

CONCESSION AGREEMENT NO. DOT-A-17-0008
G.E.O. NO. 3201

STATE OF HAWAI'I
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION

REQUEST FOR PROPOSALS (RFP)
AND CONCESSION AGREEMENT RELATING TO
OPERATION OF ON-DEMAND
SHUTTLE SERVICES CONCESSION
AT
HONOLULU INTERNATIONAL AIRPORT
HONOLULU, ISLAND OF O'AHU,
STATE OF HAWAI'I

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REQUEST FOR PROPOSALS (RFP)
OPERATION OF ON-DEMAND
SHUTTLE SERVICES CONCESSION
HONOLULU INTERNATIONAL AIRPORT

NOTICE TO PROPOSERS

The State of Hawai'i, Department of Transportation ("State") requests Proposals from all interested individuals and legally registered business entities in the State of Hawai'i (hereinafter referred to as "business entity" or "business entities") desiring to operate the On-Demand Shuttle Services Concession ("Concession") at Honolulu International Airport, Honolulu, Island of O'ahu, State of Hawai'i, for a Concession Agreement period of five (5) years.

A fully completed Proposal Intent Package, consisting of a fully completed Notice of Interest and Qualification Questionnaire must be submitted by each and every interested business entity and received no later than 4:30 p.m., on April 13, 2017, by the Director of Transportation, c/o Property and Business Development Office, Airports Division, Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880. The State reserves the right to cancel this Request for Proposals (RFP) at any time for any reason whatsoever.

A completed Proposal Package, consisting of the Proposal Form with attached Proposal, Tax Clearance Forms, Affidavit of Non-Collusion, and Proposal Bond must be received no later than 4:30 p.m, on May 5, 2017, at the address stated above.

The Concession RFP Documents describing the Concession, including without limitation, the Concession Agreement, may be examined and/or obtained from the State's Airports Division, located at Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i. The Concession RFP Documents may be purchased upon the tender of the nonrefundable sum of FORTY AND NO/100 DOLLARS (\$40.00) in United States currency or certified check. The Concession RFP Documents may also be downloaded at www.hawaii.gov/dot/airports/doing-business/concession-notices without charge.

The Concession RFP Documents are subject to revision(s) at any time prior to 4:30 p.m. on April 28, 2017. Any revisions, changes, or amendments to the Concession RFP Documents will be posted and available for download at www.hawaii.gov/dot/airports/doing-business/concession-notices.

The Concession RFP Documents consist of and include the following items: (1) this Notice to Proposers; (2) Instructions to Proposers; (3) Proposal Intent Package (Appendix A); (4) Proposal Package (Appendix B); (5) Concession Agreement (Appendix C); (6) Concession Bond (Appendix D); and (7) all of the attachments and exhibits thereto.

A Pre-Proposal Conference will be conducted by the State on March 30, 2017 commencing at 9:00 a.m., to familiarize Proposers whose proposal intent packages have been found to be acceptable, with the nature of the Concession RFP Documents, including the Concession Agreement, and to preliminarily respond to questions Proposers may have. Proposers are advised to attend the Pre-Proposal Conference which will begin promptly at

9:00 a.m., at the Airports Division, Conference Room C, located at Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i.

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

Except as may be permitted by law, all Proposal Intent Packages (Appendix A) and Proposal Packages (Appendix B) submitted to the State will be considered confidential and will not be made available for inspection nor will copies thereof be made available for purchase or copying by the general public.

The State desires to actively promote the growth and development of Airport Concession Disadvantaged Business Enterprise (ACDBE) participation in concessions awarded at all public airports in the State of Hawai'i. In accordance with Title 49, Subtitle A, Parts 23 and 26, Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Airport Concessions" and "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," respectively, it is the policy of the State's Airports Division to ensure that ACDBE firms have an equal opportunity to receive and participate in concessions at all public airports. Accordingly, all qualified ACDBEs are encouraged to compete for or participate in this Concession at Honolulu International Airport. Each business wishing to compete or participate as an ACDBE must be certified as an ACDBE by the State prior to the deadline date and time specified for the submission of Notice of Interest. For information and assistance in applying for ACDBE certification, please call the ACDBE Program Manager at (808) 587-2023.

The State reserves the right to reject any and all proposals and to waive any defects in the Concession RFP Documents or cancel this RFP when, in the opinion of the Director of Transportation, such rejection, waiver, or cancellation will be in the best interests of the State and the general public.



FORD N. FUCHIGAMI
Director of Transportation

To be advertised: Honolulu Star-Advertiser
March 15, 2017

**INSTRUCTIONS TO PROPOSERS (IP)
PERTAINING TO THE OPERATION OF
ON-DEMAND SHUTTLE SERVICES CONCESSION
AT
HONOLULU INTERNATIONAL AIRPORT**

1. PURPOSE

Proposals are invited from all individuals and qualified parties for the management and operation of the On-Demand Shuttle Services Concession at Honolulu International Airport (“Airport”) to service communities throughout the Island of O‘ahu (Concession). The State of Hawai‘i, Department of Transportation, Airports Division (State), seeks a creative and well-qualified transportation organization entity to operate and maintain the Concession at the Airport for a period of five (5) years.

The successful proposer who is awarded the exclusive right and obligation to operate and maintain the Concession (hereinafter referred to as the “Concessionaire”) will be responsible for providing high quality on-demand shuttle services to deplaning passengers and the general public from the Airport. A high degree of experience, expertise, competence and management capability will be needed to administer, manage, operate and provide such on-demand shuttle services to the traveling public. Only qualified individuals and business entities authorized to do business in the State of Hawai‘i and capable of demonstrating such abilities will be considered for the exclusive right and obligation to operate and maintain this Concession.

The Concession will be operated in accordance with the Concession Agreement (Appendix C [Concession Agreement] of the Concession RFP documents) and from the spaces at the Airport described therein. Award of the Concession Agreement will require the successful proposer to execute the Concession Agreement and comply with and satisfy all the terms and conditions therein, including, without limitation, improving, furnishing and operating the Concession spaces.

For this Concession, a Disadvantaged Business Enterprise (DBE) participation goal of fifteen percent (15%) has been established and all qualified DBEs are encouraged to compete for, and participate in, the Concession.

2. OBTAINING CONCESSION PROPOSAL MATERIALS

Copies of the Concession RFP Documents, including the Concession Agreement (Appendix C) describing the covenants, provisions, stipulations, restrictions, reservations, exclusions, terms and conditions of this Concession, may be examined and/or obtained from the

Airports Division, Department of Transportation, State of Hawai'i, Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880. The Concession RFP Documents may be purchased upon the payment of the nonrefundable sum of FORTY AND NO/100 DOLLARS (\$40.00) in United States currency or certified check. The Concession RFP Documents may also be downloaded without charge from the State's website's Concessions and Other Offerings page at www.hawaii.gov/dot/airports/doing-business/concession-notices.

The Concession RFP documents are subject to revision at any time prior to the proposal submission date. Any revisions, changes, or amendments to the Concession RFP Documents will be posted and available for download at www.hawaii.gov/dot/airports/doing-business/concession-notices.

3. PRE-PROPOSAL CONFERENCE

A pre-proposal conference to explain the objectives and requirements for the Concession and to preliminarily respond to questions will be held on March 30, 2017, at 9:00 a.m., Hawaiian Standard Time ("HST") at the:

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

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

Property and Business Development Staff
Department of Transportation
Airports Division
Honolulu International Airport
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i 96819-1880
Telephone (808) 838-8676
Facsimile (808) 838-8753

State representatives will be available to preliminarily respond to questions at this conference. To minimize the possibility of misunderstandings, all questions for the pre-proposal conference are to be submitted in writing by mail, parcel delivery, courier service, or personal delivery and received at the Airports Office, no later than 4:30 p.m. HST on March 22, 2017.

The State does not warrant or guarantee that all written questions will be addressed at the pre-proposal conference. However, at the pre-proposal conference, if time permits, the State representatives will respond to a limited number of verbal questions. Any oral responses given by State representatives at the pre-proposal conference will be preliminary and subject to further revisions and clarification as part of the State's written response.

Following the pre-proposal conference, the State will conduct a tour of the areas that will be provided to the successful proposer as concession premises.

The deadline for submitting all written questions, including the resubmission of any submitted for the pre-proposal conference, which a prospective proposer desires to obtain the State's written response for, will be 4:30 p.m., HST on April 5, 2017. The State will post the final written responses to all written questions properly submitted by the April 5, 2017 deadline on its website.

All questions should be submitted on the form provided as Attachment 3 to this Instructions to Proposers.

A summary containing all written questions properly submitted by the specified deadline of April 5, 2017, together with the State's final written responses, will be posted on the State's website on the Concessions and Other Offerings page. All prospective proposers, including Registered Proposers, should not rely on oral representations made at any time and should instead rely on the written State responses to the questions submitted by or on the April 5, 2017, deadline which shall be entitled "The State's Response to Written Concession Questions." This shall comprise the State's final response to all submitted written questions unless the State decides to amend or supplement the State's responses. As a result of the pre-proposal conference or otherwise, changes to the Concession proposal documents which are deemed appropriate by the State will be made, and will be posted, as an addendum to the Concession offering, on the State's Concessions and Other Offerings page.

4. SUBMISSION OF PROPOSAL INTENT PACKAGE: NOTICE OF INTEREST AND QUALIFICATION QUESTIONNAIRE

Potential Proposers: (a) authorized to do business in the State of Hawai'i; (b) having the minimum qualifications, expertise and/or resources; and (c) who are interested in being considered for the award of this Concession are required to submit to the State a fully and properly completed Proposal Intent Package, all in accordance with the specific instructions contained therein. A fully and properly completed Notice of Interest (Appendix A), together with a fully and properly completed Qualification Questionnaire (Appendix A, Attachment 1), must be submitted by each and every Potential Proposer and received by the State no later than 4:30 p.m., on April 13, 2017. The State will use each Proposal Intent Package submitted for the purpose of evaluating the minimum qualification of each and every Potential Proposer.

A Potential Proposer's failure to submit a fully and properly completed Proposal Intent Package, consisting of: (a) Notice of Interest (Appendix A); and (b) Qualification Questionnaire (Appendix A, Attachment 1), to the State by the deadline date and time specified in the Notice to Proposers shall disqualify the Potential Proposer from submitting the subsequent, required Proposal Package (Appendix B).

5. MINIMUM QUALIFICATIONS OF EACH POTENTIAL PROPOSER

A Potential Proposer, at the time its fully and properly completed Proposal Intent Package (Appendix A and Appendix A, Attachment 1) is submitted to the State, must be capable of performing all of the covenants, terms and conditions of the Concession Agreement (Appendix C). Before any Potential Proposer shall be entitled to submit the subsequent and required Proposal Package (Appendix B and all attachments) for the Concession, the State shall be satisfied with each Potential Proposer's financial ability, experience, and competence to satisfactorily perform and complete all of the covenants, terms and conditions of the Concession Agreement (Appendix C). At a minimum, each Potential Proposer must satisfy all the following minimum qualification criteria:

- A. Have at least five (5) years of verifiable, continuous experience within the last seven (7) years in ground transportation operations, management and administration involving public or private transit vehicles (e.g., buses, vans, and para-transit vehicles) in the United States.
- B. Have verifiable, annual combined gross receipts derived or generated from ground transportation operations, management and administration involving public or private transit vehicles in each qualifying year exceeding THREE MILLION DOLLARS (\$3,000,000.00)
- C. Have at least two (2) years of verifiable, continuous experience within the last five (5) years in developing customer service programs in a public or private transportation environment.

If a Potential Proposer is a joint venture, each joint venture partner must individually satisfy the foregoing qualification criteria.

All Potential Proposers must provide a detailed narrative of prior qualifying experience(s), duties and responsibilities, and scope of work performed, together with bona fide references to substantiate such qualifying experience(s).

For the purpose of evaluating a Potential Proposer's qualifications, the Potential Proposer must submit a fully and properly completed Proposal Intent Package (Appendix A and Appendix A, Attachment 1). The Proposal Intent Package may contain any additional information considered pertinent by a Potential Proposer with respect to its qualifications.

Whenever it appears to the State that a Potential Proposer is not fully qualified or able to fully carry out, perform, complete, or satisfy the covenants, terms and conditions of the Concession Agreement (Appendix C), the State shall, after affording the Potential Proposer an opportunity to be heard, and if still of the opinion that the Potential Proposer is not fully qualified or able to fully carry out, perform, complete, or satisfy the covenants, terms and conditions of the Concession Agreement (Appendix C), refuse to receive or consider any Proposal Package (Appendix B and all attachments) from such Potential Proposer.

All information contained in the Qualification Questionnaire (Appendix A, Attachment 1) of the Proposal Intent Package shall remain confidential in accordance with Section 102-3, Hawaii Revised Statutes (hereinafter referred to as the "HRS"). Qualification Questionnaires submitted by unqualified Potential Proposers will be returned to such Potential Proposers after the Concession has been awarded to the successful Concessionaire.

6. EVALUATION OF QUALIFICATION QUESTIONNAIRES

Each fully and properly completed Qualification Questionnaire (Appendix A, Attachment 1) submitted to the State's Airports Division, Property and Business Development Office will be reviewed and evaluated, and each Potential Proposer's qualifications, expertise, experience and resources will be evaluated based on the following evaluation criteria:

- Business Qualifications and Experience, and Financial Capability:
 1. Minimum of at least five (5) years of verifiable, continuous experience within the last seven (7) years in ground transportation operations, management and administration involving public or private transit vehicles (e.g., buses, vans, and para-transit vehicles) in the United States.
 2. Verifiable, annual combined gross receipts derived or generated from ground transportation operations, management and administration involving public or private transit vehicles in each qualifying year exceeding THREE MILLION DOLLARS (\$3,000,000.00).
- Expert Qualifications and Experience:
 1. Experience in the collection of ground transportation fees and monetary fiscal and financial controls.
 2. Expertise and experience in the development and implementation of technological applications in collection and reporting systems to ensure that ground transportation fees collected and paid to the State are properly and accurately counted in accordance with professional accounting principals and practices.

3. Expertise and experience in ground transportation operations, scheduling, administration and management, and the monitoring, and control of ground transportation services.

7. SUBMISSION OF PROPOSAL PACKAGE

Each and every Potential Proposer whose Qualification Questionnaire is found to be acceptable to the State will then be deemed a Qualified Proposer by way of written notification from the State. Upon receipt of written notification, a Qualified Proposer will subsequently be required to submit to the State a fully and properly completed Proposal Package (Appendix B and all attachments), consisting of the following items:

- Original and five (5) copies of the Qualified Proposer's written Proposal which shall describe in detail, how and what the Qualified Proposer intends to offer; and a description of how the Qualified Proposer intends to operate, manage, administer and maintain the Concession, and satisfy all of the covenants, terms and conditions of the Concession Agreement (Appendix C).
- Proposal Form (Appendix B);
- Tax Clearance Certificates (Appendix B, Attachment 1);
- Affidavit of Non-Collusion (Appendix B, Attachment 2);
- Proposal Bond (Appendix B, Attachment 3).

All the aforementioned Proposal Package items must be properly executed and notarized by a notary public if called for, addressed and submitted to the Director of Transportation, c/o Property and Business Development Office, Airports Division, Department of Transportation, Honolulu International Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880, at or before the deadline date and time set for the submission of Proposal Packages (Appendix B and all attachments).

A Qualified Proposer's failure to submit its written Proposal, including a fully and properly completed Proposal Package, consisting of: (a) Proposal Form (Appendix B); and (b) Attachments 1, 2 and 3 to Appendix B by the deadline date and time specified in the Notice to Proposers shall disqualify the Qualified Proposer from consideration for the Concession.

Each and every Proposal Package (Appendix B and all attachments) must be submitted to the State in a sealed envelope properly marked on the outside as follows:

"Proposal Package for the Operation of On-Demand Shuttle
Services Concession at Honolulu International Airport"

A Qualified Proposer's Proposal Package may be rejected by the State due to any of the following reasons:

- A. If it shows any alterations, erasures, irregularities of any kind or additions not called for in this RFP;
- B. If it is conditional or incomplete;
- C. If it fails to comply with any of the requisite conditions;
- D. If a Qualified Proposer is in arrears in any payments, including taxes and special assessments, owing to the U.S. Internal Revenue Service and/or the State of Hawai'i or any of its political subdivisions, or is in default of any obligation, including taxes and special assessments, owed to the U.S. Internal Revenue Service and/or the State of Hawai'i or any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the State; or,
- E. If more than one (1) Proposal Package from an individual, partnership, corporation or any other legal entity under the same or different names is received and more than one remains in the State's possession.

The State reserves the right to cancel this Concession RFP for any reason whatsoever. The State also reserves the right to reject any or all Proposal Packages and waive any defects when, in the opinion of the Director of the Department of Transportation (hereinafter referred to as "Director"), such rejection or waiver will be in the best interest of the State and/or the general public. The State also reserves the right to re-advertise for Proposals, or to accept any Proposal Package, if the acceptance of such Proposal Package is deemed by the State to be in the best interest of the State or/and the general public.

8. PROPOSAL DEPOSITS

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

The proposal deposit shall be in the form of legal tender, a surety bond conforming to the requirements of Section 102-6, HRS, or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a

bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum equal to that required, payable at sight or unconditionally assigned to the State's Director of Transportation.

If a surety bond is submitted, it shall: (1) be issued in accordance with Section 102-6, HRS; (2) name the State of Hawai'i, by its Director of Transportation, as obligee; (3) be on the Proposal Bond form provided (Appendix B, Attachment 3); (4) be executed by the proposer as Principal, and by any bonding company listed in the United States Treasury List, as surety; provided that the bond furnished by any surety listed shall not exceed the bonding capacity rating of that surety on the United States Treasury List; (5) be in a sum equal to that required; and (6) be conditioned upon the proposer entering into the Concession Agreement and furnishing satisfactory security in the form of the Concession Bond (and other applicable requirements) within ten (10) business days after the bidder has received the Concession Agreement for execution or within such further time as the State's Director of Transportation may allow, in writing, if the proposer is awarded the Concession Agreement.

9. PRE-PROPOSAL CONFERENCE

A mandatory Pre-Proposal Conference to explain and discuss the objectives and requirements for this Concession, including the Concession Agreement (Appendix C) and to preliminarily respond to questions will be held on March 30, 2017, commencing at 9:00 a.m. at:

Airports Division Conference Room C
Department of Transportation, Airports Division
Honolulu International Airport
Inter-Island Terminal Building
400 Rodgers Boulevard, Suite 700
Honolulu, Hawaii 96819-1880

State representatives will be available to preliminarily respond to questions raised at this conference. To minimize the possibility of misunderstandings, all questions are to be submitted in writing. However, at the Pre-Proposal Conference, State representatives will handle a limited number of oral questions.

The deadline for submitting final written questions will be 4:30 p.m. on April 5, 2017. The State will post final written responses to all properly submitted questions on the DOT website. Oral responses given by State representatives at the Pre-Proposal Conference will be considered preliminary and subject to further revisions and clarification in the State's written responses. All written questions should be submitted on the form provided as Attachment 3 (Question Submittal Form, Pre-Proposal Conference) to the Instructions to Proposers.

A written summary containing all written questions submitted by the deadline date and time specified for the submission of written questions to the State, together with the State's final

written responses, will be posted on the DOT website. All Qualified Proposers, should not rely on oral representations made at any time and should instead, rely on the State's written responses to the questions submitted which shall be entitled "The State's Responses to Pre-Proposal Conference Questions." The foregoing summary of written questions, together with the State's written responses, shall comprise the State's final response to all written questions unless the State decides to amend or supplement the State's responses. As a result of the Pre-Proposal Conference or otherwise, changes to the Concession RFP Documents, including the Concession Agreement (Appendix C) which are deemed appropriate by the State may be made, and notice of such changes to the Concession RFP Documents will be given to all Qualified Proposers before the deadline date and time specified for the submission of Proposal Packages.

10. LATE SUBMISSIONS

It is the responsibility of each and every Qualified Proposer to ensure that the State receives the fully and properly completed Proposal Package by the deadline date and time specified in the Notice to Proposers for submission of Proposal Packages. The State will not assume any responsibility or liability if the submission of the Qualified Proposer's Proposal Package via the U.S. Postal Service or other forms of delivery service is delayed beyond the specified deadline date and time for submission of Proposal Packages. Any and all Proposal Packages received by the State after the specified deadline date and time for submission of Proposal Packages will not be considered, and will be returned (without opening) to each and every Qualified Proposer.

