtain or receive financing for the Consolidated Facility Improvements upon such terms and conditions as the State shall deem appropriate in its sole and absolute discretion, the State shall be entitled to terminate this Agreement upon thirty (30) days' written notice to Concessionaire, in which case the State shall have any further liability or obligation hereunder.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

STATE OF HAWAII

By \_\_\_\_\_

Its Director of Transportation

[Concessionnaire]





List of Exhibits:

Exhibit A: Property Description of Land Underlying Consolidated Facility Improvements

Exhibit A-1: Map Showing Location of Land Underlying Consolidated Facility Improvements

Exhibit B: Ground Rent Schedule (including adjustments)

Exhibit C: Form of confirmation of the total area of the Consolidated Facility and the Ground Rent payable during the initial five (5) years of the Term

Exhibit D: Description of Premises

Exhibit E: Fair Rental Value Schedule

Exhibit F: Percentage Fee Example

Exhibit G: Consolidated Facility Plans

Exhibit H: Confirmation of Consolidated Facility Substantial Completion

Exhibit I: Additional Legal Requirements

Exhibit J: State's Operation and Maintenance Standards

Exhibit K: State's Sublease and Assignment of Lease Standards

Exhibit L: Form of Letter of Credit

Appendices:

Appendix 1: Reallocation Guidelines

Appendix A: Development Standards for Leased Airport Property

Appendix B: Tenant Improvement Guidelines