11. WITHDRAWAL OR MODIFICATION OF PROPOSAL

A Proposal Package may be withdrawn by written notice, telegram, or mailgram which must be received by the State prior to the stated applicable deadline date and time for submission of same. A substitute Proposal Package will be accepted by the State so long as a written request to withdraw the previous Proposal Package is received simultaneously with or prior to the substitute Proposal Package, and the substitute Proposal Package is received prior to the stated deadline date and time for submission of same.

Errata sheets may be submitted prior to the specified deadline date and time for submission of Proposal Packages so long as the total of all corrections to a Proposal Package does not exceed two (2) typed 8-1/2" x 11" pages. Changes of a greater magnitude require the withdrawal of the Proposal Package and the subsequent submission of a substitute Proposal Package, which must be submitted in a sealed envelope and properly marked on the outside as follows:

"Substitute Proposal Package for the Operation of On-Demand Shuttle Services Concession at Honolulu International Airport."

Further, a substitute Proposal Package must be clearly labeled on all pages as follows:

“Substitute Proposal Package, Page 1” (or Page 2, Page 3, etc.)

12. SCOPE OF SERVICES

This Request for Proposals is being issued in order to secure the services of a ground transportation entity to provide on-demand ground transportation shuttle services for arriving passengers and the general public from the Airport to locations outside of the Airport. It is the interest of the State that the shuttle services provided by the successful Proposer be of the highest quality to meet the ground transportation needs of the traveling public in a manner that is a representation of the highest level of ground transportation services available to Hawai‘i’s visitors and residents. In conjunction with such activities, the successful Proposer will be required to operate, provide, conduct and/or maintain the following types of ground transportation shuttle services:

- A. Operate and provide a shuttle bus service originating from the Airport and providing service to customer requested locations outside of the Airport as part of On-Demand Ground Transportation Service for the traveling public, including those individuals with disabilities who are covered by the Americans with Disabilities Act of 1990;
- B. Provide shuttle service dispatch, scheduling and route control management;
- C. Conduct regular physical and safety inspections of its shuttle service vehicle fleet;
- D. Provide service and customer quality care assurance programs for its shuttle service vehicle drivers and shuttle service dispatchers;
- E. Maintain concession areas (or Premises) in a clean and safe condition at all times; and,
- F. Maintain shuttle service vehicle driver and shuttle service dispatcher discipline and rules observance at all times.

Each Qualified Proposer shall include a detailed listing of the types of equipment that it proposes to use for its ground transportation services operation at and from the Airport. Said list shall include the make, model and year of each piece of equipment. Qualified Proposers shall be aware that all such equipment must be in compliance with Airport Rules and Regulations and shall meet all safety regulations for operating on public streets and highways, and be fully street licensed within the State of Hawai‘i prior to being permitted to operate at and from the Airport. After the Concession is awarded, the successful Proposer will be required to: (1) keep such list

current and shall submit any changes within ten (10) business days to the State; and (2) maintain all equipment in good working and operating condition.

After the Concession is awarded, the successful Proposer will be expected to work closely with the State, Airport tenants and other Airport ground transportation providers in its operation of the Concession to assure that a high degree of quality service is provided at all times to arriving passengers and the traveling public.

13. PROCEDURES AND CRITERIA FOR EVALUATING ALL PROPOSAL PACKAGES

After the closing date and time set by the State for the submission of Proposal Packages, each Proposal Package submitted to the State for consideration will be individually evaluated and scored by members of an Evaluation Committee in accordance with the evaluation criteria listed under the section heading of "Evaluation Criteria" on Pages IP-9 through IP-15 of this Instructions to Proposers. The Evaluation Committee will be composed of five (5) members whose members are selected by the Deputy Director of the Airports Division, Department of Transportation.

Each Proposal Package submitted to the State for consideration will be evaluated and scored by each Evaluation Committee member on the basis of the content and quality of the Qualified Proposer's written submittal (Items A, B C, D, E of the Evaluation Criteria). One hundred percent (100%) of the total combined points awarded by the five (5) members of the Evaluation Committee (or a combined maximum of 100 points) will be based on the Qualified Proposer's written Proposal covering Items A, B, C, D, E, of the Evaluation Criteria.

14. EVALUATION CRITERIA:

Each Proposal Package submitted to the State for consideration will be evaluated and scored by each member of the Evaluation Committee based on the following five (5) Evaluation Criteria:

A. Qualified Proposer's prior successful experience(s) in providing, operating, managing, administering and maintaining large-scale ground transportation services, including the dispatch, scheduling and control of ground transportation vehicles;

B. Quality and content of Qualified Proposer's proposed Concession operation and services offered to the State, including locations to be serviced, and listing and qualifications of key managements and operation personnel who will be performing the scope of work required under the Concessions Agreement (Appendix C) to be awarded;

C. Minimum annual guaranteed fee for the first year of the Concession;

D. Itemized list of Qualified Proposer's shuttle service vehicle fleet, including seating capacity of each of Proposer's shuttle service vehicles to be placed in service fleet and operated to provide Airport Shuttle Services;

E. Quality and content of Qualified Proposer's proposed Concession service for disabled individuals;

F. Quality and Content of Additional Ideas Offered by Qualified Proposer.

All written Proposals will be evaluated and scored independently by each member of the Evaluation Committee in accordance with the following weighted criteria:

A. Qualified Proposer's Prior Successful Experience(s): 20%

(Maximum of 4 points to be awarded by each Evaluation Committee member; Combined maximum of 20 points to be awarded by the five (5)-member Evaluation Committee)

Demonstration of prior successful experience(s) in providing, operating, managing, administering and maintaining large-scale ground transportation services, including dispatching, scheduling and control of ground transportation vehicles. Proposers must provide a detailed narrative of prior qualifying experience(s), duties and responsibilities, and scope of work performed, together with bona fide references to substantiate such qualifying experience(s).

B. Quality and Content of Proposed Concession Operation, Management and Administration: 20%

(Maximum of 4 points to be awarded by each Evaluation Committee member; Combined maximum of 20 points to be awarded by the five (5)-member Evaluation Committee)

A descriptive narrative of the Qualified Proposer's proposed Concession operation, management and administration and scheduled airport on-demand shuttle services offered from the Airport, a detailed proposal of how, and the manner and methods by which each Proposer intends to implement, conduct, comply with and satisfy the scope of work prescribed and set forth in the Concession Agreement (Appendix C), including proposed locations for pickup and drop off of passengers, any additional customer service space, the method of directing passengers to and

from the shuttle, if the Proposer also provides prearranged transportation services, the policies and practices used to ensure that each activity is correctly accounted for and reported . The descriptive narrative should also: (1) explain the purpose for each and every proposed operational and management activity; and (2) show the relevance each proposed activity will have in relation to effective and quality Concession services, including dispatching, scheduling, and control of ground transportation vehicles at or from the Airport.

C. Minimum Annual Guaranteed Fee
For the First Year of the Concession 20%

(Maximum of 4 points to be awarded by each Evaluation Committee member; Combined maximum of 20 points to be awarded by the five (5)-member Evaluation Committee)

The Qualified Proposer's proposed Minimum Annual Guaranteed Fee for the first year of the Concession.

D. Itemized list consisting of makeup of
Proposer's Concession vehicle fleet: 15%

(Maximum of 3 points to be awarded by each Evaluation Committee member; Combined maximum of 15 points to be awarded by the five (5)-member Evaluation Committee)

A descriptive list itemizing the number, make, model, year of manufacture, and seating capacity of each of Qualified Proposer's equipment to be placed, used and operated in its Concession vehicle fleet.

E. Quality and Content of Proposed Airport Shuttle
Service for Disabled Individuals: 15%

(Maximum of 3 points to be awarded by each Evaluation Committee member; Combined maximum of 15 points to be awarded by the five (5)-member Evaluation Committee)

Each written Proposal should include a detailed descriptive narrative on the manner and method by which the Qualified Proposer intends to implement, conduct, provide and schedule Concession Services

from the Airport for those arriving passengers and other individuals with disabilities who are covered by the Americans with Disabilities Act of 1990.

F. Quality and Content of Additional Ideas Offered by Qualified Proposer: 10%

(Maximum of 2 points to be awarded by each Evaluation Committee member; Combined maximum of 10 points to be awarded by the five (5)-member Evaluation Committee)

Special or unique idea(s), proposal(s), approach(es) and/or process(es) that a Qualified Proposer intends to employ or use, and any aspect of the Concession operation which the Qualified Proposer intends to implement to achieve a more efficient, customer-oriented Concession operation. Each Qualified Proposer's descriptive narrative should include sufficient information to acquaint Evaluation Committee members with the intended purpose(s), projected goals and/or outcome(s), and why such additional ideas and/or measures being proposed will prove advantageous and/or beneficial for a quality, efficient, customer-oriented Concession.

15. SCORING FORMAT FOR ALL PROPOSAL PACKAGES AND AWARD OF CONCESSION

The combined total of all points awarded by the five (5) members of the Evaluation Committee under Items A, B, C, D, E, F, of the Evaluation Criteria will be used to derive one hundred percent (100%) (or a combined maximum of 40 points) of the combined total points awarded for each Proposal Package. The combined total points awarded to each Proposal Package by the Evaluation Committee members (Items A, B, C, D, E, F, of the Evaluation Criteria) will determine the final combined total points awarded by the Evaluation Committee for each Proposal Package.

The maximum points which may be awarded by the Evaluation Committee and/or its individual members for any Proposal Package submitted to the State for consideration will be 40 points.

The Qualified Proposer who garners the highest combined total points on its Proposal Package based on all six (6) Evaluation Criteria (Items A through H) will be recommended to the Director and the State of Hawai'i, Board of Land and Natural Resources, for the award of the Concession.

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

The award of the Concession will be made within ninety (90) days after the deadline for submission of Proposal Packages, provided that the award may be delayed for a reasonable additional time period to permit investigation by the State into the accuracy and truthfulness of the representations made by the successful Qualified Proposer in its Proposal Package. The State reserves the right to reject all Proposal Packages and to re-advertise the Concession if it is determined by Director that such rejection is warranted and is in the best interest of the State and the general public. The award of the Concession is within the Director's sole discretion and shall be final.

The Concession Agreement (Appendix C) shall be executed by the successful Qualified Proposer, properly notarized by a notary public, and returned, together with a satisfactory Concession Performance Bond, within ten (10) calendar days after the successful Qualified Proposer has received the Concession Agreement for execution, or within such further time as the Director may allow in writing. Failure to execute the Concession Agreement and to file an acceptable Concession Performance Bond, as required, within ten (10) days after the successful Qualified Proposer has received the Concession Agreement for execution and proper notarization by a notary public, or within such further time as the Director may allow in writing, shall be just cause for the annulment of the award. If the successful Qualified Proposer refuses or fails to execute the Concession Agreement, the State may award the Concession to the next highest ranked Qualified Proposer, as determined by the Evaluation Committee, or publish another call for Proposals.

The Concession Performance Bond shall be in the amount equal to three (3) months' minimum monthly guaranteed fee for the appropriate agreement year and shall be maintained in full force and effect by the successful Qualified Proposer (hereinafter referred to as the "Concessionaire") at all times from the commencement date of the Concession Agreement until ninety (90) days after the expiration or sooner termination of the Concession Agreement. Further, the Concession Performance Bond shall be maintained by the Concessionaire, at its own cost and expense, and shall cover the Concessionaire's operations during the entire term of the Concession Agreement; provided that suits thereon by the State, or State of Hawaii or anyone else entitled to do so may be commenced within the period of limitation for contract claims unless otherwise specifically provided.

If the Concession Performance Bond is for a period less than the full term of the Concession Agreement plus ninety (90) days, the Concessionaire, at least sixty (60) days prior to the expiration date of the Concession Performance Bond, shall submit another Concession Performance Bond providing coverage beyond the expiration date of the Concession Performance Bond. If the State should receive a notice that the Concession Performance Bond will be canceled, the Concessionaire shall provide the State with a replacement Concession Performance Bond providing coverage from the effective date and time of the bond cancellation so that there is no period of time wherein a Concession Performance Bond does not cover the

Concession Agreement, as provided for herein. Such replacement bond must be forwarded to and received by the State at least twenty (20) days prior to the effective date and time of the bond cancellation.

In the event that a replacement bond or another Concession Performance Bond is not received by the State prior to the effective date and time of the bond cancellation or expiration, as stated, the Concession Agreement shall be deemed in default, regardless of whether notice of breach or default or time to correct breach or default has been provided to the Concessionaire by the State, and the full amount of the face of the bond, and an additional \$250.00 per day that there is no bond coverage, shall be immediately payable to the State as liquidated damages. The Concessionaire shall also be deemed in default and the full face amount of the bond shall be immediately payable to the State as liquidated damages if the Concessionaire shall fail to properly furnish the final certified public accountant's annual verification report.

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

The Concessionaire shall pay the State administrative costs in the amount of ONE THOUSAND NO/100 DOLLARS (\$1,000.00) upon the Concessionaire's proper execution and notarization of the Concession Agreement.

17. FUTURE/OTHER CONCESSIONS

While the State makes no guarantees regarding possible future actions, prospective proposers should be aware that the State contemplates establishing other concessions at the Airport which may result in incidental overlap of services with the On-Demand Shuttle Services Concession. The State will not grant another On-Demand Shuttle Services Concession to anyone else during the term of the Concession Agreement to provide on-demand shuttle bus service; nor will the State itself manage any other On-Demand Shuttle Services Concession at the Airport during the term of the Concession Agreement except as otherwise provided in the Concession Agreement.

18. TAXES

The Concessionaire shall pay all applicable taxes based on the gross receipts derived from the Concession at the Airport and any and all property taxes which may be applicable for the exclusively demised premises granted under the Concession Agreement.

19. GENERAL INFORMATION

Attachment 1 to the Instructions to Proposers (IP) provides information regarding past passenger activity at Honolulu International Airport for the years, 2010 to 2016.

Attachment 2 to IP provides the reported Concession gross receipts from October 16, 2011 to and including January 31, 2017.

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

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

20. OTHER REQUIREMENTS

Each interested Proposer should carefully examine all documents relating to this Concession RFP and judge for itself all the circumstances and conditions affecting its Proposal Package. Failure on the part of any interested Proposer to make such examination and to investigate thoroughly shall not be grounds for any claim that the Proposer did not understand the conditions of its Proposal Package. Any and all interested Proposers shall have the burden to notify the Director, in writing, of any ambiguity, inconsistency or conflict in the Concession RFP Documents. Failure to so notify the Director in writing shall be deemed to be a waiver of that Proposer's right to claim an ambiguity, inconsistency or conflict in the Concession RFP Documents.

21. ATTACHMENTS TO IP

1. Attachment 1 to IP (History of Passenger Traffic at Honolulu International Airport)
2. Attachment 2 to IP (History of Gross Receipts)
3. Attachment 2b to IP, Published Price Schedule (as of 4/18/16)
4. Attachment 3 to IP (Question Submittal Form, Pre-Proposal Conference)
5. Attachment 3A to IP, Question Submittal Form, Final Written Questions

22. APPENDICES

- A. Proposal Intent Package, consisting of:
 - Appendix A (Notice of Interest)
 - Appendix A, Attachment 1 (Qualification Questionnaire)
 - Appendix A, Attachment 2 (Tax Clearance)
 - Appendix A, Attachment 3 (DBE Participation Questionnaire)
 - Appendix A, Attachment 4 (Statement of Affirmation and Acknowledgment of Disadvantaged Business Enterprise (DBE) Requirements)
- B. Proposal Package, consisting of:
 - Appendix B (Proposal Form)
 - Appendix B, Attachment 1 (Tax Clearance Application Forms)
 - Appendix B, Attachment 2 (Affidavit of Non-Collusion)
 - Appendix B, Attachment 3 (Proposal Bond)
- C. Concession Agreement (Appendix C) and Index
- D. Concession Performance Bond (Appendix D)

ATTACHMENT 1 TO IP

HISTORY OF AIR PASSENGER TRAFFIC

HNL INTER-ISLAND/OVERSEAS PASSENGERS
(ARRIVALS)

<u>YEAR</u>	<u>PASSENGERS</u>
2012	9,612,003
2013	9,731,201
2014	9,663,004
2015	9,808,582
2016 (Jan-Oct)	7,255,982

HNL INTER-ISLAND/OVERSEAS PASSENGERS
(DEPARTURES)

<u>YEAR</u>	<u>PASSENGERS</u>
2012	9,663,831
2013	9,745,023
2014	9,678,889
2015	9,828,191
2016 (Jan-Oct)	7,198,138

Proposers are advised that figures pertaining to the number of inter-island/overseas passenger arrivals and departures in prior years are representations of historical activity and not necessarily indicative of future trends or activity levels. Such passenger traffic may be subject to changes in airport activity, construction or other events which may alter conditions.

THE DEPARTMENT OF TRANSPORTATION DOES NOT WARRANT OR GUARANTEE THE CORRECTNESS OF THE INFORMATION CONTAINED IN THIS ATTACHMENT.

ATTACHMENT 2 TO IP

HISTORY OF GROSS RECEIPTS

ON-DEMAND SHUTTLE SERVICES CONCESSION
HONOLULU INTERNATIONAL AIRPORT

<u>PERIOD</u>	<u>GROSS RECEIPTS</u>
January 2017	\$ 350,251
January to December 2016	\$3,775,877
January to December 2015	\$4,263,450
January to December 2014	\$3,696,917
January to December 2013	\$3,364,588
January to December 2012	\$3,476,333

Proposers are advised that the foregoing information pertaining to reported gross receipts from the On-Demand Shared-Ride Shuttle Bus operation at Honolulu International Airport in prior years are merely representations of past trends or historical activity levels based on the best information available to the Department of Transportation, and are not necessarily indicative of future trends or activity levels.

THE DEPARTMENT OF TRANSPORTATION DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF THE INFORMATION CONTAINED IN THIS ATTACHMENT.

ATTACHMENT 3 TO IP

QUESTION SUBMITTAL FORM, PRE-PROPOSAL CONFERENCE

CONCESSION: ON-DEMAND SHUTTLE SERVICES
HONOLULU INTERNATIONAL AIRPORT

COMPANY NAME: _____

ADDRESS: _____

SUBMITTED BY: _____ TITLE: _____

TELEPHONE: _____ DATE: _____

QUESTIONS: _____

(Must be submitted by 4:30 p.m., March 23, 2017)

ATTACHMENT 3A TO IP

QUESTION SUBMITTAL FORM, FINAL WRITTEN QUESTIONS

CONCESSION: ON-DEMAND SHUTTLE SERVICES
HONOLULU INTERNATIONAL AIRPORT

COMPANY NAME: _____

ADDRESS: _____

SUBMITTED BY: _____ TITLE: _____

TELEPHONE: _____ DATE: _____

QUESTIONS: _____

(Must be submitted by 4:30 p.m., April 5, 2017)

APPENDIX A

PROPOSAL INTENT PACKAGE

OPERATION OF ON-DEMAND
SHUTTLE SERVICES CONCESSION
HONOLULU INTERNATIONAL AIRPORT
HONOLULU, ISLAND OF O'AHU
STATE OF HAWAI'I

Name of Proposer (Print) _____

Mailing and Business Address (Print) _____

APPENDIX A
NOTICE OF INTEREST

Date: _____

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

Dear Sir:

You are hereby notified that it is the intent of the undersigned to submit a Proposal Package for the On-Demand Shuttle Services Concession at Honolulu International Airport, Honolulu, Island of O'ahu, State of Hawai'i.

Attached hereto is our fully completed Qualification Questionnaire (Appendix A, Attachment 1).

Very truly yours,

(Name of Firm or Individual)

By _____
(Signature)

Title: _____

(Address)

(City, State, Zip Code)

(Telephone No.)

APPENDIX A
NOTICE OF INTEREST

APPENDIX A, ATTACHMENT 1
QUALIFICATION QUESTIONNAIRE

All information requested in the Qualification Questionnaire (Appendix A, Attachment 1) must be furnished by each Registered Business Entity, and must be submitted with the Proposal Intent Package, which includes Registered Business Entity's Notice of Interest. Statements must be complete and accurate and in the form requested. Omission, inaccuracy, or misstatement may be cause for finding the Registered Business Entity not qualified to submit a Proposal Package (Appendix B) for the On-Demand Shuttle Services Concession at Honolulu International Airport.

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

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

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

3. The Registered Business Entity, if selected, intends to carry on the business as:

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

4. Provide Federal Identification Number (Federal I.D. No.) and State of Hawaii Department of Taxation Gross Excise Tax (G.E.T.) License Number for taxation purposes:

Federal I.D. No.: _____

Hawaii Gross Excise Tax License No.: _____

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

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

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Date of Organization: _____

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

D. Where Recorded: _____
County
State
Date

E. Registered in Hawai'i: Yes / No
 If yes, as of what date: _____

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

6. If the Registered Business Entity is a corporation or a limited liability company, answer the following:

A. When incorporated/formed: _____

B. In what state or country: _____

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

D. How is the corporation held:

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

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

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

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

Name	Address	Shares of Stock or Membership Interests	% of Total

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

Name	Address	Shares of Stock or Membership Interests	% of Total

Total Capitalization: \$ _____

Shares of capital stock or membership interests subscribed: _____

Amount paid-in: \$ _____

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

Yes _____ No _____

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

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

Yes _____ No _____

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

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

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

7. If the Registered Business Entity is a joint venture, provide all applicable information in response to all questions in the preceding Items 5. and 6. for each joint venture member.

8. Minimum Qualification Criteria:

A Registered Business Entity, at the time its fully and properly completed Qualification Questionnaire (Appendix A, Attachment 1) is submitted to the State, must be capable of performing all of the covenants, terms and conditions of the Concession Agreement (Appendix C). Before any Registered Business Entity shall be entitled to submit the subsequent and required Proposal Package (Appendix B and all attachments) for the Concession, the State shall be satisfied with each Registered Business Entity's financial ability, experience, and competence to satisfactorily perform and complete all of the covenants, terms and conditions of the Concession Agreement (Appendix C). At a minimum, each Registered Business Entity must satisfy all the following minimum qualification criteria:

A. Have at least five (5) years of verifiable, continuous experience within the last seven (7) years in ground transportation operations, management and administration involving public or private transit vehicles (e.g., buses, vans, and para-transit vehicles) in the United States.

- B. Have verifiable, annual combined gross receipts derived or generated from ground transportation operations, management and administration involving public or private transit vehicles in each qualifying year exceeding THREE MILLION DOLLARS (\$3,000,000.00).
- C. Have at least two (2) years of verifiable, continuous experience within the last five (5) years in developing customer service programs in a public or private transportation environment.

If a Registered Business Entity is a joint venture, each joint venture partner must individually satisfy the foregoing qualification criteria.

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

9. Summary of Experience:

To complete this Qualification Questionnaire, each Registered Business Entity must submit a narrative response that describes in detail how the Registered Business Entity meets the minimum qualification requirement of at least five (5) years of verifiable, continuous experience within the last seven (7) years as an owner and operator of a ground transportation business in the United States with annual combined gross receipts derived or generated from such business in each qualifying year exceeding \$3,000,000.00. Please follow the same format set forth below for your response. The following information must be included:

- A. Ground transportation business experience as an owner or operator in the United States.
 - (1) Names, nature. For the required five (5) years of experience within the last seven (7) years, the names and addresses of ground transportation business locations or facilities located in the United States which were owned and operated by the Registered Business Entity, together with a description of the nature and scope of the Registered Business Entity's ground transportation operations, including, without limitation, the location and type of business (e.g. airport, transportation center, hotel concession, harbor, port, or other complex). If the experience is attributable to an entity other than the Registered Business Entity, state how this experience is germane to the Registered Business Entity's ability to perform.
 - (2) Period of ground transportation business operation. Number of years (including dates of business operation) the Registered Business Entity has owned and operated said ground transportation business and the nature of the Registered Business Entity's relationship to such business (how owned and operated).

- B. Gross receipts. Gross receipts derived or generated from the Registered Business Entity's ground transportation operation at each ground transportation location or facility for each of the qualifying five (5) years.

If said business has not operated for the past five (5) years, provide the gross receipts for the years it has been operating. If the Registered Business Entity has owned another business within the past five (5) years and is using that experience to meet the minimum qualification criteria, please provide the gross receipts for that business. Each Registered Business Entity must attach evidence of such gross receipts by way of the Audited Statement of Revenues of the Registered Business Entity named in this Qualification Questionnaire prepared by a licensed independent certified public accountant (except unaudited Statement of Revenues may be submitted for the Registered Business Entity's current operating year) for each of the qualifying years for said ground transportation business and/or other businesses.

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

- (1) Organizational documents. Organizational documents, such as joint venture/partnership agreement, corporate articles/bylaws, share certificates.
- (2) Audited financial statements. A complete set of the entire Audited Financial Statements (Independent Auditor's Report, Balance Sheet, Statement of Revenues, Expenses and Changes to Retained Earnings, Statement of Cash Flows, Notes to the Financial Statements and all Supplementary Information) (hereinafter collectively referred to as the "Audited Financial Statements") of the Registered Business Entity named in this Qualification Questionnaire for the most recent three (3) calendar years or fiscal years of operation. The Audited Financial Statements must be prepared and certified by a licensed independent certified public accountant. The Audited Financial Statements may not be prepared or submitted to the State on a condensed or similar summary basis. For example, the submission of a condensed statement of assets, liabilities, and partners' capital (regardless of whether the same was submitted as part of a Federal or State tax return filing) will not be sufficient to satisfy the Registered Business Entity's obligation herein to submit Audited Financial Statements. The financial statements will be used in the scoring of Evaluation Criteria H, Qualified Proposer's Financial References and Capabilities.
 - (a) Individual. If the Registered Business Entity is an individual, submit audited personal financial statements (net worth) in accordance with this Section 9.C.(2).

(b) Registered Business Entity recently formed.

- 1) Registered Business Entity itself. If the Registered Business Entity is a corporation, limited liability company, partnership, or joint venture that was formed within the last three (3) years, the Registered Business Entity must submit Audited Financial Statements, as prescribed and set forth in the preceding Section 9.C.(2), for each year that the corporation, limited liability company, partnership, or joint venture existed; and
- 2) Interest holders. The Audited Financial Statements, as required pursuant to the preceding Section 9.C.(2), for the following: prior to the formation of the corporation, limited liability company, partnership, or joint venture, respectively, to assure that a minimum of three (3) consecutive years of audited financial statements are submitted for the Registered Business Entity:
 - a) For each principal stockholder if the Registered Business Entity is a corporation (a principal stockholder is defined as a stockholder who owns or holds 10% or more of the outstanding stock of the corporation);
 - b) For each principal member if the Registered Business Entity is a limited liability company (a principal member is defined as a member who owns or holds 10% or more of the outstanding membership interests in a limited liability company);
 - c) For each general partner, managing partner, and partner owning, having, or holding a 10% or more interest in the partnership, if the Registered Business Entity is a partnership; or,
 - d) For each member if the Registered Business Entity is a joint venture.

D. Expert Qualifications and Experience. The registered business entity must provide a narrative response describing the following:

- (1) Experience in the collection of ground transportation fees and monetary fiscal and financial controls.
- (2) Expertise and experience in the development and implementation of technological applications in collection and reporting systems to ensure that ground transportation fees collected and paid to the State are properly and

accurately counted in accordance with professional accounting principals and practices.

(3) Expertise and experience in ground transportation operations, scheduling, administration and management, and the monitoring, and control of ground transportation services.

E. Prior name. State if the Registered Business Entity has ever operated under another name and/or ownership structure and if so, please identify all such names and describe the ownership structures.

F. Landlords. Provide the names, addresses, and telephone numbers of landlords and property managers for all operations listed above.

10. References.

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

B. Prior landlords. Attach reference letters from at least three previous landlords.

C. Registered Business Entity's management experience. Contents of the reference letters in the preceding Sections 10.A and 10.B herein shall include information directly related to the Registered Business Entity's management or ownership experience in a ground transportation business.

11. Other information. List and provide any other information the Registered Business Entity may consider pertinent.

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

NAME OF REGISTERED BUSINESS ENTITY: _____

By _____
Date _____

Title _____

Print Name

By _____
Date _____

Title _____

Print Name

By _____
Date _____

Title _____

Print Name

By _____
Date _____

Title _____

Print Name

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

Notary Public, _____

State of _____

My Commission Expires: _____

APPENDIX B

PROPOSAL PACKAGE

OPERATION OF THE ON-DEMAND
SHUTTLE SERVICES CONCESSION AT
HONOLULU INTERNATIONAL AIRPORT
HONOLULU, ISLAND OF O'AHU
STATE OF HAWAI'I

Name of Proposer (Print): _____

Mailing and Business Address (Print): _____

PLEASE REPLACE THIS PAGE WITH THE PROPOSAL

APPENDIX B, ATTACHMENT 1

TAX CLEARANCE CERTIFICATES

The State of Hawai‘i, Department of Taxation Tax Clearance Application (Form A-6, Rev. 2016) is available at the Department of Taxation website at the following address: <http://files.hawaii.gov/tax/forms/2016/a6.pdf>

The form is to be completed by each Proposer and submitted to the Hawaii Department of Taxation for verification that all applicable State taxes and Federal income taxes of the Proposer and all “affiliated entities” have been paid to the State of Hawaii and the U.S. Government, respectively.

"Affiliated entities" is defined as any entity having more than fifty percent (50%) interest in the Proposer; any company more than fifty percent (50%) owned by a company having more than fifty percent (50%) interest in the Proposer; and any entity in which the Proposer has more than fifty percent (50%) interest. Each Proposer shall be responsible for obtaining Tax Clearance Certificates from the Hawai‘i Department of Taxation for itself and all affiliated entities.

Further, each Proposer shall also apply for, obtain and submit a tax clearance certificate issued by each of the county governments within the State of Hawai‘i, which certificate shall verify that all real property taxes, special assessments or other obligations of the bidder have been paid to the respective county.

All tax clearance certificates must be submitted with the Proposer's completed Proposal Package.

APPENDIX B, ATTACHMENT 2

AFFIDAVIT OF NON-COLLUSION

STATE OF _____)

COUNTY OF _____)

_____ being first duly
sworn deposes and says:

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

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

Further Affiant sayeth not.

DATED at: _____

_____, 2011.

By (sign) _____

(Print) _____

Title _____

Subscribed and sworn to before me
this ____ day of _____,
2011.

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

Doc. Description: _____

No. of Pages: _____

Notary signature

My Commission Expires: _____

APPENDIX B, ATTACHMENT 3

PROPOSAL BOND

Bond No. _____

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

KNOW ALL BY THESE PRESENTS: That we, _____

_____ hereinafter called the "Principal," and _____

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

WHEREAS, the Principal has submitted the accompanying Proposal, dated _____ 2017, for a Concession Agreement with said Obligee for the On-Demand Shuttle Services Concession (hereafter the "Concession").

NOW, THEREFORE, if the aforesaid Principal shall not withdraw its proposal for a period of ninety (90) calendar days after the opening of proposals, and if awarded the Concession Agreement upon said proposal, shall enter into the Concession Agreement with said Obligee within ten (10) business days after the Principal has received the Concession Agreement for execution and shall contemporaneously therewith or prior to the execution of such Concession Agreement, give to said Obligee the performance security (Concession Bond) in the form and amount as prescribed and set forth in the "Instructions to Bidders" with respect to and forming a part of said Concession Agreement, and in all respects in conformity with such Instructions, then this obligation shall be null and void; otherwise the Principal and Surety shall pay unto the Obligee the sum of _____

_____ DOLLARS (\$ _____), as and for damages sustained by the Obligee as a result of a failure on the part of the Principal to meet all of the obligations of the Principal contained herein.

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

(Principal)

By _____
Its

(Surety)

By _____
Its Attorney-in-Fact

(ACKNOWLEDGMENTS)

CONCESSION AGREEMENT NO. DOT-A-17-0008
G.E.O. NO. 3201

STATE OF HAWAI'I
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION

APPENDIX C

CONCESSION AGREEMENT
RELATING TO OPERATION OF
ON-DEMAND SHUTTLE SERVICES CONCESSION
AT
HONOLULU INTERNATIONAL AIRPORT
HONOLULU, ISLAND OF O'AHU,
STATE OF HAWAI'I

CONCESSION AGREEMENT RELATING TO OPERATION OF
ON-DEMAND SHUTTLE SERVICES CONCESSION
AT HONOLULU INTERNATIONAL AIRPORT

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APPENDIX C

CONCESSION AGREEMENT
FOR THE ON-DEMAND
SHUTTLE SERVICES
HONOLULU INTERNATIONAL AIRPORT
HONOLULU, ISLAND OF O‘AHU
STATE OF HAWAI‘I

This Concession Agreement made this ____ day of _____, 2017, by and between the STATE OF HAWAI‘I, by its Director of Transportation, hereinafter referred to as the “STATE,” and _____, whose business and post office address is _____, hereinafter referred to as the “Concessionaire”.

WITNESSETH:

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

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

WHEREAS, the STATE solicited proposals to exclusively operate the On-Demand Airport-Based Shuttle Services Concession at Honolulu International Airport in the State of Hawai‘i; and

WHEREAS, proposals were received from qualified proposers, which were carefully analyzed and fully reviewed, and the STATE determined that the Concessionaire’s proposal was the most responsible and awarded this Concession Agreement to operate the Concession (hereafter the "Concession Agreement ") to the Concessionaire; and

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

WHEREAS, the STATE desires to enter into this Concession Agreement to make available to passengers at Honolulu International Airport adequate on-demand airport-based shuttle bus services,

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

ARTICLE I. DEFINITIONS

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

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C.S Section 12101 et seq., as amended. B. "ADAAG" means the United States Access Board's ADA Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles.

B. "Airport" means the Honolulu International Airport, located in Honolulu, City and County of Honolulu, Island of O'ahu, State of Hawai'i , as shown on Exhibit A, attached hereto and hereby made a part hereof.

C. "AVI" means Automatic Vehicle Identification system, an automated vehicle tracking system that indicates the number of trips made by ground transportation motor vehicles on Airport roadways and the time and date of each trip.

D. "Concession" means the exclusive right, privilege and obligation to use the Premises to operate and maintain a shuttle bus service originating from the Premises and providing service to locations outside of the airport as part of On-Demand Ground Transportation Service at the Airport in accordance with the agreements, covenants, promises, provisions, requirements, restrictions, reservations, stipulations, terms, and conditions contained in this Concession Agreement.

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

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

G. "Concessionaire" means the proposer to whom the Concession Agreement is awarded and who enters into the Concession Agreement (Appendix C) with the State in accordance with the Proposal.

H. "Concessionaire's agents" means all of the Concessionaire's officers, employees, agents, servants, contractors, subcontractors, suppliers, customers, guests, patrons and invitees.

I. "County" means the City and County of Honolulu O'ahu, State of Hawai'i.

J. "DCAB" means the State of Hawai'i, Department of Health Disability and Communication Access Board.

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

L. "Director" means the Director of Transportation, State of Hawai'i, or the Director's designated representative.

M. "Disadvantaged Business Enterprise" 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, an entity in which at least fifty-one percent (51%) of the stock is owned by one or more such individuals; 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified by STATE as a Disadvantaged Business Enterprise.

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

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

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

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

R. "Ground Transportation Service" means the providing for hire of a motor vehicle at the Airport for the purpose of transporting the hirer of, or passenger and/or personal property in such motor vehicle.

S. "Guests" shall include licensees, Concessionaire's vendors, visitors, providers of utility services and other services, customers, invitees and patrons.

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

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

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

W. "Incumbent Concessionaire" means the existing Concessionaire currently operating the exclusive On-Demand Shuttle Bus concession at the Airport.

X. "Incumbent Concessionaire Agreement" means the existing concession agreement between State and the Incumbent Concessionaire for the operation of the exclusive on-demand shuttle bus concession, currently held on a holdover, month-to-month basis.

Y. "Initial Allocation" means and includes all those certain areas and/or spaces at the Airport, as described in the Concessionaire's Proposal, and agreed to by the STATE, and shown and delineated on Exhibits _____, attached hereto and made a part hereof, which Concessionaire may occupy and use for Concession purposes.

Z. "Land Board" means the Board of Land and Natural Resources of the State of Hawai'i, which shall approve any amendment to this Concession Agreement that adds space to the Premises.

AA. "Minimum Annual Guaranteed Concession Fee" or "MAG" means the Minimum Annual Guarantee, as stated in t14C-he Concessionaire's proposal for the first Concession Agreement year. For each subsequent year of the Concession Agreement, the MAG shall be eighty-five percent (85%) of the Concession Fee that was paid and payable to the State in the prior Concession Agreement year.

BB. "On-Demand Shuttle Service" means providing for hire of a motor vehicle, at any public airport, for the purpose of transporting the hirer of, or a passenger in, such motor vehicle

and personal property where such hire or transportation was not contracted or arranged for by the hirer, passenger, or another on behalf of the hirer or passenger, in advance of the hirer's or passenger's arrival at the Airport.

CC. "Percentage Fee" means the amount equal to 15% of Concessionaire's gross receipts.

DD. "Prearranged Ground Transportation Service" as defined in Section 19-20.1-55, Hawai'i Administrative Rules, means providing for hire of a motor vehicle, including rent-a-car vehicles, at any public airport, for the purpose of transporting the hirer of, or a passenger in, such motor vehicle and personal property where such hire or transportation was contracted or arranged for by the hirer, passenger, or another on behalf of the hirer or passenger, in advance of the hirer or passenger's arrival at a public airport or, upon or after his/her arrival at the public airport, by communicating with an operator whose place of business is situated outside the public airport, for ground transportation services to be performed, at least in part, at the public airport.

Prearranged Ground Transportation Service as used herein also includes passenger transportation services, tours, and courtesy car services for customers and guests upon vehicles owned or leased by the operators even if the services are provided gratuitously or may be an incidental part of another service.

Prearranged Ground Transportation Service as used herein does not include the right to solicit, offer, and provide ground transportation service for hire to any person other than to persons for which ground transportation services had been arranged in advance.

EE. "Premises" means the Initial Allocation and the additional space, if any.

FF. "Sales Space" means that portion of the Premises designated by the Concessionaire to be used for ticket sales. All portions of the Premises not designated as Sales Space shall be considered Non-Sales Space.

GG. "Shuttle Bus" means a motor vehicle, as described in the Concessionaire's Proposal, capable of carrying passengers and their baggage, with a driver provided by the Concessionaire.

HH. "Shuttle Bus Pickup/Drop off" means the designated area(s) shown in the Concessionaire's Proposal, and agreed to by the STATE, where ground transportation vehicles and drivers pickup or off-load passengers.

II. "Shuttle Service" means and includes the service of providing for hire by the public at the Airport vehicles as described in the Concessionaire's Proposal. The vehicles shall have a driver other than the hirer, for the purpose of transporting the hirer and incidental personal property to a fixed point or points of destination over a route or routes controllable by the driver.

JJ. "Shuttle Bus Stand" means the area designated by the STATE for use by the Concessionaire for pickup or off-loading passengers.

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

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

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

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

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

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

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

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

(vi) Women; and,

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

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

MM. "STATE" means the State of Hawai'i, by its Department of Transportation.

NN. "STATE's agents" means the STATE's officers, employees, agents, servants, representatives, contractors, suppliers and guests.

OO. "Tenant Improvement Guidelines" refers to the manual (Appendix C, Attachment 2) prepared by the STATE which details specifications and guidelines to be adhered to for all improvements, additions, and renovations made by the Concessionaire to the Premises, including any subsequent amendments thereto adopted by the STATE.

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

ARTICLE II. CONCESSION AGREEMENT STANDARDS

A. Foundation. This Concession Agreement sets forth the obligations and privileges of Concessionaire with respect to the operation of the Concession at the Airport. This Concession Agreement incorporates by reference the Concession RFP Documents. In the event of a conflict among the Concession RFP Documents, this Concession Agreement (Appendix C) shall control.

B. Qualification. As an explicit condition of the award of this Concession to Concessionaire, in the event this Concession is awarded hereunder to an Incumbent Concessionaire and notwithstanding any other term or provision contained in the Incumbent Concessionaire Agreement, the subject Incumbent Concessionaire Agreement shall terminate as of the commencement date of this Concession Agreement as set forth in Article IV (Term) hereof. Said termination will be effective without the requirement for any other notification from STATE to the Incumbent Concessionaire. Upon such termination by STATE, all rights, powers, and privileges of the Incumbent Concessionaire granted under the Incumbent Concession Agreement shall cease.

ARTICLE III. CONCESSION PREMISES

The Concessionaire shall, upon payment of the required rents, fees and charges herein and the observance and performance of such further terms and conditions as are hereinafter provided, occupy and use the Premises during the term of this Concession Agreement to operate the Concession. The Premises are more particularly described hereafter and specific locations are identified. All Concession activities within the Premises must conform to the uses identified for that particular area of the Premises and cannot be adjusted, changed or altered without the STATE's prior written approval.

A. At the Commencement of the Concession Agreement (“Initial Allocation”).

1. Passenger Service, Dispatch and Office Space. As agreed to with the Successful Proposer.

2. Passenger Pick-up/Drop-off Area. As agreed to with the Successful Proposer.

B. Additional Space.

1. STATE's requirement. The STATE may make available to the Concessionaire at the Airport additional spaces over and above the Initial Allocation under this Concession Agreement and require the Concessionaire to operate the Concession there from if the volume of air travelers, passengers, visitors, customers and users of the Airport, in the STATE's sole discretion, justifies the opening of the Concession at any spaces at the Airport over and above the Initial Allocation. The decision to make available additional Concession spaces shall be in the sole discretion of the STATE.

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

3. Concessionaire's Request. The Concessionaire may request the use of additional space at the Airport over and above the Initial Allocation under the Concession Agreement for operation of the Concession. The STATE may grant or deny the Concessionaire's request, in whole or in part, in the STATE's sole discretion.

4. Agreement Amendment. The Concessionaire shall not use any such additional space approved by the STATE unless and until an amendment to this Concession Agreement is signed by the STATE and the Concessionaire and properly approved by the Land Board. The rent for any additional space requested by the Concessionaire and approved by the STATE is set forth in Article VI (Concession Fee). Any space added to the Premises after commencement of the Concession Agreement (whether at the request of the STATE or the Concessionaire) under an amendment to the Concession Agreement signed by the STATE and the Concessionaire and approved by the Land Board shall become part of the Premises under this Concession Agreement.

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

C. Concession Limited to Premises. The Concessionaire shall conduct the Concession operations at the Airport solely and exclusively within the limits and confines of the Premises.

D. Space Adjustments

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

2. No Specific Space Guaranteed. The award of the Concession Agreement and the use of the Premises shall not mean the Concessionaire is guaranteed the right of occupancy or operation from any specific portion of the Premises for the entire term of the Concession Agreement. The STATE shall not be responsible and the Concessionaire shall have no claim against STATE, for any costs or expenses incurred by the Concessionaire in relocating from any portion of the Premises. At any time during the term of this Concession Agreement, the STATE may, by letter setting forth the reasons, require the Concessionaire to surrender any portion of the Premises. Should the STATE require such surrender, the STATE will use its best efforts to provide the Concessionaire with substantially equivalent substitute space provided, however, that the Concessionaire acknowledges and agrees that there may be a net reduction in the area of the Premises, and that Concessionaire will not seek damages or other remedy for such reduction.

3. Changes to the Airport.

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

(1) Changes. Change the shape, size, location, number and extent of the improvements on any portion of the Airport, including, without limitation, the concourses, piers, boarding areas, concession areas, parking areas, loading areas, roadways, drop-off areas, and security areas located in the terminal buildings;

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

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

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

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

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

c. Concessionaire's acknowledgment. The Concessionaire acknowledges that such construction, renovation and modification at the Airport might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions and other inconveniences normally associated with construction, renovation and modification.

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

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

ARTICLE IV. CONCESSION TERM

A. Five-year term. The term of this Concession Agreement shall commence at 12:01 a.m. on _____, 2017 and expire at 12:00 midnight on _____, 2022, unless (1) sooner terminated pursuant to Articles XX (Termination by STATE) or XXIII (Termination by Concessionaire), or (2) extended in accordance with the holdover provisions set forth hereof.

B. Holdover.

1. STATE's decision. The STATE may, but shall not be obligated to, permit the Concessionaire to holdover on or at the Premises beyond the expiration of this Concession Agreement, subject to the terms and conditions set forth herein. In making its decision on whether to permit such a holdover, the STATE shall consider any circumstances impacting thereon, including, without limitation: (1) the benefits and costs to the STATE of permitting such a holdover, (2) conditions under which a delay in placing the Concession out to bid could result in greater revenue to the STATE, (3) the potential revenue loss resulting from a gap in the provision of the Concession services, (4) renovations of the 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 to exceed one year from the end of the concession term agreed to by the Concessionaire and the STATE.

3. Holdover terms.

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

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

ARTICLE V. USE OF CONCESSION PREMISES

A. Authorized Use. Concessionaire shall, in general, have the exclusive right, privilege and obligation to use the Premises for the operation of the concession, including sales, customer service, dispatching vehicles and passenger pick-up and drop-off.

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

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

1. No illegality. For any illegal purpose.
2. No nuisance. To do any act which results or may result in the creation or commission or maintenance of a nuisance on the Premises. The Concessionaire shall also not cause or produce or permit to be caused or produced upon the Premises, or to emanate therefrom, any offensive sounds, or any noxious or objectionable smoke, gases, vapors, or odors.
3. No lodging. For lodging or sleeping purposes.
4. No interference. For anything which may interfere with either the effectiveness of or access to utility systems, air conditioning systems, elevators or escalators (including facilities, structures, lines, equipment, conduits, and appurtenances, connected or appurtenant thereto) in or adjacent to the Premises; or which may interfere with the free access and passage in and to the Premises or public areas adjacent thereto, or in the streets or sidewalks adjoining the Premises.
5. No overload. To overload any floor on the Premises or place loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways, elevators, or escalators in front of, within or adjacent to the Premises and the terminal buildings in which the Premises are located.

6. No effect on insurance. To do or permit the doing of any act or thing upon the Premises which will either increase the premium rate of, be contrary to, or invalidate any fire, casualty, or liability insurance policies either required herein or carried by the STATE, covering the Premises or the buildings in which the same are located. (The Concessionaire shall, in connection herewith, obey, observe and adhere to any and all present and future rules, regulations, orders and decisions issued by the STATE or any governmental authority pursuant thereto, and the requirements and directions of fire or other underwriters on the applicable policies of the STATE and the Concessionaire, which may pertain or apply to the operation of the Concession upon the Premises.)

7. No vending machines. To install, maintain or operate or permit the installation, maintenance or operation, of any coin, token, or credit card-operated vending machine or device for the purpose of vending or providing any product or service (and for the purposes hereof, amusement or entertainment shall be deemed a service) upon any portion of the Premises or the Airport without the prior written approval of the STATE.

8. No deceptive promotion. To engage in any deceptive promotional, sales or advertising practice which would mislead or otherwise provide any customer with an indication of an opportunity which is not as indicated or which significantly overvalues the service being sold.

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

10. No handbills. Distribute handbills or circulars to patrons of the Airport or to vehicles in the parking lots of the Airport, or engage in any other advertising in the Airport (except as may specifically permitted under this Concession Agreement).

11. No injury to reputation. Do or permit to be done anything in any way tending to injure the reputation of the STATE or the Airport or the appearance of the Airport. The Concessionaire shall not, without the prior written consent of the STATE, reference the STATE or the Airport for any purpose other than the address of the business to be conducted by the Concessionaire in the Premises, nor will the Concessionaire do or permit anything in connection with the Concessionaire's business or advertising which in the judgment of the STATE may reflect unfavorably on the STATE or the Airport, or confuse or mislead the public as to the relationship between the STATE and the Concessionaire.

12. No alcoholic beverages. Consumption or sale of alcoholic beverages.

C. Exclusive Use of Premises. As long as the Concessionaire is not in default hereunder, the Concessionaire shall have the exclusive right, privilege and obligation to use the Premises described in Article III (Concession Premises), solely for the purpose prescribed and set forth in Article V.A (Authorized Use), and shall not use the Premises, or any portion thereof,

for any other purpose during the term of this Concession Agreement. Any clarification or further determination of the uses allowed under this Concession Agreement shall be at the sole discretion of the STATE.

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

ARTICLE VI. CONCESSION FEE

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

1. Annual Concession Fee. The total annual Concession Fee shall be the greater of the following:

a. Minimum Annual Guaranteed Fee. The minimum annual guaranteed fee for the first year of the term of this Concession Agreement, as set forth in the Concessionaire's Proposal (hereafter the "MAG"); or

b. Percentage Fee. For each year of the term of this Concession Agreement, the percentage fee shall be fifteen percent (15%) of the Concessionaire's annual gross receipts generated from, related or attributable to, or connected with the operation of the Concession.

c. Minimum Annual Guarantee Fee for subsequent years. The minimum annual guaranteed fee for each subsequent year of the term of this Concession Agreement shall be Eighty-Five Percent (85%) of what was paid and payable in the prior concession year.

2. Space Rents. A portion of the Annual Concession Fee shall be allocated and attributed to the use of space initially made available to the Concessionaire under this Agreement.

a. Initial allocation.

As agreed to with the Concessionaire.

b. Additional space. The Concessionaire shall pay to the STATE, in addition to the Annual Concession Fee, the annual sum of the space rents for additional Concession spaces requested by the Concessionaire and approved by the STATE, based on the applicable rental rates set forth in Article VI.A.2.a (Initial allocation) above, excluding those additional Concession spaces from or on which the STATE required the Concessionaire to operate the Concession, as prescribed in Article III (Concession Premises) herein.

3 Other Modes of Transportation. All fees and other payments required of the Concessionaire by this Concession Agreement shall be paid by the Concessionaire, without diminution or abatement, regardless of the existence or creation of any mode of transportation which serves the general public, whether or not such service is operated by public, quasi-public, and/or private bodies, and whether or not such service includes the Airport. Further, the Concessionaire hereby waives any and all rights, present or future, that it may possess against any public, quasi-public, and/or private bodies, including the STATE, because of the existence or creation of said mode of transportation.

B. Gross Receipts Defined. "Gross receipts" shall include all receipts, whether by coin or currency, on account, by check, debit card, or credit card, money order, purchase order, cashier's check, traveler's check or similar, derived or received by the Concessionaire as a result of its operation of the Concession and shall include all other receipts from or incidental to any business conducted through the use of the Premises or which is a part of, related to, or connected with, the Concessionaire's operation of the Concession, regardless of whether or not the transactions resulting in the receipts involved any entity related to the Concessionaire.

1. Exclusions. "Gross receipts" excludes:

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

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

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

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

C. Additional Space. If the Concessionaire requests and the STATE agrees to make available additional space over and above the Initial Allocation under the Concession Agreement, the Concessionaire shall pay rental for such additional space as follows:

1. Floor rent. Floor rent equal to the square footage of additional space multiplied by the rates and charges applicable to such additional space as set forth in Article VI.A.2.a (Initial Allocation).

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

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

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

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

3. All sales recorded. The Concessionaire 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 or otherwise. The Concessionaire shall issue to each customer a receipt or sales slip for each transaction, which transaction must be recorded on serially numbered receipts or sales slips.

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

5. Reports.

a. Monthly report deadline. Submit to STATE on or before the 20th day of each and every month following each month of the term of this Concession Agreement, including the 20th day of the month following the end of said Agreement term by expiration or sooner termination, at the place fixed for fee payment, a written statement using forms prescribed or approved by the Director, to be certified as correct by the Concessionaire, or by a person duly authorized by the Concessionaire to so certify, showing in accurate detail the: (1) number of passengers each day, (2) destination for each passenger, (3) the time each passenger requested service, (4) the time the service was provided, (5) amount charged each passenger, (6) total number of passengers, and (7) amount of gross receipts for the preceding month.

b. Annual report deadline. The Concessionaire shall further submit to the STATE on or before the 60th day following the end of each agreement year during the term of this Concession Agreement, at the place fixed for fee payment, a written statement certified as correct by the Concessionaire, or by a person duly authorized by the Concessionaire to so certify, showing in accurate detail: (1) Passenger counts, (2) Passenger destinations, and (3) Gross Receipts, duly verified by a licensed independent certified public accountant.

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

d. Purchases from DBEs. The Concessionaire shall provide with the monthly and annual reports, a separate report detailing any purchases of goods and /or services from DBEs. The report shall specify the goods and services purchased, the cost of each good or service and the name of the DBE company from which the goods or services were purchased.

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

f. Estimate of gross receipts. The STATE may make assessments upon the Concessionaire by recourse to such procedures selected by the STATE which would produce a reasonable gross receipts expectation upon which concession fees may be computed. In the event that records have not been prepared and kept in accordance with the provisions set forth herein, the STATE shall, in addition to all other payments required herein, including any percentage fees based on a reasonable amount of gross receipts estimated by the STATE, be entitled to demand and receive from the Concessionaire an additional payment of ten percent

(10%) of the aggregate of: (a) the applicable Minimum Monthly Guaranteed Fee; and (b) the applicable Monthly Percentage Fees.

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

- a. the Concessionaire's request for STATE's consent to an assignment; or,
- b. the Concessionaire's request involves any type or claim of financial hardship or distress or any type of financial relief under the Concession Agreement, such as rent or other type of financial relief; or,
- c. the Concessionaire's request for any change to the terms of the Concession Agreement (assuming such change is permissible) which, in the STATE's discretion, may have a significant financial impact on Concession operations; or,
- d. the Concessionaire's submission of a financial, or other type of monetary claim under or pursuant to the Concession Agreement; or,
- e. the STATE reasonably believes (based on the STATE's written findings) that the submission of Concessionaire's financial statements is necessary to effectively assess and monitor Concession operations.

If the STATE evaluates any claims by the Concessionaire of financial hardship or distress or requests by the Concessionaire for financial relief under the Concession Agreement, the STATE may, if it deems necessary after reviewing Concessionaire's financial statements and any other financial information submitted by the Concessionaire, require the Concessionaire to: (i) post additional security in the form of additional surety bonds; or (ii) increase the amount of the Concession Performance Bond (as defined herein). If the STATE determines that the Concessionaire should provide the STATE with additional security regarding the Concessionaire's ability to fully perform its obligations under the Concession Agreement, the Concessionaire shall provide such additional security, such as separate and additional surety bonds or a Concession Performance Bond with increased dollar coverage, within five (5) business days after receiving the STATE's written notice.

7. Other reports. In addition to the Concessionaire's financial statements required to be submitted pursuant to Article VI.C.6 (Audited Financial Statements) of the

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

8. Financial Records Inspection.

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

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

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

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

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

f. Audit cost reimbursement. If such audit by the STATE's accountant or licensed independent certified public accountant retained by the STATE shall disclose that fees have been underpaid by two percent (2%) or more for any period under examination, the STATE shall, in addition to the remedies provided in Article VI.D.5 (Reports) herein, be entitled to reimbursement of all costs and expenses incurred in completing any such audit, in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

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

E. Time of Payment.

1. MAG. The MAG and, if any, additional floor rent, required herein shall be paid monthly, in advance, but not more than one year in advance, on the first day of each month. The first MAG payment shall be on _____.

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

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

F. General Payment Provisions.

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

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

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

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

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

H. Partial Relief from Obligation. Based on §102-10, HRS, if during the term of this Concession Agreement, there has been a reduction of fifteen percent (15%) or more in the

volume of business at the Premises of the Concessionaire for a period of sixty days or more, computed on the average monthly gross receipts for the eighteen months just prior to the period or as long as the Concessionaire has been in the business under this Concession Agreement, whichever period is shorter, and such reduction, as determined by the STATE, is caused by construction work conducted by the STATE during the period of time on, within or contiguous to the Premises, with the approval of the Governor, the STATE may modify any of the terms of this Concession Agreement, including the agreed upon fee, for a period which will allow the Concessionaire to recoup the amount lost by such reduction, provided further that this provision shall not apply to this Concession Agreement if the application thereto may impair any contractual obligations with bondholders of the STATE, the State of Hawai‘i, or with any other parties. If §102-10, HRS, is revised or amended, the provisions contained in this Article VI.H (Partial Relief from Obligation) will be revised or amended to conform to such changes to §102-10, HRS. If the Concessionaire elects to receive or receives the relief described in this Article VI.H (Partial Relief from Obligation), the Concessionaire shall not be entitled to combine this relief with any other relief allowed under this Concession Agreement, including Article VI.I (Relief due to Economic Emergency) below.

I. Relief Due to Economic Emergency

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

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

(b) either of the following two conditions:

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

(2) The Director of Transportation finds that from and after the date the Concessionaire requests relief, there has been a significant decrease in airline passenger

arrivals (hereafter “deplanements”) from the airport of twenty per cent (20%) or more for a period of sixty (60) consecutive days or more, computed on the airport’s average monthly deplanements for the eighteen (18) months just prior to the date from which the Concessionaire requests financial relief.

2. Concessionaire’s financial hardship claim. Concessionaire must submit a written request for fee relief to STATE claiming financial hardship or distress and make available to STATE such financial information as may be required by STATE pursuant to Article VI.D.6 (Audited Financial Statements) and Article VI.D.7 (Other reports) herein.

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

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

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

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

ARTICLE VII. CONCESSION IMPROVEMENTS

A. Acceptance of Premises.

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

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

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

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

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

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

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

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

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

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

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

2. STATE to provide. The Initial Allocation provided by the STATE to the Concessionaire shall at minimum be unfinished space within the confines of the Initial Allocation consisting of plastered or particle board walls, structural ceiling, concrete flooring and the utility stub outs or nearby connections as further described in Article XII (Utility Service).

B. Utility Connections. Utility service connections for electric power and telephones will be available for the Premises. Said utilities are to be separately metered or billed to the Concessionaire and the Concessionaire is to provide distribution of utilities within the Premises.

1. Electricity. Electricity shall be available to the Concessionaire at electric power panels located in the respective Airport buildings. Heat and air conditioning will be made available at connection points determined by the STATE and the Concessionaire will be charged at established rates for its pro rata share of the cost of furnishing such heat and air conditioning as well as for all other utility services which are not separately metered.

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

3. Concessionaire's release. The Concessionaire hereby expressly waives and releases any and all claims for compensation or for any diminution or abatement of the rents, fees and charges provided for herein for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the heating or air conditioning systems, electrical apparatus, equipment, facilities, or wires furnished to the Premises which may occur from time to time from any cause or from any loss resulting from water, earthquake, wind, civil commotion, riot or any other cause beyond the control of the STATE; and the Concessionaire hereby expressly releases and discharges the STATE and the STATE's officers, employees, servants and agents from any and all demands, claims, actions, causes of action, liabilities, losses, damages, costs and expenses arising from any of the aforesaid causes. In all instances where damage to any utility service line is caused by the Concessionaire, its employees, contractors, suppliers, agents or invitees, the Concessionaire shall be solely responsible for the cost to repair such damage.

C. Maintenance and Repair.

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

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

2. Concessionaire. The Concessionaire shall, at all times and at its sole cost and expense, keep and maintain all portions of the Premises, including, without limitation: (a) all FFE, (b) any hallway, walkway, corridor and other common routing used by the Concessionaire, (c) all mechanical room equipment such as, but not limited to, heat exchanges, fans, controls and electric panels, (d) lighting fixtures used to sign or identify the activity permitted upon the Premises (including the lighting fixtures and signs on the sides of the Premises that face the public areas where passengers, users and visitors at the Airport will pass through) and (e) obstruction lights and similar devices, fire protection and safety equipment and all other like equipment required by any law, statute, rule, regulation, order, or ordinance, in good repair and in a clean and orderly condition and appearance and shall keep the areas immediately adjacent to the Premises, particularly those adjacent to the entrances and exits, clean and orderly and free of obstructions. The Concessionaire shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or sooner termination of this Concession Agreement, the Premises will be in a condition similar to that which existed at the commencement of this Concession Agreement, ordinary wear and tear excepted.

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

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

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

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

e. Damage Repair. The Concessionaire shall suffer no strip or waste of the Premises and shall repair, replace, rebuild and paint all or any part of the Premises which may be damaged or destroyed by the acts or omissions of the Concessionaire, the Concessionaire's agents, officers and employees or other persons. Any and all structural repairs, alterations and additions to be made by the Concessionaire to or on the Premises (and any and all other such work which is non-structural and costs \$3,000.00 or more) shall be subject to the requirements of this Article VII (Concession Improvements) herein and all such work must receive the prior written consent of the STATE.

D. Relocation. The Concessionaire acknowledges and agrees that the STATE may require, at the Concessionaire's sole cost and expense, an expansion of any portion of the Premises, and require the relocation of any portion of the Premises, in whole or in part, during the term of this Concession Agreement, upon a finding by the STATE that such expansion and/or relocation is necessary to provide for an on-demand shuttle service concession facility in any area of the Airport to meet the demands of the air traveling public at the Airport.

ARTICLE VIII. CONCESSION OPERATION

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

1. Conduct of operations. The Concessionaire shall maintain and operate the Concession in an orderly, proper and first-class manner representative of a world-leading provider of on-demand shuttle bus services.

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

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

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

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

e. Greeting. As agreed to with the Concessionaire.

f. Provide directions. Should a traveler have a question about the Airport, or other methods of transportation, such as rental cars, taxi cabs or the City bus, Concessionaire and its employees shall be able to answer questions about the Airport and provide directions to the Consolidated Rent-A-Car facility (or the pick-up locations used by buses that service the facility), the nearest taxi stand or City bus stop.

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

3. Meeting participation. The Concession Manager shall participate in Airport organized meetings designed to communicate information regarding events and activities affecting the operation of the Airport, as well as to meet with any consultant, planner or member

of the Airport administration identified by the STATE to discuss and review matters pertaining to Airport or ground transportation activities.

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

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

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

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

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

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

(3) Other locations. The Concessionaire's staff shall be knowledgeable about the location of hotels and be able to provide an accurate estimate of the travel time from the airport to the destination.

B. Operations.

1. Service Areas.

- a. Required service. As agreed to with the Concessionaire.
- b. Optional service. As agreed to with the Concessionaire.

2. Hours of operation. The Concessionaire shall provide and operate the Concession during all hours in which passenger flights arrive and/or depart from the Airport. The Concessionaire may advise the STATE of the Concessionaire's analysis of the optimum arrangements, but the ultimate determination will be made by the STATE, who may require, by written notice to the Concessionaire that the business hours be changed to meet new conditions including, but not limited, to aircraft arrival and/or departure times. The Concessionaire shall be excused from its obligations as set forth above in the event that its operations are closed or curtailed, in whole or in part, by reason of strike, lockout or other cause beyond the Concessionaire's control.

3. Customer wait time. The Concessionaire shall ensure that no passenger or customer will wait longer than fifteen (15) minutes at the Premises for on-demand shuttle service.

4. Number of vehicles. The Concessionaire shall provide a sufficient number of Airport on-demand shuttle service vehicles and drivers to meet public demand at all times of the day, except as noted elsewhere in this Concession Agreement.

5. Solicitation. The officers, employees, agents, and guests of the Concessionaire shall not: 1) solicit any gratuities or favors related to the operation of the Concession, and 2) solicit any other business not directly related to the Concession operation.

6. Lost and found. The Concessionaire shall establish and undertake lost and found procedures to be followed by its officers, employees, agents, and guests. The procedures shall include: 1) required efforts to locate the rightful owner of the lost and found items, 2) provisions for safe storage by the Concessionaire of all lost and found items, 3) provisions for return of claimed items, including, if necessary, shipping to the owner's residence at Concessionaire's sole cost and expense, and 4) provisions for disposal of unclaimed items after a suitable time period, which shall be no less than six months after discovery of the lost and found item. A written record of all lost and found articles shall be maintained by Concessionaire and made available to STATE upon demand.

7. Condition of vehicles. The Concessionaire shall ensure that all motor vehicle(s) used in the operation of the Concession are in a safe and proper mechanical condition, clean, air-conditioned, and acceptable in appearance, and also meet and conform to all of the

standards prescribed and set forth by the U.S. Department of Transportation and the State Public Utilities Commission for commercial motor vehicles.

8. No service, maintenance or repair. The Concessionaire shall not permit nor allow any on-demand shuttle service motor vehicle or any other motor vehicle to be washed, cleaned, polished, maintained, serviced or repaired anywhere on the Premises or at any other location on the Airport at any time. All motor vehicle maintenance, service, repair, or part replacement work is prohibited at, upon, or within the Premises or at any other location on the Airport.

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

10. Control movement. The Concessionaire at all times supervise, manage, and control the movement, circulation and routing of all Concessionaire's on-demand shuttle buses which such motor vehicles are operating on Airport roadways to ensure the property timing and arrival of on-demand shuttle bus at the shuttle bus stands and to meet customer demand.

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

12. AVI. In the event that an AVI system at the Airport is deemed necessary by the STATE, the Concessionaire shall assume full responsibility for coordinating, scheduling and arranging for the installation of the individual AVI system equipment and sensing components on all of the Concessionaire's on-demand shuttle buses. Further, the Concessionaire shall: (a) certify and assure the STATE that each and every on-demand shuttle bus is equipped with individual AVI sensing equipment; and (b) remit to STATE all fees and charges associated with the purchase and installation of individual AVI sensing equipment.

13. Prearranged Shuttle Bus Service. At such time as a customer contacts the Concessionaire to make arrangements for prearranged shuttle bus service, the Concessionaire shall direct the customer to the Premises for service. The Concessionaire shall not meet or greet its prearranged customers at locations in the Airport other than the Premises. 14. Waste disposal. The Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused by or resulting from the operation of the Concession.

14. Hazardous Materials. The Concessionaire shall remove Hazardous Substances or any such materials at, upon, above or under the Premises which may endanger the life or health or property of people at the Airport and Airport operations. The Concessionaire's obligations attributable to the Concessionaire's use, generation, handling, storage, or release of

Hazardous Substances which were on or from the Premises are further described in Article XI (Compliance with Laws) herein.

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

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

2. Price List. No later than the commencement of each year of the Concession Agreement term, the Concessionaire shall publish and submit to the STATE a list of the prices charged to the 20 most popular destinations and neighborhoods.

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

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

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

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

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

ARTICLE IX. CONCESSION BOND

A. Requirements. Within thirty (30) days after award of this Concession Agreement or prior to the commencement date of this Concession Agreement, whichever first occurs, and throughout the term of this Concession Agreement and including no less than ninety (90) days after the expiration or sooner termination of the Concession Agreement, the Concessionaire shall deliver to the STATE, and keep and maintain in full force and effect at all times a concession bond acceptable to the STATE, in accordance with the terms specified in this Article IX (Concession Bond), and in the amount equal to four (4) months of MAG for the appropriate year of the Concession Agreement term, as specified in the Concessionaire's Bid Proposal hereof (hereafter the "Concession Bond"). The Concession Bond must:

1. Authorized surety. Be executed by a surety company licensed and authorized to do business under the laws of the State of Hawai'i (hereafter the "Surety");
2. STATE approval. Meet with the written approval of the STATE, including, without limitation, meeting the requirement that the Surety, to the STATE's sole satisfaction, has the financial capability to fully perform and complete the Surety's obligations under the Concession Bond;
3. STATE's attorney approval. Be in a form approved by an authorized representative of the Department of the Attorney General of the State of Hawai'i;
4. Guarantee full performance. Require the Surety to guarantee to the STATE that the Concessionaire shall fully and completely perform all of the promises, duties, responsibilities, obligations, covenants, provisions, requirements, restrictions, stipulations, terms and conditions set forth in this Concession Agreement which the Concessionaire is required to perform;
5. Concessionaire's cost. Be maintained by the Concessionaire, at the Concessionaire's sole cost and expense; and
6. Cover all Concession operations. Cover all of the Concessionaire's Concession operations during and throughout the term of this Concession Agreement including any holdover period; provided that lawsuits or actions thereon by the STATE, the State of Hawai'i or anyone else entitled to do so may be commenced within the applicable period of limitation for contract claims unless otherwise specifically provided.

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

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

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

E. Concession 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 the STATE prior to the effective date and time of the bond cancellation or expiration, as stated, the Concessionaire shall be deemed in default of this Concession Agreement, regardless of whether or not a notice of breach or default or time to correct breach or default has been provided to the Concessionaire by the STATE, and the full value shown on the face of the Concession Bond and the additional charge of \$250.00 per day that there is no bond coverage shall be immediately payable by the Concessionaire to the STATE as liquidated and ascertained damages and not as a penalty.

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

ARTICLE X. INSURANCE

A. In General.

1. Concessionaire's cost. The Concessionaire shall procure, at its sole cost and expense, and keep in effect at all times during the term of this Concession Agreement, the types and amounts of insurance coverages specified herein. The specified insurance shall also, either by provisions in the policies, by the STATE's own endorsement form or by the endorsement attached to such policies, include and insure the STATE, the STATE's agents, guests, invitees, and STATE's successors and assigns, as insured, against the areas of risk covered by the insurance coverages specified herein, including, without limitation, protection against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses,

damages, costs and expenses, including costs of suit and attorneys' fees, resulting from any bodily or personal injury, death or property damage, arising out of or related to any acts or omissions of the Concessionaire, the Concessionaire's agents and third persons, the use and occupancy of the Airport, including the Premises and the roadways of the Airports by the Concessionaire, the Concessionaire's agents and third persons and the operation of the Concession on the Premises, including related functions performed by or on behalf of the Concessionaire at the Airport.

2. Form of Policies.

a. Form and substance. All insurance required to be furnished by the Concessionaire hereunder shall be pursuant to policies in form and substance satisfactory to the STATE and issued by companies of sound and adequate financial responsibility, who are licensed and authorized to do business in the State of Hawai'i, all as satisfactory to the STATE. The STATE may, upon reasonable notice and reasonable grounds increase or change the insurance required hereunder, in which event the Concessionaire shall obtain such required insurance.

b. Required provision. All insurance, except Workers' Compensation and Employer's Liability Insurance, shall:

(1) Additional Insured. Name the STATE, the STATE's agents and STATE's successors and assigns and State of Hawai'i's directors, officers, agents, elected officials, boards (including the Land Board), as additional insureds.

(2) Severability of interest. Contain a severability of interest (cross liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or lawsuit is brought except with respect to the limits of the company's liability ..." and a contractual endorsement which shall state "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under insured's Concession Agreement with the State of Hawai'i at Honolulu International Airport in the State of Hawai'i."

(3) Waiver of subrogation. Contain a waiver of subrogation endorsement in favor of the STATE.

(4) Notification. Provide that the STATE shall be notified, in writing, at least sixty (60) calendar days prior to any termination, cancellation, or material change or non-renewal to any such insurance policy (including the Workers' Compensation and Employer's Liability Insurance).

c. All insurance. All insurance shall:

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

(2) No premiums. Not require the STATE to pay any premiums for any insurance coverage required of the Concessionaire under this Concession Agreement.

(3) No partnership. The inclusion of the STATE, the STATE's officers, employees, agents and guests, and their successors and assigns, and State of Hawai'i's directors, officers, agents, elected officials, boards (including the Land Board) as insureds or additional insureds, is not intended to, and shall not, make them or any of them, a partner or joint venturer with the Concessionaire in the operation of the Concession at the Premises or the Airport.

d. Deductibles. The insurance policies required hereunder may provide for reasonable deductibles or retentions, acceptable to the STATE, based upon the nature of the Concessionaire's operation of the Concession and the type of insurance involved.

e. Failure to obtain. Upon failure of the Concessionaire to provide and maintain the insurance required herein after a ten (10) day prior written notice to comply from the STATE, the STATE may, but shall not be required to, procure such insurance at the Concessionaire's sole cost and expense and the Concessionaire agrees to immediately reimburse the STATE for the cost thereof plus fifteen percent (15%) for administrative overhead. Any lapse in, or failure by the Concessionaire to procure, maintain and keep in full force and effect such insurance coverage as is required under this Concession Agreement, at any time during and throughout the term of this Concession Agreement, shall be a violation of this Concession Agreement and shall give the STATE the right to assess additional rent and/or terminate this Concession Agreement pursuant to Article VI.G (Additional Charges) and Article XX (Termination by STATE), respectively, herein.

f. Subrogation. The STATE agrees to release the Concessionaire from the STATE's claim for loss or damage caused by fire or other casualty covered by fire insurance policies, with extended coverage, to the extent of any payment received by the STATE from the insurers. This release includes also a waiver of subrogation by the STATE's insurer of any right of action against the Concessionaire in the event of such loss or damage and payment therefor to the STATE. Said waiver of subrogation is conditional upon acceptance of such waiver by the STATE's insurer affected thereby. Evidence of such waiver shall be in writing.

g. Proof of insurance. The Concessionaire shall provide proof of all specified insurance and related requirements to the STATE either by production of the actual insurance policies, by use of the STATE's own endorsement forms, by broker's letter acceptable to the STATE in both form and content, or by other written evidence of insurance acceptable to

the STATE, together with appropriate written evidence, satisfactory to the STATE, that the insurance premiums thereon have been paid. The documents evidencing all specified coverages shall be submitted to the STATE prior to the Concessionaire occupying the Premises. Each policy shall contain the applicable policy number, the inclusive dates of policy coverage and the insurance carriers' name, shall bear an original signature of an authorized representative of said carrier and shall provide that such insurance shall not be subject to cancellation, reduction in coverage or nonrenewal except after written notice by certified mail, return receipt requested, to the STATE at least thirty (30) days prior to the effective day thereof. The STATE reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

h. Annual review. The Concessionaire agrees that the insurance limits specified by the STATE herein shall be reviewed for adequacy annually throughout the term of this Concession Agreement by the STATE who may, thereafter, require the Concessionaire to adjust the amounts of insurance coverage to whatever amounts the STATE deems to be adequate.

B. Operation. The Concessionaire shall, at its sole cost and expense, procure, maintain, and keep in full force and effect during and throughout the term of this Concession Agreement, adequate insurance to protect both the STATE and the Concessionaire against the risks mentioned in Article X.A (In General) herein, which risks shall be covered by a policy or policies of insurance of the types and minimum amounts indicated as follows:

1. Commercial General Liability Insurance. Combined single limit coverage of not less than \$2,000,000.00 per occurrence arising from any one accident or other cause covering:

- a. Bodily injury and death.
- b. The Premises and the operations of the Concessionaire, the Concessionaire's agents, contractors and subcontractors or third persons.
- c. Contractual liability for any general indemnification agreement in any contract including, without limitation, this Concession Agreement.

2. Property Damage Liability Insurance, including Broad Form Property Damage Insurance and, where applicable, Underground, Explosion and Collapse Hazard Liability Insurance. Combined single limit coverage of not less than \$1,000,000.00 per occurrence arising from any one accident or other cause;

3. Workers' Compensation and Employer's Liability Insurance: Not less than \$100,000.00 or as otherwise required by applicable Federal and State laws;

C. Motor Vehicles. The Concessionaire, at the Concessionaire's sole cost and expense, shall procure, maintain, and keep in full force and effect during and throughout the term

of this Concession Agreement, State of Hawai'i No-Fault commercial motor vehicle liability insurance policy or policies of at least: (1) \$1,000,000.00 per person per accident and \$3,000,000.00 per occurrence for bodily injury and death; (2) an aggregate of \$3,000,000.00 per accident or occurrence for bodily injury and death; (3) \$500,000.00 per accident or occurrence for property damage; and (4) a combined single limit coverage of not less than \$3,000,000.00 per accident or occurrence for bodily injury, death, and property damage for each of the Concessionaire's commercial motor vehicles, including each motor vehicle or automobile from the Concessionaire's fleet operating on or within the roadways and other areas of the Airport.

For all commercial motor vehicles operated by the Concessionaire or the Concessionaire's agents entering and operating within the restricted airport operations area (AOA) of the Airport, the Concessionaire shall obtain additional insurance coverage of at least: (i) \$5,000,000.00 per person per accident for bodily injury and death; (ii) an aggregate of \$5,000,000.00 per accident or occurrence for bodily injury and death; (iii) \$5,000,000.00 per accident or occurrence for property damage; and (iv) a combined single limit coverage of not less than \$5,000,000.00 per accident or occurrence for bodily injury, death, and property damage. The insurance obtained by the Concessionaire hereunder shall cover all of the Concessionaire's agents, or the Concessionaire shall require the Concessionaire's agents to obtain, at their sole cost and expense, such insurance coverage in favor of the STATE.

ARTICLE XI. COMPLIANCE WITH LAWS

A. Generally. The Concessionaire and Concessionaire's agents shall at all times during the term of this Concession Agreement comply with all applicable laws, statutes, rules, regulations, orders and ordinances of all governmental authorities, including, without limitation, the United States of America, the State of Hawai'i, and the 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. The Concessionaire's obligation to comply with all laws, statutes, rules, regulations, order and ordinances hereunder shall apply to the Concessionaire's use and occupancy of the Premises, the operation of the Concession thereon and the construction and installation of the Leasehold Improvements and FFE.

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

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

of the Premises to forfeiture or loss, and (2) pay the required fees set forth in Article VI (Concession Fee).

B. Compliance with Americans With Disabilities Act.

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

2. Accessible services. Concessionaire acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. Concessionaire shall provide the services or conduct its Concession operations as specified in this Concession Agreement in a manner that complies with the ADA, and any and all other applicable federal, state, and local disability rights legislation. Concessionaire agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Concession Agreement, and Concessionaire further agrees that any violation of this prohibition on the part of Concessionaire, and Concessionaire's officers, employees, agents, guests, invitees, successors, and/or assigns shall constitute a material breach of this Concession Agreement.

3. ADA Requirements for Providing Services to Disabled Persons.

a. Federal ADA requirements. During the entire term of this Concession Agreement, the Concessionaire is required to comply with and completely satisfy the ADA requirements as prescribed and set forth in the Disabilities Act of 1990 and 49 Code of Federal Regulations (CFR), Part 37, including but not limited to the following sections: (1) Section 37.23, pertaining to "Service under contract"; (2) Section 37.77, pertaining to "Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public"; (3) Section 37.103, pertaining to "Purchase or lease of new non-rail vehicles by private entities primarily engaged in the business of transporting people"; and (4) Section 37.105, pertaining to "Equivalent service standard".

b. Wheelchair-accessible, special assistance shuttle buses. During the entire term of this Concession Agreement, Concessionaire is required to take all steps necessary to ensure that an adequate supply of wheelchair-accessible, special assistance shuttle buses equipped with motorized or hydraulic lifts or ramps, and shuttle bus drivers are available at all times on or at the Airport, if requested, to provide shuttle service to disabled persons and/or those individuals in need of special assistance.

c. Disabled customer wait time. The customer wait time for disabled persons or those individuals needing special assistance arrangements shall be equivalent to that required under Article VIII.B.3 (Customer wait time).

d. Service to disabled persons. Concessionaire shall ensure that any disabled person, covered by the Americans with Disabilities Act of 1990, is not subject to discriminatory practices nor refused service by any of Concessionaire's agents.

e. Service plan. The Concessionaire shall file with the STATE its plan to ensure provision of service meeting the requirements listed in this Article XI.B.3 (ADA Requirements for Providing Service to Disabled Persons) to disabled persons and persons needing special assistance prior to the commencement of this Concession Agreement.

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

5. Concessionaire's indemnification. Concessionaire shall release, indemnify, defend, keep, save, and hold STATE and STATE's successors and assigns, harmless from and against any and all actions, causes of action, claims, demands, lawsuits, judgments, liabilities, losses, damages, costs, and expenses, including any and all attorneys' fees and demands therefor, resulting or arising from Concessionaire's failure or alleged failure to observe, comply with, and completely satisfy Concessionaire's obligations hereunder with respect to the ADA.

C. Environmental Compliance – Concessionaire's Duties

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

2. Hazardous substances. Concessionaire shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substance, or allow the same by any employee, agent, guest, invitee, contractor, subcontractor, or any third person, on

the Premises without obtaining the prior written consent of STATE, which consent may be withheld by STATE in its absolute discretion, and complying with all environmental laws, including giving all required notices, reporting to, and obtaining permits from all appropriate authorities, and complying with all provisions of this Concession Agreement.

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

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

5. Environmental Investigations and Assessments. Concessionaire, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the

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

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

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

7. Restoration and Surrender of Premises. Concessionaire hereby agrees to timely surrender the Premises upon termination of this Concession Agreement and, prior thereto, shall restore the Premises, including the soil, water, ground water and structures at, in, on, under, or about the Premises to the same condition as the Premises existed at the commencement of this Concession Agreement, as determined by STATE, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of Concessionaire. This duty to restore the Premises includes remediation as described in the previous Article XI.C.6 (Remediation). This duty also includes, but is not limited to, the removal of all pipes, pipelines, tanks and containers of any kind that Concessionaire has installed or erected on the Premises. In the event Concessionaire does not timely restore the Premises to a satisfactory condition, as

determined by STATE, Concessionaire understands and agrees that STATE may exercise its rights under Article XLC.8 (STATE's Right to Act) and until such time as the restoration is complete to the satisfaction of STATE, Concessionaire shall be liable for Concession Agreement Fee in the same manner and amount as if this Concession Agreement had continued in effect during the period of restoration, in the fee amount of Concessionaire's last fee payment, as well as any other damages and costs that STATE may have incurred, including charges, fines and assessments related to the Premises which may be imposed on STATE or by any governmental authority.

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

9. Release and Indemnity. Concessionaire hereby agrees to release STATE, its officers, employees, agents, representatives, successors and assigns from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments or assessments that may be imposed or obtained by any person, agency or governmental authority against Concessionaire by reason of any hazardous substance that may be present by whatever means at, in, on, under, or about the Premises. Concessionaire hereby agrees to release, indemnify, defend with counsel acceptable to the STATE, and hold harmless the STATE, its officers, employees, agents, representatives, successors and assigns from any liability that may arise in connection with, or by reason of, any occurrence involving any hazardous substance that may be alleged to be connected to, or related in any way with, the Premises, the STATE's ownership of the Premises, or this Concession Agreement, including the presence of any hazardous substance at, in, on, under, or about the Premises. The parties understand and agree that the intent of this indemnification agreement includes, but is not limited by, those agreements authorized by 42 U.S.C. Section 9607(e)(1), as amended, and any successor section thereof.

This indemnity provision shall not be construed to be a limitation of the general indemnification by the Concessionaire as found in Article XVII (Liability and Indemnity).

10. Insurance. Prior to the commencement of the term of this Concession Agreement, Concessionaire shall obtain and keep in force a commercial liability and property damage policy of insurance issued by an insurer licensed to do business in the State of Hawai'i

with limits of indemnity coverage of no less than \$500,000.00 per person and \$1,000,000.00 per occurrence. Said policy of insurance shall include indemnity coverage for personal injury and damage to property caused by hazardous substances or any occurrence that may constitute a violation of any environmental law by Concessionaire. Said policy of insurance shall name STATE, its officers, employees, agents, guests, representatives, successors and assigns, and State of Hawai'i's directors, officers, agents, elected officials, boards (including the Land Board), as additional insureds. Concessionaire shall provide proof of said insurance satisfactory to STATE which shall include, at a minimum, a certificate of insurance from the insurer indicating the coverage provided and the term during which said policy shall irrevocably remain in effect. In the event Concessionaire changes insurers, or Concessionaire's insurer provides notice of change, cancellation, termination or modification of its coverage to Concessionaire, Concessionaire shall provide STATE with notice of said action thirty (30) days prior to the effective date of said change, cancellation, termination or modification.

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

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

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

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

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

handling personnel to prevent the discharge of oil, providing security around oil storage facilities, and all record keeping pertaining thereto.

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

ARTICLE XII. UTILITY SERVICE

A. Utility Services to Premises.

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

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

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

4. Meters. The Concessionaire, at its sole cost and expense, shall be responsible for the installation of electric and water meters and shall connect said utility meters to the energy monitoring and control system at the Airport. For metered electricity, the CONCESSIONAIRE shall pay electricity charges based on rates charged the STATE, but on

non-metered Premises, the Concessionaire shall pay a pro-rata share to be determined by the STATE.

B. Non-Liability for Interruption of Utility Services.

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

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

3. Damage repair. If any damage to any electricity, water, sewer, telecommunication, or telephone service line or facility or utility service connection, or any other utility service line or facility or utility service connection is caused by the Concessionaire, or the Concessionaire's agents, or third persons, the Concessionaire shall, at its sole cost and expense, repair, restore or replace such utility service line or facility or utility service connection.

C. Telecommunications Equipment.

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

2. Telecommunication services. Telecommunication services include the installation, operation, and provisioning of telecommunications conduit, cabling, antennas, equipment, and service. Telecommunication service providers include cable and equipment installation contractors, system operators, and any entity which provides telecommunication services, such as Hawaiian Telcom, AT & T, government entities, or other Airport tenants.

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

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

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

6. No interference. Telecommunication facilities and services established and used by the Concessionaire shall not interfere with the STATE's telecommunication facilities and services. All such facilities and services shall comply with all applicable municipal, state, and federal rules and regulations, including without limitation, the Federal Communications Commission licensing regulations and the State Public Utilities Commission.

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

ARTICLE XIII. ASSIGNMENT AND SUBLETTING

A. Assignment or Other Transfers.

1. Assignment. The Concessionaire shall not assign, sublet, encumber or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof or any interest herein, or permit any other person to occupy or use the Premises except by way of devise, bequest or intestate succession, without the STATE's prior written consent, which consent may be granted or denied in the STATE's sole discretion and, by the approval of the Land Board. Any such transfer or assignment made without the STATE's and Land Board's consent shall constitute a default under this Concession Agreement and shall be voidable at the STATE's election. With prior written approval of the STATE, and the prior

approval of the Land Board, such assignment and transfer of this Concession Agreement, or any interest therein, may be made in accordance with current industry standards, as determined by the Land Board, pursuant to Section 171-36, HRS; provided further, that prior to the written approval of the STATE of any assignment of this Concession Agreement, the STATE shall have the right to review and approve, in writing, the consideration paid by the Assignee, and may condition the STATE's consent to the assignment of this Concession Agreement on payment by the Concessionaire to the STATE of a premium of fifty percent (50%) of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of all Leasehold Improvements and trade fixtures constructed or installed upon the Premises by the Concessionaire during the term of this Concession Agreement, and being transferred to the Assignee, as further explained in the Department of Transportation Assignment of Lease Evaluation Policy, attached hereto and made a part hereof, as Appendix C, Attachment 5 (hereafter the "Assignment Policy"). The Concessionaire shall pay the assignment premium to the STATE as calculated by the STATE based on the Assignment Policy.

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

2. Changes in Concessionaire.

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

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

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

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

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

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

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

D. Procedure and conditions.

1. Procedure. The Concessionaire must provide the STATE in writing:
 - a. the name and address of the proposed assignee or transferee;
 - b. the nature of the proposed business to be operated by the assignee or transferee on the Premises;

- c. the terms of the proposed assignment or transfer; and
- d. reasonable financial information so that the STATE can evaluate the proposed assignee or transferee under this Article XIII (Assignment and subletting).

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

- a. the terms of this Concession Agreement;
- b. the term of any assignment or other Transfer agreement shall not extend beyond the Concession Agreement Term;
- c. the Concessionaire shall remain liable for all Concession Agreement obligations;
- d. consent to one Transfer does not waive the consent requirement for any future Transfers;
- e. payments to the STATE of all premiums, Sandwich Profit or other amounts which the Concessionaire may be required to pay under this Article XIII (Assignment and subletting);
- f. any other conditions that may be imposed by the STATE.

ARTICLE XIV. DAMAGE OR DESTRUCTION

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

B. Extensive Damage. If the damages are so extensive as to render the Premises or a portion thereof uninhabitable, but are capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the STATE, subject to the limitations as hereafter provided, and an appropriate portion of the rents, fees, and charges payable herein shall abate from the time of the damage until such time as the Premises or portion thereof are fully restored

and certified by the STATE as again ready for use; provided, however, that if such damage is caused by the negligence or omission to act of the Concessionaire or the Concessionaire's agents, said rents, fees, and charges will not abate and the Concessionaire shall be responsible for reimbursing the STATE for the costs and expenses incurred by the STATE in completing such repair upon demand and as directed by the STATE.

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

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

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

E. Restrictions on Abatement. The foregoing provisions for abatement of the obligation to pay rents, fees, and charges required under this Concession Agreement and for

cancellation of this Concession Agreement shall not apply if the Concessionaire has caused or is responsible in any part for the Premises becoming damaged, destroyed, untenable, or uninhabitable.

ARTICLE XV. SIGNS

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

1. Concessionaire's cost. The Concessionaire shall have the right to install and operate upon or at the Premises, at the Concessionaire's sole cost and expense, advertising signs containing the name of and representing the Concession business (but which shall not advertise, refer to, or indicate any part of the Concession schedule of prices, rates and charges).

2. Conformity. The signs shall be substantially uniform in size, type and location with those of other businesses and tenants at the Airport and conform to the STATE's Signage and Graphics Manual.

3. Submit drawings. Prior to the erection, construction or placing of any such signs or displays, the Concessionaire shall submit to the STATE, for the STATE's review and approval in writing, drawings, sketches, design dimensions and type and character of the proposed sign or display. Any conditions (including a requirement that such sign or display be multilingual), restrictions or limitations imposed by the STATE as part of the STATE's written approval, shall become conditions on the use of such signs and displays as if specifically set forth at length herein.

B. Removal of signs. Upon the expiration or the sooner termination of this Concession Agreement, the Concessionaire, if requested by the STATE, shall remove, obliterate, or paint out any and all advertising signs, posters and similar devices and any displays placed by the Concessionaire on the Premises and restore any wall or surface area to which they may have been attached or affixed, including any previous signage installation, all to the satisfaction of the STATE. If the Concessionaire fails to so remove, obliterate, or paint out each and every sign or piece of advertising or display as requested by the STATE, the STATE may perform such work and the Concessionaire shall immediately pay to the STATE any and all costs so incurred by the STATE upon demand from the STATE.

Nothing in this Article contained shall limit nor be construed to limit the effect of the provisions of Article XVIII (Surrender of Premises) hereof.

ARTICLE XVI. INGRESS AND EGRESS

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

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

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

D. Concessionaire release. The Concessionaire hereby releases and discharges the STATE, its officers, employees, guests, invites, and agents, and State's successors and assigns, and State of Hawai'i's directors, officials, agents, elected officials, boards (including the Land Board) and employees of and from any and all claims, demands, causes of action, liabilities, losses, damages, costs and expenses, which the Concessionaire may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, access area or other area, whether within or outside the Airport, or any closure, change, alteration, adjustment, amendment or revision in any pedestrian traffic routing through any part of the Airport.

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

ARTICLE XVII. LIABILITY AND INDEMNITY

A. Assumption of liability. The Concessionaire shall assume liability for all of Concessionaire's agents and third persons entering or coming onto the Premises. The use of the Airports and the Premises by the Concessionaire and the Concessionaire's agents and third persons shall be at their own risk.

B. Indemnity. The Concessionaire shall release, defend, indemnify, and keep and hold harmless the STATE; including the STATE's officers, agents, employees, and representatives and all directors, officers, agents, elected officials, boards, and employees of the State of Hawai'i including the Land Board, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, fines, penalties, charges, costs and expenses (including, without limitation, costs of lawsuit and fees directly related thereto and reasonable attorneys' fees) arising from any claimed injury to or death of persons or damage to or destruction of property, including property of the Concessionaire, or any violations of federal, State of Hawai'i, or county laws or regulations, resulting from or related to the Concessionaire's use and occupancy of the Premises or use of any other portions of the Airports, or any act or omission of the Concessionaire or the Concessionaire's agents.

ARTICLE XVIII. SURRENDER OF PREMISES

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

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

replacing any item, article, Leasehold Improvements, FFE, or portion of the Premises damaged, destroyed, removed, or rendered unusable by the Concessionaire.

ARTICLE XIX. RIGHTS OF ENTRY RESERVED

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

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

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

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

E. No Abatement. No abatement of rents, fees or other charges shall be claimed by or allowed to the Concessionaire by reason of the STATE's exercise of any or all of the rights contained in this Article XIX (Rights of Entry Reserved) herein; provided, however, that nothing in this Article contained shall permit or be construed to permit the STATE to exercise any right of access or entry for any of the purposes denoted hereinabove, except at reasonable times and in

such a manner as to not unreasonably interfere with or hinder the occupancy, use and enjoyment of the Premises by the Concessionaire.

ARTICLE XX. TERMINATION BY STATE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. General assignment. The Concessionaire makes a general assignment for the benefit of creditors, or files a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under any law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the Premises; or

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

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

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

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

1. Additional charge. Assess a charge of Two Hundred Fifty and No/100 Dollars (\$250.00) per day as prescribed and set forth in Article VI.G (Additional Charges) hereof; and

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

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

C. Right of Re-entry. The STATE shall have, as an additional remedy upon the giving of a written Notice of Termination and Notice to Vacate as provided in this Article XX.B (Default and Termination) herein, the right to re-enter the Premises and every part thereof demised under this Concession Agreement upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or

resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Concessionaire under this Concession Agreement, and shall in no event constitute an acceptance of surrender.

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

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

The Concessionaire hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event the STATE obtains or retains possession of the Premises in any lawful manner. The Concessionaire further agrees that in the event the manner or method employed by the STATE in reentering or regaining possession of the Premises gives rise to a cause of action in the Concessionaire in forcible entry and detainer under the laws of the State of Hawai'i, the total amount of damages to which the Concessionaire shall be entitled in any such action shall be the sum of One Dollar (\$1.00), and the Concessionaire agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

ARTICLE XXI. WAIVER

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

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

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

ARTICLE XXII. WITHDRAWAL

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

B. Notice. The STATE shall give the Concessionaire written notice of any such withdrawal or recapture and the STATE's intent to cancel or terminate the Concession Agreement as to the portion of the Premises so withdrawn or recaptured no less than sixty (60) days prior to the effective date of such cancellation or termination.

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

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

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

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

F. Potential fee reduction. If such withdrawal or recapture causes any portion of the Premises to become unusable for the operation of the Concession, as authorized under this Concession Agreement, the Concession Fee shall be reduced as follows:

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

2. Sales space. For the Sales spaces of the Premises that are withdrawn or recaptured, the Concession Fee paid by the Concessionaire shall be reduced as follows:

a. Percentage of Gross Receipts. Of the total gross receipts generated by the Premises for the twelve (12) months immediately preceding the date the STATE requests withdrawal or recapture, determine the percentage whose numerator is the gross receipts attributable to the Sales space of which the portion of the Premises to be withdrawn or recaptured is a part (hereafter the "Target Sales Space") and whose denominator is the total gross receipts.

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

c. Target Sales Space Area. Divide the product derived Article XXII.F.2.b. (Greater of MAG or Percentage Fee) by the square footage of the Target Sales Space.

d. Value of withdrawn sales space. Multiply the square foot value derived in Article XXII.F.2.c. (Target Sales Space Area) with the square footage of the portion of the Target Sales Space being withdrawn or recaptured. The resulting product is the amount by which the Concession Fee payable for the remainder portion of the Target Sales Space not withdrawn or recaptured shall be reduced.

ARTICLE XXIII. TERMINATION BY CONCESSIONAIRE

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

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

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

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

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

ARTICLE XXIV. SUSPENSION OR ABATEMENT

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

ARTICLE XXV. SUBORDINATION

A. Joint-Use. This Concession Agreement shall be subordinate in all respects to the provisions of any existing or future agreements between the STATE and the United States Government, or any agency thereof, relative to the aircraft operating areas of the 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 occupancy by the Concessionaire of the Premises, and its use thereof pursuant to Article V (Use of Concession Premises) herein, this Concession Agreement or the particular terms and conditions affected thereby shall be suspended or terminated without the STATE being liable for any damages.

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

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

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

ARTICLE XXVI. CONDEMNATION

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

1. "Award" means all compensation, sums or value paid, awarded or received for Taking, whether pursuant to judgment, agreement, settlement or otherwise.
2. "Date of Taking" means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor, and (b) the date on which the CONCESSIONAIRE is dispossessed.
3. "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

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

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

D. Partial Taking; Election to Terminate.

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

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

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

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

1. Concessionaire.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XXVII. LITIGATION

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

B. Attorneys' Fees. For purposes of this Concession Agreement, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys who practice in the County with the equivalent number of years of experience in the subject matter area of law for which the STATE's attorneys' services were rendered.

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

D. Waiver of Claims. The Concessionaire hereby waives any claim against the STATE and the STATE's agents, and STATE's successors and assigns, and State of Hawai'i's directors, officers, agents, elected officials, boards (including the Land Board) for loss of revenue, loss of opportunity, and loss of anticipated profits caused by any lawsuit or proceedings directly or indirectly attacking the validity of this Concession Agreement, or any part or portion hereof, or by any judgment or award in any lawsuit or proceedings declaring this Concession Agreement null, void, or voidable or delaying the same, or any part or portion hereof, from being carried out.

ARTICLE XXVIII. LIENS

A. STATE's Lien. The STATE shall have a lien upon all the Concessionaire's FFE upon the Premises, to the extent permitted by law, for the purpose of securing to the STATE the payment of all sums, including rents, fees, and other charges, which may be due from the Concessionaire under this Concession Agreement. In the event that past-due rents, fees, or charges are not paid by the Concessionaire within five (5) days after a notice of default is given

by the STATE to the Concessionaire, the STATE may take possession of and sell such portion of the Concessionaire's FFE as may be sufficient to pay the delinquent rents, fees, and charges owed by the Concessionaire to the STATE. A sale of the Concessionaire's FFE pursuant to this Article XXVIII (Liens) may be made either publicly or privately, upon the notice given to the Concessionaire as herein provided.

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

ARTICLE XXIX. SUCCESSORS AND ASSIGNS

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

ARTICLE XXX. NOTICES

Except as otherwise specifically provided in this Concession Agreement, any notice, consent, request, demand, or other correspondence given under this Concession Agreement shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid; to: (a) Concessionaire at the address provided on Page 1 of this Concession Agreement; or (b) STATE at the following address: State of Hawai'i, Department of Transportation, Airports Division, Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880; or (c) such other address as either 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 XXX (Notices) herein. Any notice hereunder shall be deemed to have been given and received and

effective two (2) calendar days after the date when it is mailed, if sent by first-class, certified mail, one (1) calendar day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the number set forth herein, or such other number as may be provided from time to time; provided, however, neither party may give official or binding notice by facsimile.

ARTICLE XXXI. INTERPRETATION OF CONCESSION AGREEMENT

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

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

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

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

ARTICLE XXXII. NO PARTNERSHIP

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

ascertained. The STATE and the Concessionaire acknowledge and agree that there are no third-party beneficiaries to this Concession Agreement.

ARTICLE XXXIII. FORCE MAJEURE

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

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

B. Fees remain payable. Unless and only to the extent otherwise specified in this Concession Agreement (such as Article VII. [Relief Due to Economic Emergency]), no abatement, diminution, or reduction of the rents, fees, or other charges payable by the Concessionaire shall be claimed by or allowed to the Concessionaire for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances, or regulations of the United States of America, or of the State of Hawai'i, or any county or municipal governments, or of any other municipal, governmental, or lawful authority whatsoever; or by priorities, rationing, curtailment, or shortage of labor or materials, or by war, acts of terrorism, or any matter or thing resulting therefrom, or by strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or by any other cause or causes beyond the control of the STATE, nor shall this Concession Agreement be affected by any such causes.

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

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

ARTICLE XXXIV. ENTIRE AGREEMENT

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

ARTICLE XXXV. AMENDMENTS

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

ARTICLE XXXVI. INVALID PROVISION-SEVERABILITY

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

ARTICLE XXXVII. NON-LIABILITY OF INDIVIDUALS

Neither the STATE, the Director, nor any governmental agency of the State of Hawai'i (including any as may succeed to the duties, powers or functions of the STATE), nor any of them, nor any agency, officer, or employee thereof, shall be charged personally by the Concessionaire with any liability, or be held liable to the Concessionaire under any covenant,

provision, term, or condition of this Concession Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

ARTICLE XXXVIII. NONDISCRIMINATION

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

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

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

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

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

4. That the Concessionaire shall not discriminate against any business owner because of race, creed, color, national origin, sex or a physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, in connection with operating and maintaining the Concession at the Airport or in connection with the award and performance of any Concession Agreement covered by Title 49, CFR Parts 23 and 26;

5. That the Concessionaire shall use the Premises, and operate and maintain the Concession thereon in compliance with all other requirements imposed by or pursuant to

Title 49, CFR, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Federal Regulations may be amended; and

6. That the Concessionaire will include the foregoing statements in any subsequent Concession Agreement or other agreements it enters and cause those businesses to similarly include the statements in further agreements.

C. Breach. In the event of breach of any of the foregoing nondiscrimination covenants, the STATE may terminate this Concession Agreement and re-enter and repossess the Premises, together with all Leasehold Improvements and the Concessionaire's FFE thereon, and hold the same as if the Concession Agreement had never been made or issued.

ARTICLE XXXIX. CIVIL RIGHTS PROVISION

The Concessionaire assures that it will undertake an affirmative action program as required by Title 14, CFR Part 152, Subpart E and as said regulation may be administered upon the Airport by the Federal Aviation Administration, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered by Title 14, CFR Part 152, Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire further assures that it will require that its covered sub-organizations provide assurances to the STATE that they similarly will undertake affirmative action programs, and that they will require assurances from their sub-organizations, as required by Title 14, CFR Part 152, Subpart E, to the same effect.

ARTICLE XL. DISPUTES

A. All disputes. All controversies and disputes between the STATE and the Concessionaire which arise under, or by virtue of, this Concession Agreement, and which are not resolved by mutual agreement, shall be decided by the Director, in writing, within one hundred twenty (120) calendar days after receiving a written request by the Concessionaire for a final decision concerning the controversy; provided that if the Director does not issue a written decision within one hundred twenty (120) calendar days after receiving a written request for a final decision, within such longer period as may be agreed upon by the parties, then the Concessionaire may proceed as if an adverse decision had been received.

B. Notice of decision. The Director shall immediately furnish a copy of the decision to the Concessionaire, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

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

ARTICLE XLI. BROKERS

The Concessionaire warrants and represents to the STATE that the Concessionaire has not had any contact or dealings regarding the renting of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Concession Agreement. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Concessionaire shall be responsible for such commission or fee and shall release, indemnify, defend, and hold harmless the STATE from any and all claims, demands, actions, lawsuits, causes of action, judgments, liabilities, losses, damages, costs, and expenses arising from the Concessionaire's dealings and interactions with any broker, finder or person who could claim a right to a commission or finder's fee. The provisions of this Article XLI (Brokers) shall survive any termination or expiration of this Concession Agreement.

ARTICLE XLII. STATE RESERVATIONS

The STATE may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, to conduct a financial audit, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. The STATE shall use reasonable efforts to minimize disruption to the Concessionaire's Concession operation. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive, of the Concessionaire from the Premises. The STATE reserves the exclusive right to use all areas of the Airport not comprising the Premises, and the exterior walls and roofs of the Premises. The STATE reserves the exclusive right to use such areas, together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, equipment, appurtenances and structural elements serving other parts of the Airports in and through the Premises. This reservation in no way affects the Concessionaire's maintenance obligations contained in the Concession Agreement.

ARTICLE XLIII. SURVIVAL OF OBLIGATIONS

A. STATE's right to enforce. Termination of this Concession Agreement, whether by expiration or sooner termination, shall not affect the right of the STATE to enforce any or all indemnities and representations and warranties given or made by the Concessionaire to the

STATE under this Concession Agreement, nor shall it affect any provision of this Concession Agreement that expressly states it shall survive termination hereof, including, without limitation, Articles IX (Concession Bond), XLB (Americans With Disabilities Act), XLC (Environmental Compliance – Concessionaire’s Duties), XVII (Liability and Indemnity), XXVI (Condemnation), XXVII (Litigation), XXVIII (Liens) and XLI (Brokers). The Concessionaire specifically acknowledges and agrees that, with respect to each of the Concessionaire's indemnities contained in this Concession Agreement the Concessionaire has an immediate and independent obligation to defend the STATE from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Concessionaire by the STATE.

B. Accrued obligations. The Concessionaire's obligation to make payments to the STATE with respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to the STATE) which are accrued at the expiration or earlier termination of this Concession Agreement shall survive the expiration or earlier termination of this Concession Agreement.

ARTICLE XLIV. QUIET ENJOYMENT

The Concessionaire, upon paying all of the rents, fees and charges required under this Concession Agreement and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the Concession Agreement term as against all persons or entities claiming by and through the STATE. The Concessionaire expressly acknowledges that the Concessionaire's right to quiet possession of the Premises does not preclude the STATE's right to make changes and additions to the Airports, including the Premises, and to do work in the Premises as permitted by this Concession Agreement, including, without limitation, the STATE's right to relocate the Concessionaire as described in this Concession Agreement.

ARTICLE XLV. ACCORD AND SATISFACTION

A. Concessionaire’s instructions void. The payment by the Concessionaire or the receipt by the STATE of a lesser amount than the concession fee or rent stipulated in this Concession Agreement may be, at the STATE's sole option, deemed to be on account of the earliest due of first (1) any interest, service charges and late fees and second (2) any stipulated concession fee or rent (beginning with earliest owing concession fee or rent), notwithstanding any instruction by or on behalf of the Concessionaire to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and the STATE may accept such check or payment without prejudice to the STATE's right to recover the balance of such concession fee or rent or payment or pursue any other remedy available in this Concession Agreement or at law.

B. Acceptance does not invalidate notice. The STATE may accept any partial payment from the Concessionaire without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law.

ARTICLE XLVI. JOINT AND SEVERAL LIABILITY

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

ARTICLE XLVII. ESTOPPEL STATEMENTS

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

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

ARTICLE XLVIII. AUTHORITY

If the Concessionaire signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Concession Agreement on behalf of the Concessionaire does hereby covenant and warrant that the Concessionaire is a duly authorized and existing entity, that the Concessionaire has and is duly qualified to do business in Hawai'i, that the Concessionaire has full right and authority to enter into this Concession Agreement, and that each and all of the persons signing on behalf of the Concessionaire are authorized to do so. Upon the STATE's

request, the Concessionaire shall provide the STATE evidence reasonably satisfactory to the STATE confirming the foregoing representations and warranties.

ARTICLE XLIX. CONSENTS

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

ARTICLE L. COUNTERPARTS

This Concession Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing, and delivery of this Concession Agreement, duplicate unexecuted pages of the counterparts may be discarded, and the remaining pages assembled as one document.

ARTICLE LI. GOVERNING LAW

This Concession Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Hawai'i. Notwithstanding anything to the contrary stated herein, all provisions herein are subject to Land Board approval, if such approval is required by law.

(Remainder of this page intentionally left blank)

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

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF Hawai'i
DEPARTMENT OF TRANSPORTATION

By _____
Its Director

CONCESSIONAIRE

By _____
Its

APPROVED:

BOARD OF LAND AND
NATURAL RESOURCES

By _____
Its Chairperson and Member

Approved by the Board
at its meeting held on

7-22-16, Item M-3

STATE OF _____)

COUNTY OF _____) SS.
)

On this _____ day of _____, 20__ before me personally appeared _____ to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, _____ Judicial Circuit
State of _____

My Commission Expires: _____

STATE OF _____)

COUNTY OF _____) SS.
)

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

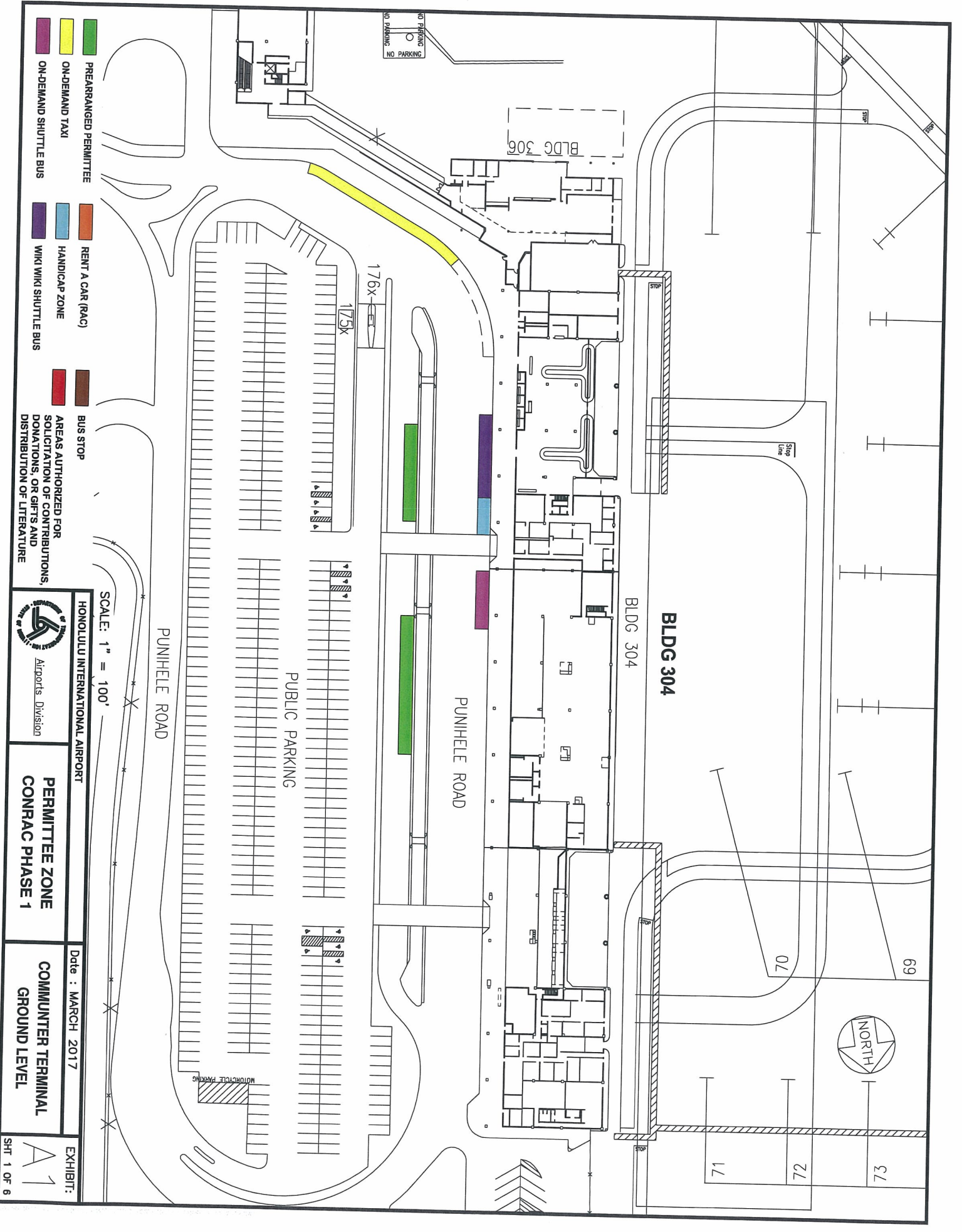
Notary Public, _____ Judicial Circuit
State of _____

My Commission Expires: _____

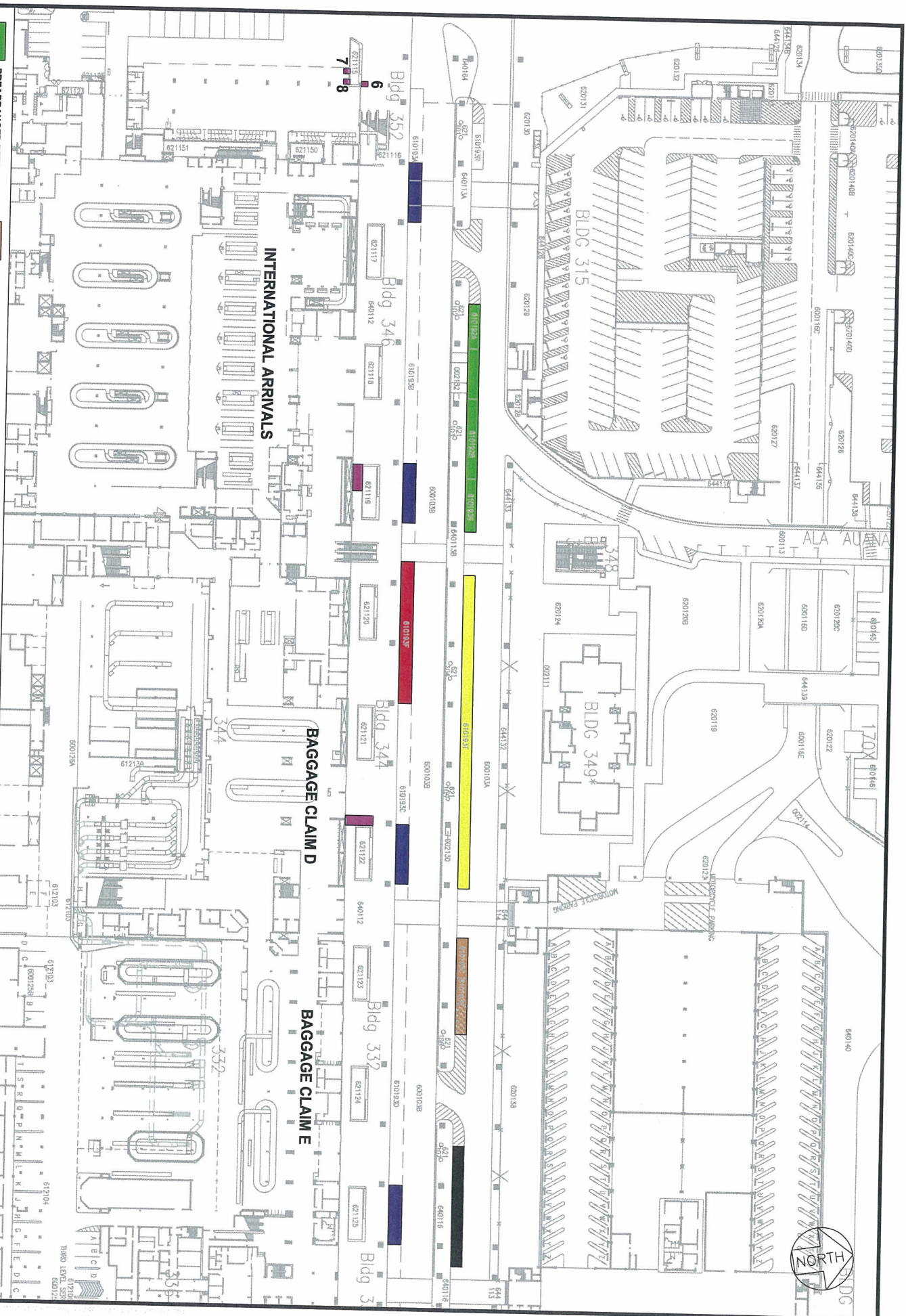
APPENDIX C

EXHIBIT A

Pickup/Drop Off Locations



- PREARRANGED PERMITTEE
- ON-DEMAND TAXI
- ON-DEMAND SHUTTLE BUS
- RENT A CAR (RAC)
- HANDICAP ZONE
- WIKI WIKI SHUTTLE BUS
- BUS STOP
- AREAS AUTHORIZED FOR SOLICITATION OF CONTRIBUTIONS, DONATIONS, OR GIFTS AND DISTRIBUTION OF LITERATURE



- PREARRANGED PERMITTEE
- ON-DEMAND TAXI
- ON-DEMAND SHUTTLE BUS
- RED ZONE
- RENT A CAR (RAC)
- HANDICAP ZONE
- WIKI WIKI SHUTTLE BUS
- BUS STOP
- AREAS AUTHORIZED FOR SOLICITATION OF CONTRIBUTIONS, DONATIONS, OR GIFTS AND DISTRIBUTION OF LITERATURE

SCALE: 1" = 100'

HONOLULU INTERNATIONAL AIRPORT

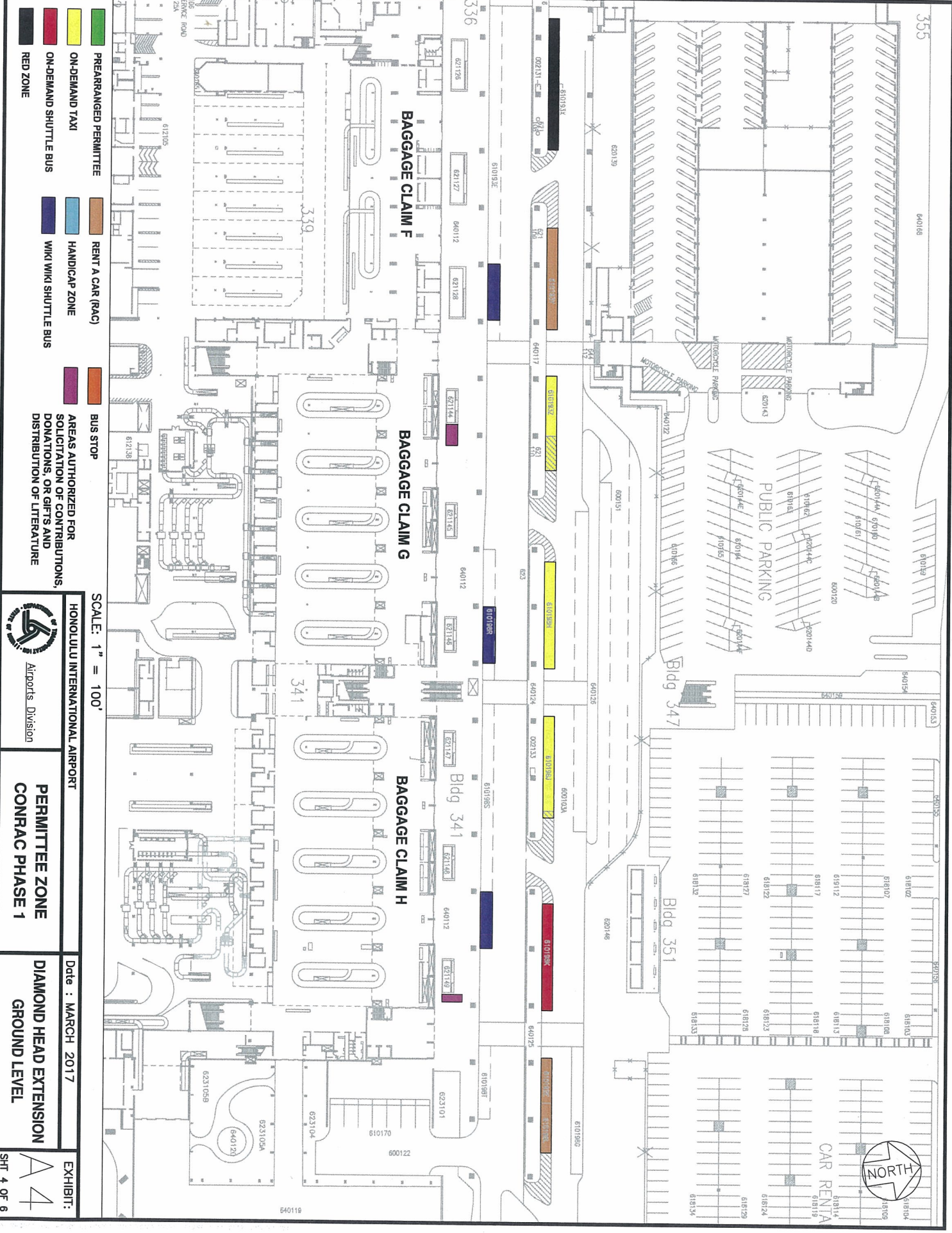


PERMITTEE ZONE
CONRAC PHASE 1

EWA DOMESTIC EXTENSION
GROUND LEVEL

Date : MARCH 2017

EXHIBIT:
A3
SHT. 3 OF 6



SCALE: 1" = 100'

HONOLULU INTERNATIONAL AIRPORT

Date : MARCH 2017

EXHIBIT:

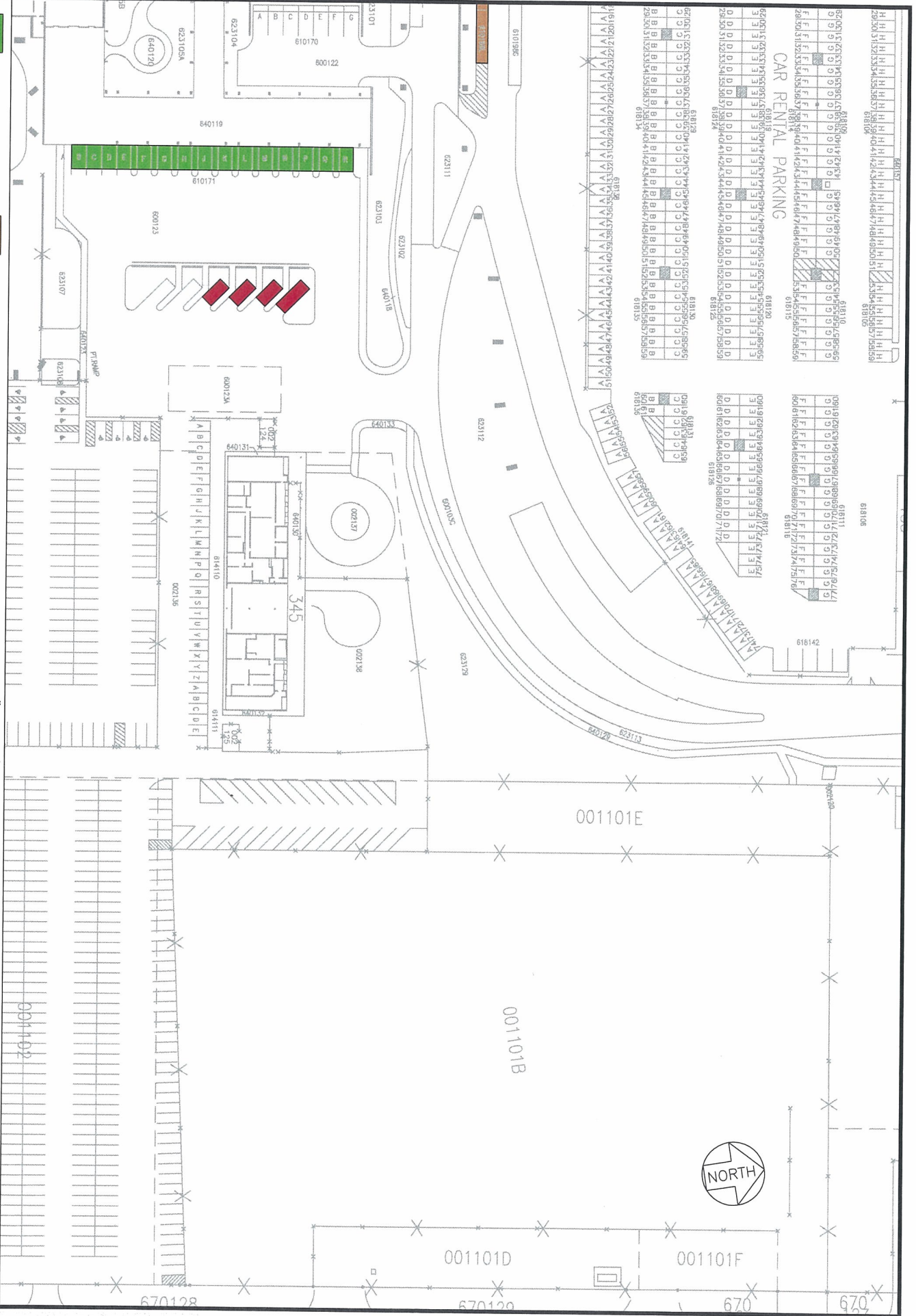


PERMITTEE ZONE
CONRAC PHASE 1

DIAMOND HEAD EXTENSION
GROUND LEVEL

A4
SHT 4 OF 6

- PREARRANGED PERMITTEE
- ON-DEMAND TAXI
- ON-DEMAND SHUTTLE BUS
- RED ZONE
- RENT A CAR (RAC)
- HANDICAP ZONE
- WIKI WIKI SHUTTLE BUS
- BUS STOP
- AREAS AUTHORIZED FOR SOLICITATION OF CONTRIBUTIONS, DONATIONS, OR GIFTS AND DISTRIBUTION OF LITERATURE



- PREARRANGED PERMITTEE
- ON-DEMAND TAXI
- ON-DEMAND SHUTTLE BUS
- RED ZONE
- RENT A CAR (RAC)
- HANDICAP ZONE
- WIKI WIKI SHUTTLE BUS
- BUS STOP
- AREAS AUTHORIZED FOR SOLICITATION OF CONTRIBUTIONS, DONATIONS, OR GIFTS AND DISTRIBUTION OF LITERATURE

SCALE: 1" = 100'

HONOLULU INTERNATIONAL AIRPORT



PERMITTEE ZONE
CONRAC PHASE 1

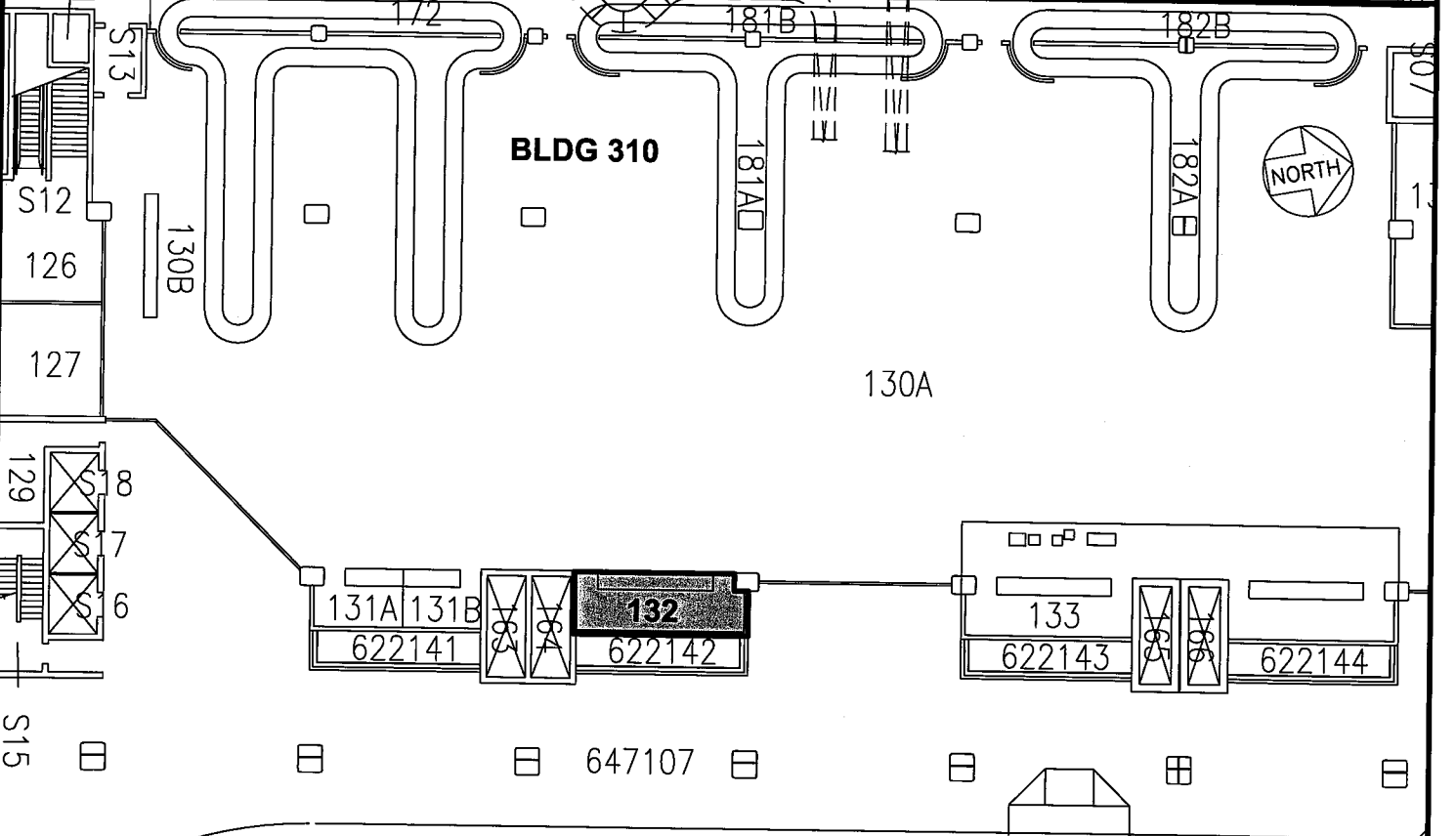
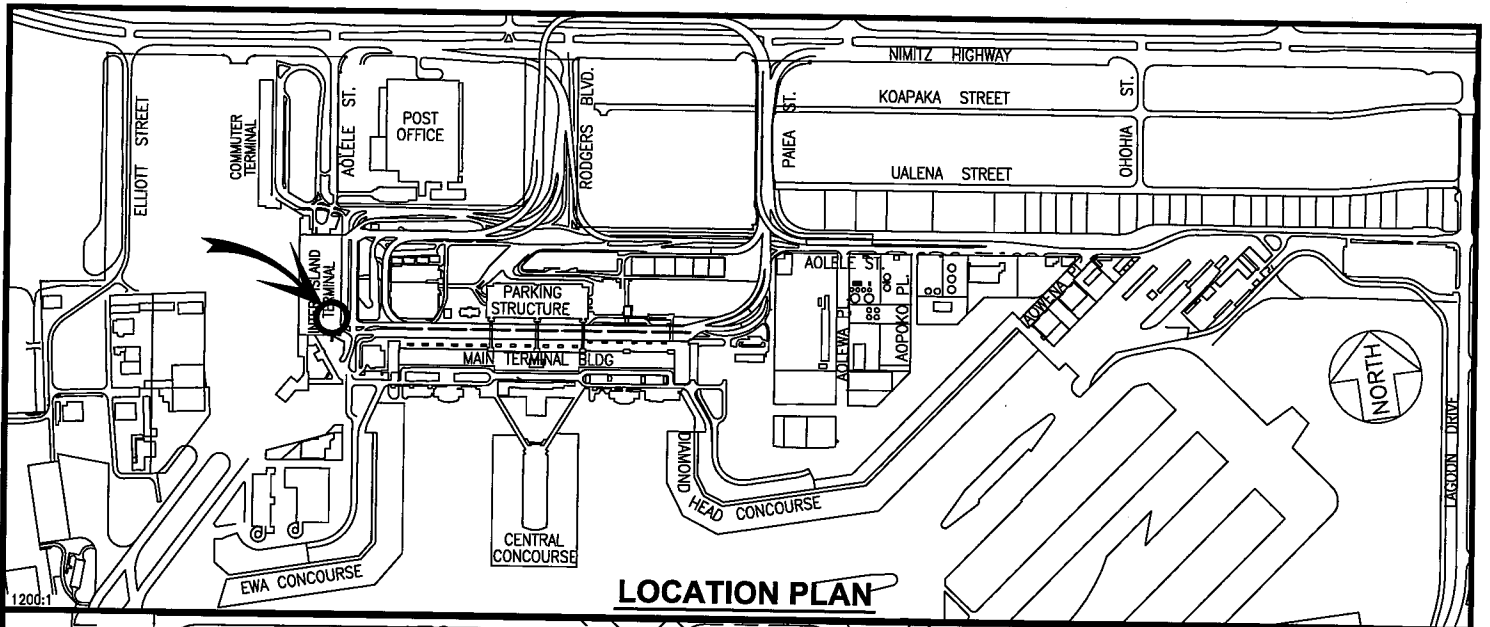
Date : MARCH 2017

D. H. GROUP TOUR AREA
GROUND LEVEL

EXHIBIT:

A5
SHT 5 OF 6

Counter & Office Space



SCALE: 1" = 30'

BLDG/ROOM	SQ. FT.
310 132	291

DATE : MARCH 2017 EXHIBIT: **A**



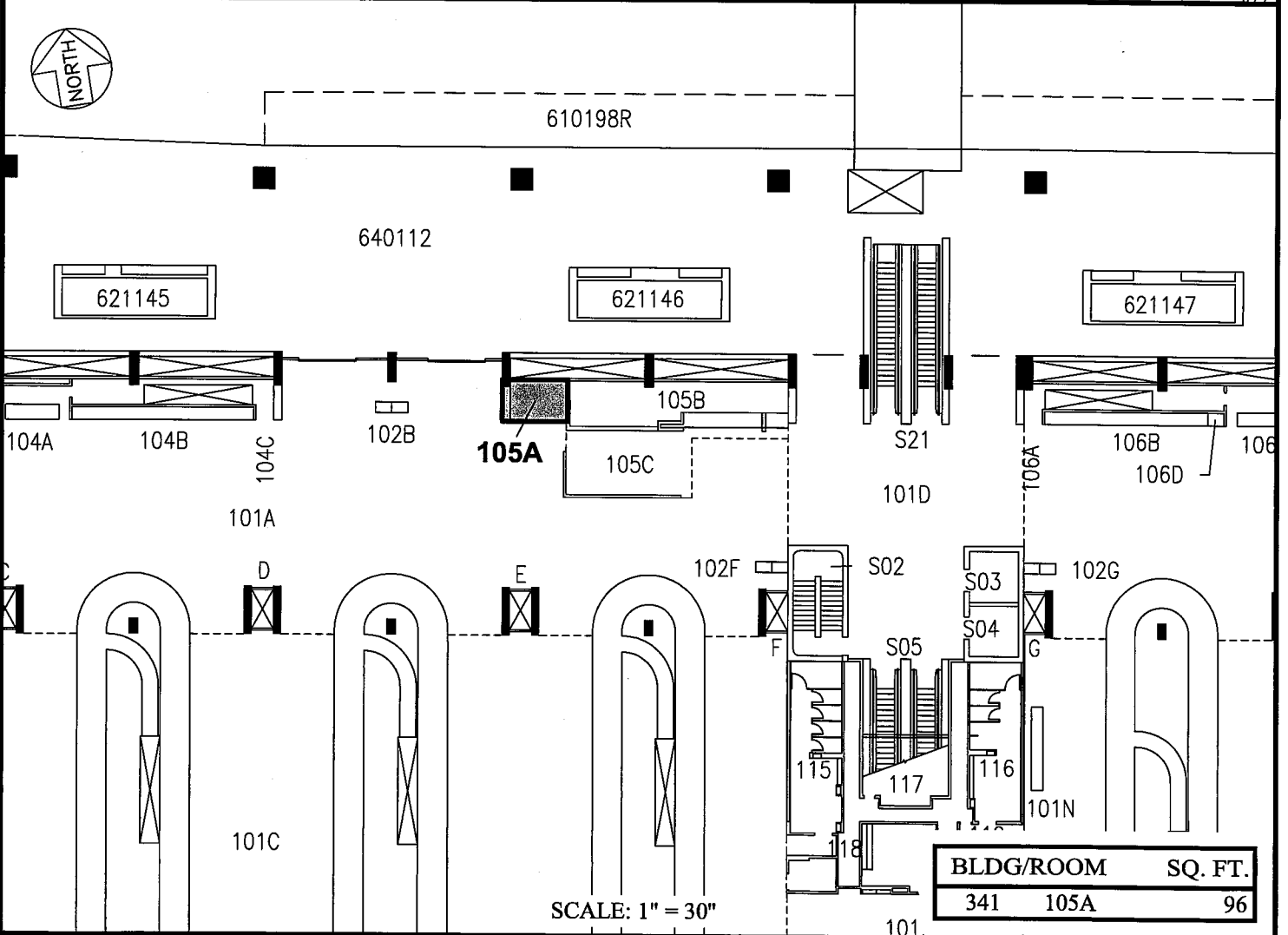
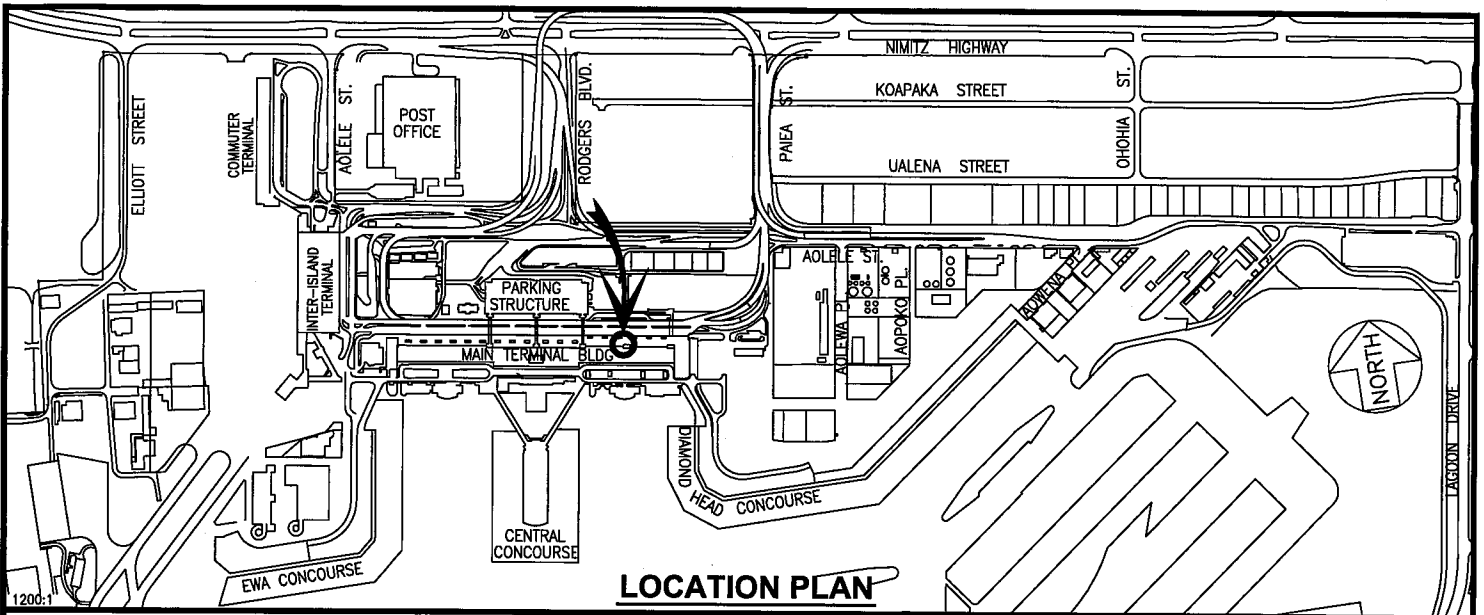
SPEEDI SHUTTLE, LLC.

**BUILDING 310
INTER-ISLAND TERMINAL
GROUND LEVEL**

**310132
PLAT E1**

HONOLULU INTERNATIONAL AIRPORT

N:\AIRPORTS\HNL_HONOLULU\CAD\PM\HNL_310132-01.DWG



DATE : MARCH 2017

EXHIBIT: **A**



SPEEDI SHUTTLE, LLC.

BUILDING 341
DIAMOND HEAD EXTENSION
GROUND LEVEL

341105A
PLAT C1

HONOLULU INTERNATIONAL AIRPORT

APPENDIX D

CONCESSION BOND

KNOW ALL BY THESE PRESENTS, that _____,
_____, as Principal,
and _____,
as Surety, are held and firmly bound unto the State of Hawai‘i, its successors or assigns, in the full and just sum of _____
DOLLARS (\$) _____), in lawful money of the United States of America, for the payment of which to the State of Hawai‘i, its successors or assigns, well and truly to be made, we do hereby bind ourselves and our respective heirs, executors, and administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounden Principal shall fully and faithfully perform and fulfill all of the covenants, terms and conditions in that certain Concession Agreement, dated _____, entered into by said Principal with the State of Hawai‘i for the operation and maintenance of the On-Demand Shuttle Services Concession at Honolulu International Airport in the State of Hawai‘i, and shall promptly pay all just claims against the Principal, and shall hold harmless, indemnify and defend the State of Hawai‘i, its officers and agents, successors or assigns, against loss or damage to property of the State of Hawai‘i, or to the property of others, and from all claims, costs and liabilities for injury to or death of persons when such loss, damage, injury or death arises or results from any acts or omissions of the Principal, its officers, agents, employees, contractors and guests (including invitees and licensees) in connection with the operation and maintenance of the On-Demand Shuttle Services Concession, then this obligation shall be void, otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED:

(1) That no amendment, modification, change, extension, alteration, deduction or addition, permitted by said Concession Agreement, in or to the covenants and terms of the Concession Agreement, shall in any way affect the obligation of said Surety on this bond; and that said Surety does hereby waive notice of any such amendment, modification, change, extension, alteration, deduction or addition in or to the covenants, terms and conditions of the Concession Agreement.

(2) That suit on this bond may be brought before a court of competent jurisdiction without a jury in the event of a breach of any, or all, or any part of, the stipulations, agreements, covenants, terms or conditions contained in the Concession Agreement or in this bond, in accordance with the terms thereof.

WITNESS our hands and seals at _____,
State of _____, this _____ day of _____, 20____.

Principal

Surety

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20__, before me personally appeared _____ to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, _____ Judicial Circuit
State of _____

My Commission Expires:

STATE OF _____)
) SS
COUNTY OF _____)

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

Notary Public, _____ Judicial Circuit
State of _____

My Commission Expires: