METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

REQUEST FOR PROPOSALS RFP NO. RFP-21-22988

FOR

THE ESTABLISHMENT AND OPERATION OF AUTOMATED TELLER MACHINE SERVICES AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT AND WASHINGTON DULLES INTERNATIONAL AIRPORT

September 3, 2021

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FOR THE ESTABLISHMENT AND OPERATION OF AUTOMATED TELLER MACHINE SERVICES AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT AND WASHINGTON DULLES INTERNATIONAL AIRPORT

SECTION 1 - GENERAL INFORMATION AND BACKGROUND

A. The Metropolitan Washington Airports Authority (Authority) is a public body politic and corporate, created with the consent of the United States Congress by an interstate compact between the Commonwealth of Virginia and the District of Columbia, for the purpose of operating, maintaining and improving Washington Dulles International Airport (Dulles Airport or IAD) and Ronald Reagan Washington National Airport (National or DCA). For additional background information, visit the Authority's website at http://www.mwaa.com. The Authority is committed to deliver an exceptional passenger experience to passengers by providing a variety of concessions, business services, and amenities both within and beyond our facilities and to maintain a high-level of consistent, quality service in public safety, information technology, and telecommunications for airport tenants and the Authority employees.

B. Contract Term. The Authority intends to grant the selected Offeror a contract to provide ATM Services, for a term of five (5) years, with two (2) two-year extension options which may be exercised at the sole discretion of the Authority. The effective date of the Contract will be negotiated between the Authority and the selected Offeror, but is anticipated to be February 1, 2022.

C. Draft Concession Contract. The selected Offeror shall be required to meet the requirements set forth in the Draft Contract contained in Attachment 1 and the Standard Provisions for Concession Contracts, provided however, certain portions of the final contract will incorporate language and provisions directly from the selected Offeror's proposal and the selected Offeror will also be obligated to comply with those provisions. While portions of the final agreement between the Authority and the selected Offeror may be negotiated prior to finalizing the Contract, no significant deviations from or alterations to the Draft Contract or Standard Provisions as published in, or as amended by, the RFP will be made.

SECTION 2 - THE OPPORTUNITY

A. The Authority is seeking a firm to provide automated teller machine (ATM) services at National and Dulles Airports. The operating requirements are set forth in Article 4 of the Draft Concession Contract and Lease. (Attachment 1)

B. The premises consist of several locations throughout National and Dulles Airports. The locations are listed in Article 2 of the Draft Concession Contract and Lease. (Appendix C and D).

SECTION 3 - TITLE VI SOLICITATION NOTICE AND ACDBE GOALS

A. The Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-4, and implementing regulations, 49 C.F.R. Part 21, notifies all Offerors that it will affirmatively ensure that disadvantaged business enterprises are afforded full and fair opportunity to submit proposals in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in the review and evaluation of proposals or otherwise in the consideration of Offeror(s) for a contract award.

B. It is the Authority's policy to ensure that Airport Concession Disadvantaged Business Enterprise (ACDBE) firms have a significant and continuing opportunity to compete for Authority business. The Airports Authority has set a goal of zero percent (0%) ACDBE participation for the Contract to be awarded pursuant to this solicitation. However, the Authority strongly encourages ACDBE participation wherever feasible.

SECTION 4 – SCOPE OF WORK

A. REQUIRED SERVICES

Services offered at the ATMs shall include (at a minimum) account inquiries, cash withdrawals, fund transfers and cash advances.

B. OPERATING REQUIREMENTS.

1. ATM transaction fees or surcharges may not exceed those charged at the Contractor's off-airport units in the Greater Metropolitan Washington DC Area.

2. The ATMs shall be front-loading and mounted as flush with the wall as possible. The ATM design, subject to Authority approval before installation, shall be modular and have the ability to incorporate new features and capabilities.

3. The ATMs shall be industry standard in appearance, functional, and resistant to rough usage.

4. The ATMs shall be equipped with an alarm system.

5. The ATM shall have a color cathode ray tube (CRT) or a Liquid Crystal Display (LCD).

6. The ATMs shall be able to execute transactions using a variety of credit, debit, and ATM cards. The ATMs shall access at least one national network (e.g.i.e., Cirrus, Plus, Star, etc.) and each of the following debit

card networks: Visa, MasterCard and American Express. Additional network affiliations are encouraged.

7. The ATMs shall display all written directions necessary to instruct customers in the operation of the ATM and a list of ATM transactions fees, transactions surcharges, or any other fees charged and to whom the transactions fees and/or surcharges apply.

8. Services offered at the ATMs shall support balance inquiries, cash withdrawals, account transfers and other transactions as permitted by the governing network regulations.

9. ATMs must be ADA (American with Disabilities Act) compliant and have voice and braille guidelines.

10. The Contractor shall be required to meet all security requirements, including but not limited to, compliance with Airport and federal directives, background checks and badging requirements. Any necessary expenses to comply with security requirements shall be the responsibility of the Contractor.

11. The ATMs shall either electronically display or have affixed to them information for obtaining ATM services and/or refunds.

12. The ATMs shall conduct all transactions in United States Currency and use twenty dollar bills as the primary denomination for withdrawals. The use of other denominations is encouraged (i.e., ten dollar bills).

13. Perform appropriate preventative maintenance and routine service necessary to ensure the ATMs remain in fully operational condition.

14. ATMs must have system management capabilities for predicting, assisting and reporting maintenance and the need for cash replenishment. The Contractor’s response time to service calls on ATMs and replenishment of funds must be within four (4) hours of notification by the ATM’s internal system to the Contractor. Each ATM shall bear in a plainly visible location the Contractor’s name, ATM machine number, the location it is in, and have a twenty-four (24) hours a day, seven (7) days a week toll free telephone number to call for inquiries, maintenance issues, customer service issues or complaints. In addition, each ATM must display a map showing ATM locations at the airport for customer convenience when the Contractor is servicing an ATM or in case of ATM malfunction.

15. As a concession in Dulles and National Airports, the Offeror’s business will be covered by the Metropolitan Washington Airports Authority’s Airport Workers Wage Program. The Workers Wage policy mandates that the “Covered Business” are to pay their “Covered Workers” for on-Airport work

at an hourly wage rate that is no less than the "Base Wage Rate" set out in the Policy. Details of the policy can be found at the Airport Authority's website: https://www.mwaa.com/about/airport-workers-wage-program

SECTION 5 – PRE-PROPOSAL CONFERENCE

A. Schedule. A pre-proposal conference will be held on **September 16, 2021 at 10:00 a.m**. local time. A link to the meeting will be made available on the solicitation's information page which is linked to https://www.mwaa.com/business/current-contracting-opportunities. The slides from the presentation will be posted online after the meeting has concluded.

B. Purpose of Conference. The purpose of this conference will be to discuss the RFP's requirements and objectives. The Authority representatives will be available to answer questions. Each offeror is encouraged to attend this conference.

C. Pre-Proposal Conference Questions. The Authority encourages offerors to submit any questions and/or concerns about the RFP documents, including the draft Lease, through the Authority's website at: http://www.mwaa.com/business/current-contracting-opportunities. A summary of the questions and answers, as well as a list of all attendees, will be made available via the Authority's website to all individuals or companies that registered as planholders according to the instructions.

D. Questions after the Pre-Proposal Conference. Questions may be submitted after the pre-proposal conference until **3:00 p.m. on September 23, 2021.** All questions must be submitted via the Authority's website as listed in **Paragraph C** of this **Section 5**.

E. Amendments. Any changes in the requirements of this RFP that result from the Pre-Proposal Conference or from written questions will be made by amendment to this RFP, and will be posted on the Authority website. Offerors shall not and may not rely upon any oral responses or instructions given by the Authority. If there is any conflict between oral responses, instructions or statements and the written responses, instructions or statements posted on the website, the written responses or statements shall control. All amendments to the RFP must be acknowledged by offerors according to instructions on the amendment form and a signed copy of each amendment must be provided to the Authority by the time specified for receipt of offers in **Section 7.B**.

SECTION 6 - PROPOSAL FORMAT REQUIREMENTS.

A. Each proposal for the solicitation shall be compiled in two (2) pdf files: PDF File 1: "[name of offeror] Representation Package and Financial Offer Form" and PDF File 2: "[name of offeror] Technical Proposal."

B. Each proposal must be typewritten, using a 12 point font on a standard 8 1/2" x 11" page format, not to exceed a total of twelve (12) single-sided, numbered pages for PDF File 2

“Technical Proposal,” excluding exhibits and accompanied by a cover letter on the Offeror’s letterhead.

C. Additional data, exhibits, and explanations may be included should the Offeror deem them important to the evaluation of its proposal by the Authority. The mere inclusion of additional materials does not make such materials a part of the proposal and the Authority is under no obligation to evaluate such additional material with the proposal.

D. Proposals, modifications thereof, and all documentation submitted in support of the offer, including but not limited to, written narrative, enclosures, submittal, examples of past work, financial statements, and pictures and videos will become the property of the Authority and will not be returned.

SECTION 7 - PROPOSAL SUBMISSION REQUIREMENTS

A. Each Offeror responding to this Request for Proposal must supply all the information and documentation required in the RFP. Failure to comply with the instructions of the RFP or to provide documentation with the Offeror’s response to the RFP may be cause for disqualification and rejection of an Offeror’s Proposal. All Offerors are advised that substantial deviations from the requirements of this RFP shall not be accepted. “Substantial deviations” are Proposal terms that materially alter the proposed business terms and performance requirements of the RFP.

B. All Offers must be submitted electronically via the upload link available on the solicitation page found through https://www.mwaa.com/business/current-contracting-opportunities and be submitted no later than **2:00 p.m., local time, on October 7, 2021**. The proposal shall be submitted in two (2) pdf files: PDF File 1 shall be titled “[name of offeror] Representation Package and Financial Offer Form” and PDF File 2 “[name of offeror] Technical Proposal. A copy of the Proposal Guarantee shall be included in PDF File 1 with the original sent by mail and postmarked no later than October 7, 2021 to: Donald Laffert, Contracting Officer, Metropolitan Washington Airports Authority, Procurement and Contracts Department, MA-950, 2733 Crystal Drive, Arlington, VA 22202.

Proposals or modifications thereto received subsequent to the above date and time shall be considered "late proposals" and will be returned to the offeror unopened. If any amendments to this RFP are issued, each amendment must be acknowledged in writing by the offeror as instructed in the amendment and the acknowledgement shall accompany the proposal.

C. Proprietary Data. The Authority will consider all proposals to be confidential in nature during the solicitation process, but those portions of a successful offeror's proposal not marked proprietary that are incorporated into the awarded contract, shall become public information when the contract is executed. It is incumbent upon offerors, who include in their proposal data or other information that they consider proprietary and that they do not want disclosed to the public or used by the Authority except for evaluation purposes, to do the following:

1. Mark the title page with the following legend:

   "This proposal includes data and other information that the Offeror considers to be proprietary and that, therefore, shall not be disclosed outside the Authority and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this Offeror as a result of-or in connection with-the submission of this data, the Authority shall have the right to duplicate, use or disclose the data and other information to the extent it is included in the awarded contract. This restriction does not limit the Authority's right to use the proprietary data and other information contained in this proposal if it is obtained from another source without restriction. The data and other information subject to this restriction are contained in pages [insert numbers from proposal] and in sheets [insert numbers or other identification of attachments to the proposal]"; and

2. Mark each page or sheet containing the proprietary material it wishes to restrict with the following legend:

   "Use or disclosure of data and information contained on this page/sheet is subject to the restriction on the title page of this proposal."

D. Rights of Airports Authority.

1. The Authority reserves the right to reject any and/or all proposals, to waive irregularities and technicalities in the proposals, to re-solicit this concession opportunity, to cancel the solicitation, and to proceed to provide the service otherwise, whenever it determines such action, in its sole discretion, to be in the best interest of the Authority.

2. The Authority reserves the right to accept the proposal which in the Authority's sole judgment best meets the Authority's objectives and requirements.

3. The Authority reserves the right to amend any provision of the RFP, including without limitation, the draft contract.

4. The Authority reserves its right to award contract(s) only to responsive and responsible contractors. In exercising this right, the Authority shall make such a determination of responsibility based upon a review of the responsibility of the offeror(s), including any affiliates, joint venture partners and proposed major subcontractors. Business or family relationships are deemed to establish the relationship of affiliation of each other when either directly or indirectly: (1) one business concern or family member controls or has the power to control the other; (2) a third party (or parties) has the power to control both; or (3) there are, in the Authority’s sole judgment, other business or family ties that are indicia of common management, contractual relationships, overlapping authority, or substantial involvement from a financial, management or operational perspective that relate to the factors related to responsibility, as set forth in Section 6.3.8 of the Authority’s Contracting Manual.

5. The Authority reserves the right to conduct announced or unannounced site visits and/or contact customers of some or all offerors to elicit further information relevant to the proposals submitted. The Authority also reserves the right to hold discussions with any offeror or with any offerors judged to be within a competitive range, concerning its proposal. The Authority further reserves the right to use the findings of such visits, contacts or discussions, and any other available information, in its evaluation of the offeror's proposal under the evaluation criteria established in this RFP. The Authority also reserves the right to make an award without conducting site visits, contacting customers or holding discussions.

6. The Authority reserves the right to require the submittal of Best and Final Offers by all offerors which have submitted a proposal or from those offerors judged to be within a competitive range.

E. Proposal Submission. It is essential that the information and requirements of this RFP be carefully studied and adhered to in the preparation and submission of proposals. Offerors are expected to examine the RFP and all attachments, including the draft Lease, all instructions and other information provided. Failure to do so will be at the offeror's risk and may be cause for rejection of an offeror's proposal.

F. Late Submission, Modifications, and Withdrawals of Offers

1. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and is in the Authority's best interest to accept the offer.

2. Any modification or withdrawal of an offer except a modification resulting from the Contracting Officer's request for "best and final" offer is subject to the same conditions as in paragraph F.1. above.

3. Notwithstanding paragraph 1. above, a late modification of an otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

4. Offers may be withdrawn at any time prior to Contract award.

G. Proposal Costs. All costs incurred in the development of a proposal in response to this RFP or in presenting the proposal, will be borne entirely by the offeror.

H. Proposal Acceptance Period; Responsibility. Submission of a proposal shall constitute a valid offer which may be accepted by the Authority for a period of one hundred eighty (180) days following the date specified for submission of proposals. The Contracting Officer will review the responsibility of any apparent successful offeror prior to awarding a contract.

I. Protests.

1. If a potential offeror believes it has grounds to protest any terms or conditions contained in or omitted from this solicitation or a solicitation amendment issued by the Authority, the potential offeror may file a protest with the Manager, Procurement and Contracts Department (Manager), and such protest must be received by the Manager by the earlier of the following dates: (1) fourteen (14) calendar days after the issuance date of the solicitation or the issuance date of the solicitation amendment when the amendment contains the terms or conditions that are the subject of the protest or, (2) the date specified for submission of proposals. The filing of a protest under this subparagraph 1 shall not have any effect on this solicitation, including the submission of proposals and their review and evaluation by the Authority, except as provided in subparagraph 6.

2. If an unsuccessful offeror on this solicitation believes it has grounds to protest the rejection of its proposal or the award of a contract to another offeror other than grounds relating to the terms or conditions contained in or omitted from a solicitation or solicitation amendment, the unsuccessful offeror may file a protest with the Manager. The Manager must receive such protest within seven (7) calendar days after the date of the Authority's letter notifying the offeror that its proposal was rejected or that the contract the offeror had sought to obtain has been awarded to another offeror.

3. The Manager will attempt to respond to a protest filed under subparagraph 1 or 2 within seven (7) calendar days from receipt of the protest. If the Manager determines that additional time will be required to respond to the protest, the Manager will, within seven (7) calendar days from receipt of the protest, notify the protestor of the time period within which a response will be made.

4. If a protestor is not satisfied with the Manager's decision on the protest, the protestor may ask the President and Chief Executive Officer (CEO) or designee to review the matter. This request must be received by the CEO or designee within seven (7) calendar days after the protestor's receipt of the Manager's decision.

5. If a protestor is not satisfied with the decision of the CEO, then the protestor may request that the protest be reviewed by the Board of Directors. Such request must be filed with the Secretary and must be received by the Secretary no later than the seventh (7th) day following the protestor's receipt of the CEO's decision. The decision of the Board is final.

6. If a contract pursuant to this solicitation has not been awarded at the time a protest is timely filed with the Procurement and Contracts Department Manager, the contract may not be awarded while the protest is pending within the Authority unless the President and Chief Executive Officer or designee determines that the award of the contract and issuance of a notice to proceed is in the Authority's best interest.

J. Protest Bonds.

1. A protest bond equal to Fifty Thousand Dollars ($50,000) must be submitted with any protest filed with the Authority by an offeror. Each such bond shall be in a form acceptable to the Authority and the bonding surety company shall have an A.M. Best rating of not less than “A” with a financial size of “IX” or better. In lieu of a surety bond, the protest bond may be in the form of a certified check, cashier’s check, or irrevocable letter of credit by a bank rated “A” or better by Kroll Bond Ratings and made payable to the Metropolitan Washington Airports Authority. Failure to submit a protest bond with a protest will result in the protest being rejected by the Authority without any consideration of the merits of the protest.

2. If the Authority’s final action on a protest is to dismiss or deny it, the bond shall be forfeited. If the protest is sustained on any issue, the bond shall be returned (without accrued interest) to the protesting offeror.

SECTION 8 - PROPOSAL GUARANTEE

A. A proposal guarantee in the sum of Ten Thousand Dollars ($10,000) must be submitted by an Offeror with each proposal. The proposal guarantee must guarantee the Offeror’s execution of any contract which the Authority, at the conclusion of this solicitation, determines to award the Offeror. In the event an Offeror fails to execute any such contract, the proposal guarantee shall be forfeited.

B. The proposal guarantee may be in the form of a certified check, cashier’s check, money order, bond or irrevocable letter of credit by a bank rated "B" or better by *Kroll Bond Ratings* and made payable to the Metropolitan Washington Airports Authority. Checks or money orders will be deposited into an Authority bank account designated for this purpose. The proposal guarantee may also be in the form of a proposal bond, issued by an insurance company with a B+10 rating by Best or an equivalent rating.

C. The proposal guarantee will be returned without accrued interest, if any, to unsuccessful Offerors following execution of a contract between the Authority and the successful Offeror(s) and the Authority’s receipt of a contract performance bond.

SECTION 9 – FINANCIAL OFFER

In addition to all other charges or costs required to be paid or borne by the Offeror herein, the Offeror shall, during each Contract Year, pay the Authority a Concession Fee which consists of the greater of 1) a Minimum Annual Guarantee (MAG), or 2) a percentage of annual gross receipts (Percentage Rent). The Percentage Rent shall be twenty percent (20%) of annual gross receipts.

SECTION 10 - PROPOSAL CONTENT REQUIREMENTS

A. Proposal Content.

Proposals for the solicitation shall include complete and detailed written responses to the categories of information in paragraphs below and shall provide such responses in the same order as the categories are listed below. Each Offeror's response to these items will be evaluated in accordance with the criteria stated in Section 11 of this RFP.

B. Each Offeror's proposal submission shall include the following required items:

1. TECHNICAL PROPOSAL (PDF File 1)

   a. **Operations Plan.** Offeror shall provide a comprehensive Operations Plan, which includes the following:
      i. A discussion of how each of the Required Services described in Section 4, shall be provided. Offeror shall provide a detailed transition plan, to include a timeline for installation of the ATMs while maximizing customer service.
      ii. Offeror shall list all transactions or functions that they plan to feature on each ATM and include technical specifications, an emergency and routine maintenance program, and reliability statistics (if available) for the proposed ATMs.
      iii. Offeror shall also describe how it will staff the operation to ensure ATM maintenance response times are met.
      iv. For the proposed ATMs, Offeror shall provide a complete list of all transaction fees, surcharges and the dollar amounts charged to the customer for each type of transaction or function.

   b. **Experience and Qualifications of Offeror.** The Offeror shall describe its experience in the management and operation of ATM services concession similar in size and complexity to that which is offered in this RFP. Including the following:
      i. Offeror shall describe its experience in the management and operation of ATM services concession similar in size and complexity to that which is offered in this RFP.
      ii. Offerors shall provide at least three (3) references with the proposal with whom they have provided relevant services. If the Airports Authority is one of the references, then a fourth reference should be provided. Include the name of the organization, address, email address, telephone number, name and title of the organization's representative for whom work was provided

2. FINANCIAL OFFER AND ABILITY TO PERFORM (PDF File 2)

   a. **The Eligibility Form (Attachment 2)**. The offeror, including its joint venture partners, if any, must be financially capable to provide the goods and services required by the Contract. If a proposal does not contain an Eligibility Form, or if in the sole opinion of the Authority, the information contained in the Eligibility Form is incomplete, not responsive, or the offeror does not meet the eligibility requirements, the proposal may be rejected by the Authority.

b. **Representations and Certifications Form (Attachment 3)**. This form must be completed and signed by all offerors and joint venture partners and included with the proposal.

c. **The Financial Offeror form (Attachment 4)**

Offeror(s) shall provide a financial offer in the form of a Minimum Annual Guarantee ("MAG") for each Contract Year during the Term of the Lease. Attachment 4 must be completed, signed by the Offeror, and returned as part of PDF File 1.

d. **Amendments.** The signed acknowledgement of any and all Amendments to this RFP must be included in the offeror's proposal.

e. **Proposal Guarantee**. The proposal guarantee in the sum of Ten Thousand Dollars ($10,000) must be submitted with Offeror's proposal. (see, Section 7.B. for submission instructions)

f. **Financial Strength and Ability to Perform**
The Authority reserves the right to not make an award to an Offeror which proposes a financial offer that would render the procurement infeasible. To assist the Authority undertake this evaluation, Offeror(s) should submit the following:

1. Each Offeror shall provide a financial profile for itself which includes a copy of the Offeror's audited financial statements prepared in accordance with General Accepted Accounting Procedures for its two (2) most recent fiscal years, showing profit/loss of all Offeror's businesses, and which includes a statement of any significant financial events affecting the Offeror occurring subsequent to the closing date of the most recent financial statement. The financial statements shall have been audited and certified by a Certified Public Accountant (CPA). If Offeror, any partner or principal owner of Offeror, or any affiliate of Offeror, is required to file reports with the Securities and Exchange Commission, Offeror shall provide copies of all such reports filed during the past two (2) years.

2. In the event an Offeror anticipates that a newly established entity, a subsidiary or spin off of an existing corporation will perform the services contemplated under this RFP, Offeror shall disclose this information and shall submit sufficient information and data to demonstrate the financial capability of the proposed new entity, subsidiary or spin off entity; such demonstration by an Offeror may require it to submit one or more letters of credit in an adequate amount to finance the operations required under this RFP. The Authority reserves the right to request a guarantee from an Offeror entity that proposes to establish a new business entity.

3. If the Offeror is a joint venture, the information in subparagraphs a) and b) above, when applicable, shall be supplied for each venture partner or member.

4. If the Offeror contemplates providing certain elements of the work via subcontractors, sufficient information and data with respect to each subcontractor must be provided to demonstrate that it has the financial capability to perform those elements of the concession.

SECTION 11 – EVALUATION CRITERIA

A. The Authority is using a competitively negotiated procurement process and will award the concession offered by this RFP to the qualified and responsible Offeror which Meets the technical requirements of the Authority and offers the highest payment (MAG) to the Authority.

B. Information submitted in proposals will be evaluated using only the criteria listed below. Please note that the elements listed in each of these paragraphs are not considered subcriteria and will be evaluated collectively, not individually. In other words, when evaluating how well a technical proposal meets a particular criterion, the Authority will consider all of the elements of the criterion together as a single criterion, not as separate subcriteria. The Authority will base its evaluation on information provided by the Offeror.

1. TECHNICAL MERIT (PDF File 1)

a. **Criterion 1: Operations Plan.** Offeror's Operations Plan for the ATM services concession will be evaluated in terms of its reasonableness and completeness in addressing the requirements of Section 11, including the following:
   i. How Offeror addresses each of the Required Services described in Section 4. Offeror will also be evaluated on the completeness of the transition plan, to include a timeline for installation of the ATMs while maximizing customer service.
   ii. How Offeror's ATMs comply with the requirements of the solicitation including technical specifications, an emergency and routine maintenance program, and reliability statistics (if available).
   iii. How Offeror plans to staff the operation to ensure ATM maintenance response times are met.
   iv. Whether the ATM transaction fees or surcharges exceed those charged at the Offeror's off-airport units in the Greater Metropolitan Washington DC Area.

b. **Criterion 2: Experience and Qualifications of Offeror.** Offeror will be evaluated on whether Offeror has demonstrated that the Offeror is experienced and fully qualified to manage and operate the ATM services concession. Including the following:
   i. Whether Offeror has demonstrated experience in the management and operation of ATM services concession similar in size and complexity to that which is offered in this RFP.
   ii. Whether Offerors has provide at least three (3) acceptable references with the proposal with whom they have provided relevant services.

2. **FINANCIAL OFFER AND ABILITY TO PERFORM (PDF File 2)**

   a. **Minimum Annual Guarantee:**

      Offerors must propose a Minimum Annual Guarantee for Years 1 through 5 using Attachment 4 “Financial Offer Form.”

   b. **Financial Strength and Ability to Perform**:

      Offeror’s financial ability to execute its Proposal and perform the requirements of the Contract.

SECTION 12 –DISCLAIMER

The passenger enplanement data, site characteristics, and other information provided by the Authority in connection with this RFP are furnished for informational purposes only. Such data shall in no way relieve Offeror from the responsibility of determining for itself the business potential of the proposed management opportunity

APPENDICES

APPENDIX A

Passenger Statistics

PASSENGER STATISTICS

https://www.mwaa.com/about/reagan-air-traffic-statistics

https://www.mwaa.com/about/dulles-air-traffic-statistics

APPENDIX B

Automated Teller Machine Transaction Histories: 2015 – 2020

RFP 21-22988 ATM Services at IAD and DCA

Automated Teller Machine Transaction Histories: 2015 – 2020

	ATM Transactions Dulles	ATM Transactions National	Total
2015	121,326	182,263	303,589
2016	170,752	185,140	355,892
2017	167,528	156,635	324,163
2018	154,048	118,192	272,240
2019	168,051	110,577	278,628
2020	52,096	35,476	87,572

APPENDIX C

Premises, National Airport

REAGAN NATIONAL
LEVEL 3
Ticketing/ Check-In
Outside Terrace
American
Door Closed
American Shuttle/Priority
Alaska
JetBlue
Delta
United
Outside Terrace
RIDE APP PICKUP
RENTAL CARS/ PARKING SHUTTLE
MULTI-PARTY SHUTTLES
HOTEL SHUTTLE
RIDE APP PICKUP
Symbol Legend
ATM/Cash
Baggage Claim
Chapel
Elevators
Elevators to Ticketing/ Check-In
Metro Station
Nursing Room
Police
Restrooms - Family
Restrooms - Men
Restrooms - Women
Security Screening
Airport Shuttle
Ticketing
United Service Organizations Center
Escalators
Information Counter
Mail Drop
Shoeshine Stand
Power Charge Stations
TSA Pre Enrollment
Terminal Doors
Pet Relief
Ride APP Pickup
Gates 46-59
American
Gates 35-45
American
American Bus Transfer
Gates 23-34
American
JetBlue
Gates 10-22
Alaska
Delta
United
DCA Levels Overview
LEVEL 3 : TICKETING/CHECK-IN
LEVEL 2 : TSA SECURITY /GATES
LEVEL 1 : BAGGAGE CLAIM
LEVEL 2
TSA Security/ Gates
Metro
Walkway to Metro Elevators
Metro
Walkway to Metro Elevators
Parking C
Parking B
Rental Cars
Proceed to Garage A
Alamo
Payless
AVIS
Hertz
National
zipcar
Budget
DOLLAR
enterprise
Thrifty
Underground Pedestrian Walkway
PASSENGER PICKUP & RIDE APP SERVICES
ALL SHUTTLES
TAXI
Conference Center and Historic Lobby
Lost & Found
Parking A
Gates 1-9
Air Canada
Frontier
Southwest
LEVEL 1
Baggage Claim
American
JetBlue
United
Alaska
Delta
TSA
Door Closed
TAXI
RIDE APP & PRIVATE VEHICLE PICKUP (Wait on Median)

APPENDIX D

Premises, Dulles Airport

DULLES INTERNATIONAL

SHOP • DINE

FlyDulles.com

We apologize for any inaccuracies on this map as the airport continues to upgrade your retail and dining experience.

Terminal – Upper Level
Ticketing (Pre-Security)

SHOP
Forbes News (West)
Hudson News (East)
iTravel 2 (West)

SERVICES
Currency Exchange (East & West)

Terminal – Lower Level
Baggage Claim (Pre-Security)

SHOP
Washington Informer (Baggage Claim #4)
Washingtonian News (Baggage Claim #13 Open 24 Hrs)

DINE
Cafe Americana (Baggage Claim #15)
Capitol Grounds Coffee (Baggage Claim #4)
Dulles Gourmet Market (Baggage Claim #14 - Open 24 Hrs)
Starbucks (Baggage Claim #14)

Terminal
(Post-Security)

SHOP
Capitol City Ink News

DINE
Dunkin' Donuts
Subway (Z Gates)

Concourse A

SHOP
Capitol City Ink News (Gate A5)
Hudson News (Gate A22)
Montblanc (Gate A32)
Tax & Duty Free (Gate A14 & A32)

DINE
Dunkin' Donuts (Gate A22)
The Firkin & Fox Pub (Gate A3)
Jersey Mike's Subs (Gate A3)
Smashburger (Gate A5)
Starbucks (Gate A5)

SERVICES
Currency Exchange (Gate A31)

Concourse B

SHOP
Coach (Gate B37)
Estee Lauder/M.A.C (Gate B50)
L'OCCITANE (Gate B37)
Michael Kors (Gate B37)
Ralph Lauren Polo (Gate B37)
Stellar News (Gates B50 & B73)
Sunglass Hut (Gate B42)
Swarovski (Gate B50)
Tax & Duty Free (Gate B50)
Tumi (Gate B50)
Vera Bradley (Gate B66)
Vineyard Vines (Gate B66)
Washingtonian News (Gate B38)

DINE
Bracket Room Sports Lounge (Gate B50)
Capitol Grounds Coffee (Gate B74)
Chick-fil-A (Gate B46)
DC3 Hot Dogs (Gate B71)
Five Guys Burgers & Fries (Gate B71)
Peet's Coffee (Gate B46)
Potbelly Sandwich Shop (Gate B46)
Vino Volo Wine Room (Gate B50)
Washington Burgundy and Gold Club (Gate B73)
Wendy's (Gate B45)

SERVICES
Smoking Lounge (Gates B41 & B72)

Concourse C

SHOP
Brookstone (Gate C9)
Capitol City Ink News (Gate C14)
Hudson News (Gate C4)
Hudson News (Gate C28)
InMotion (Gate C11)
Tax & Duty Free (Gate C4 & C14)

DINE
&pizza (Gate C28)
American Tap Room (Gate C22)
Au Bon Pain (Gate C14)
Auntie Anne's Pretzels (Gate C9)
brb (be right burger) (Gate C14)
Chef Geoff's (Gate C14)
The Chef's Table by Wolfgang Puck (Gate C3)
Starbucks (Gate C24)
Subway (Gate C2)

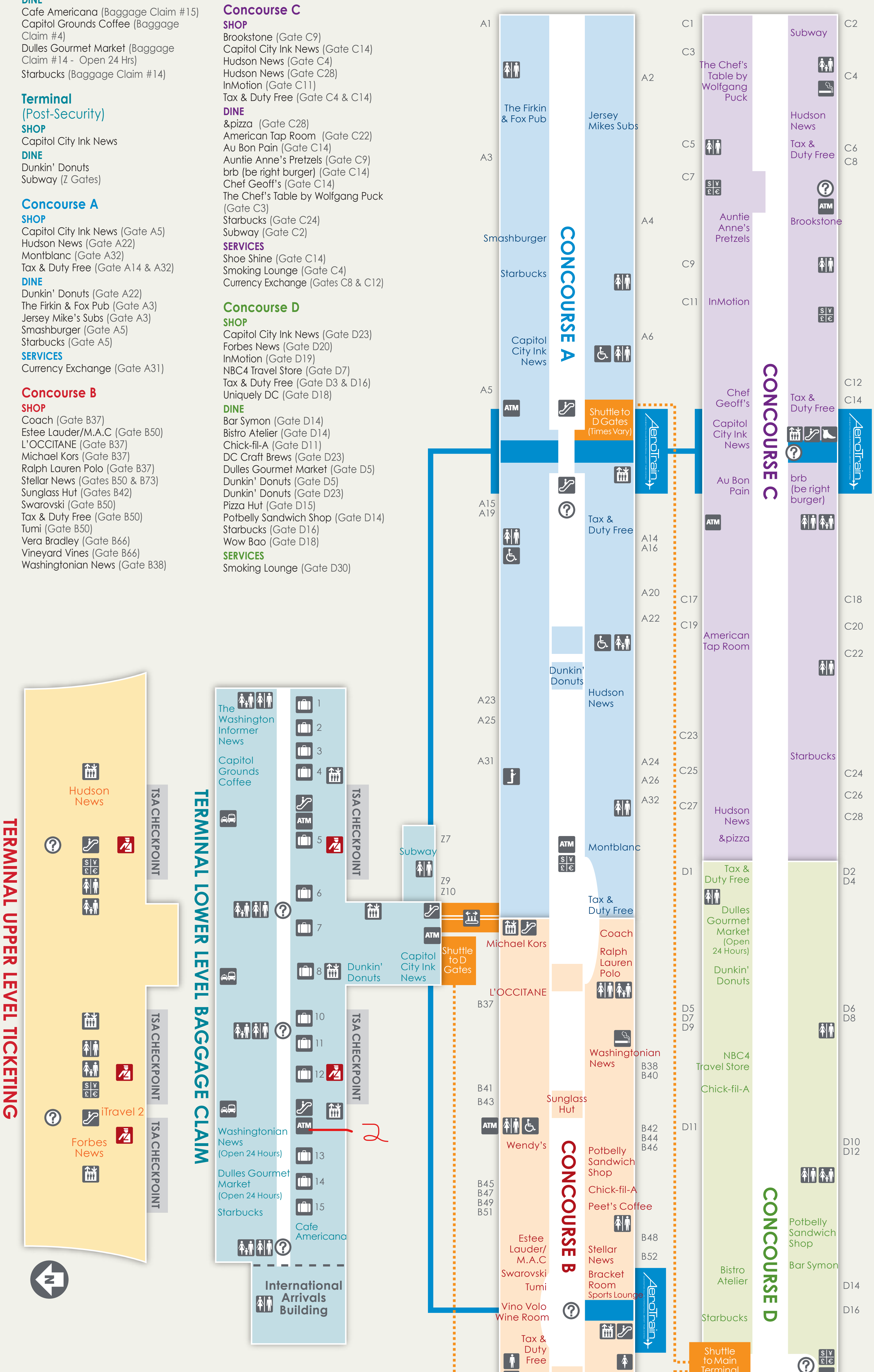
SERVICES
Shoe Shine (Gate C14)
Smoking Lounge (Gate C4)
Currency Exchange (Gates C8 & C12)

Concourse D

SHOP
Capitol City Ink News (Gate D23)
Forbes News (Gate D20)
InMotion (Gate D19)
NBC4 Travel Store (Gate D7)
Tax & Duty Free (Gate D3 & D16)
Uniquely DC (Gate D18)

DINE
Bar Symon (Gate D14)
Bistro Atelier (Gate D14)
Chick-fil-A (Gate D11)
DC Craft Brews (Gate D23)
Dulles Gourmet Market (Gate D5)
Dunkin' Donuts (Gate D5)
Dunkin' Donuts (Gate D23)
Pizza Hut (Gate D15)
Potbelly Sandwich Shop (Gate D14)
Starbucks (Gate D16)
Wow Bao (Gate D18)

SERVICES
Smoking Lounge (Gate D30)



Restrooms
Restrooms – Family
Currency Exchange & Business Center
ATM/Cash Machine
Baggage Claim
Chapel/Meditation Room
Escalators
Elevators
Moving Walkways
Ground Transportation Center
Smoking Lounge
Shoe Shine Stand
To Security Checkpoints
Information
Shuttle Bus Path
AeroTrain Path

WiFi ZONE

Managed by MARKETPLACE DEVELOPMENT

This map is not to scale.
08/01/21

ATTACHMENTS

Attachment 1 – Concession Contract and Lease – Includes Standard Provisions

Attachment 2 – Eligibility Form

Attachment 3 – Representations and Certifications Form

Attachment 4 – Financial Offer Form

ATTACHMENT 1

CONCESSION CONTRACT AND LEASE – INCLUDES STANDARD PROVISIONS

DRAFT

CONCESSION CONTRACT AND LEASE

BETWEEN

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

AND

____

FOR THE ESTABLISHMENT AND OPERATION

OF

AUTOMATED TELLER MACHINE SERVICES AT

RONALD REAGAN WASHINGTON NATIONAL AIRPORT

AND

WASHINGTON DULLES INTERNATIONAL AIRPORT

CONTRACT NO. SC-21-000__

Table of Contents

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
CONTRACT NO. SC-21-000__
TO ESTABLISH AND OPERATE
AUTOMATED TELLER MACHINE SERVICES AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT
AND
WASHINGTON DULLES INTERNATIONAL AIRPORT

THIS CONTRACT and LEASE, by and between the METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (hereinafter referred to as "Authority"), 1 Aviation Circle, Washington, DC, 20001, and_____________________, a corporation organized and existing under and by virtue of the laws of the State of___________, (hereinafter referred to as "Contractor");

W I T N E S S E T H :

WHEREAS, the Authority, a public body corporate and politic created by interstate compact between the Commonwealth of Virginia and the District of Columbia, with the consent of the U.S. Congress, has been given the responsibility for the operation, maintenance, protection, promotion and development of Ronald Reagan Washington National Airport ("National Airport") and Washington Dulles International Airport ("Dulles Airport") (hereinafter referred to as "Airports"); and,

WHEREAS, the Authority has determined that the operation of an Automated Teller Machine (ATM) Services Concession at the Airport is desirable; and,

WHEREAS, the Contractor has submitted a proposal in response to the Authority's public solicitation, Request for Proposals No. 21-22988, and the Contractor's proposal submitted in the response thereto was selected as the best proposal; and,

NOW, THEREFORE, the Authority has approved the selection of the Contractor on the terms and conditions herein set forth;

ARTICLE 1. OPERATING PERIOD

1.1 Operating Period. The term of this Contract shall be a period of five (5) years, commencing February 1, 2022 and expiring January 31, 2027, subject, however, to such earlier termination as provided for elsewhere herein.

1.2 Contract Year. For the purpose of this Contract, "Contract Year" shall mean the period of time beginning with February 1 of each year and extending through January 31 of the following year.

1.3 Option Period. The Authority, at its sole discretion, may exercise two, two-year (2) Option Periods to extend the Operating Period by four (4) years total. The Authority shall notify the Contractor whether it intends to exercise an Option Period no later than one hundred eighty (180) days before the end of the fifth Contract Year of the original Operating Period or no later than one hundred-eighty (180) days before the end of the second Contract Year during the first Option Period.

ARTICLE 2. PREMISES

2.1 National Airport:

a. ATM Locations. The Contractor shall install ATMs at the following locations:

Pre-Security:

1. Terminal B – National Hall, Baggage Level two (2) ATMs
2. Terminal A – Pre-security area one (1) ATM

Post-Security:

3. Terminal B – National Hall, Concourse Level two (2) ATMs
4. Terminal C – North Pier, post-security one (1) ATM
5. Terminal B/C – Center Pier, post-security one (1) ATM
6. Terminal B – South Pier, post-security one (1) ATM
7. Terminal A – Post-security along the walk-way to the gate area, one (1) ATM

b. Premises drawings are attached as Exhibit B to this Contract.

2.2 Dulles Airport:

a. ATM Locations. The Contractor shall install ATMs at the following locations:

Pre-Security:

1. Main Terminal – Baggage Claim Level, next to escalator one (1) ATM
2. Main Terminal – Baggage Claim Level, next to Baggage Claim #5, one (1) ATM
3. Main Terminal – Baggage Claim Level, near Baggage Claim #9, one (1) ATM

Post-Security:

4. South Finger – Concourse Level, one (1) ATM
5. Concourse A – Concourse Level, one (1) ATM
6. Concourse B – Concourse Level, one (1) ATM
7. Concourse C – Concourse Level, one (1) ATM

8. Concourse D – Concourse Level, one (1) ATM

b. Premises drawings are attached as Exhibit B to this Contract.

2.3 Relocation, Expansion, and Reduction of Facilities.

Due to the nature of the airport industry, at any time during the Operating Period of this Contract, it may be necessary for the Contractor to relocate an ATM. For purposes of this Contract, relocation is defined as the Authority's decision to terminate possession of an existing Premises, and to provide substitute Premises. In the event it is necessary to relocate an ATM, the Authority shall provide at least ninety (90) days advance written notice of such changes to the Contractor and pay the reasonable and audited costs of relocating the ATM up to a maximum reimbursement of $6,000.

ARTICLE 3. SCOPE OF SERVICES

3.1 Required Services

Services offered at the ATMs shall include (at a minimum) account inquiries, cash withdrawals, fund transfers and cash advances.

ARTICLE 4. OPERATING REQUIREMENTS

4.1 ATM Requirements. The Contractor shall meet the following requirements with respect to ATMs:

1. ATM transaction fees or surcharges may not exceed those charged at the Contractor's off-airport units in the Greater Metropolitan Washington DC Area.

2. The ATMs shall be front-loading and mounted as flush with the wall as possible. The ATM design, subject to Authority approval before installation, shall be modular and have the ability to incorporate new features and capabilities.

3. The ATMs shall be industry standard in appearance, functional, and resistant to rough usage.

4. The ATMs shall be equipped with an alarm system.

5. The ATM shall have a color cathode ray tube (CRT) or a Liquid Crystal Display (LCD).

6. The ATMs shall be able to execute transactions using a variety of credit, debit, and ATM cards. The ATMs shall access at least one national network (*e.g.*, Cirrus, Plus, Star) and each of the following debit card networks: Visa, MasterCard and American Express. Additional network affiliations are encouraged.

7. The ATMs shall display all written directions necessary to instruct customers in the operation of the ATM and a list of ATM transactions fees, transactions surcharges, or any other fees charged and to whom the transactions fees and/or surcharges apply.

8. Services offered at the ATMs shall support balance inquiries, cash withdrawals, account transfers

and other transactions as permitted by the governing network regulations.

9. ATMs must be ADA (American with Disabilities Act) compliant and have voice and braille guidelines.

10. The Contractor shall be required to meet all security requirements, including but not limited to, compliance with Airport and federal directives, background checks and badging requirements. Any necessary expenses to comply with security requirements shall be the responsibility of the Contractor.

11. The ATMs shall either electronically display or have affixed to them information for obtaining ATM services and/or refunds.

12. The ATMs shall conduct all transactions in United States Currency and use twenty dollar bills as the primary denomination for withdrawals. The use of other denominations is encouraged (*i.e.*, ten dollar bills).

13. Perform appropriate preventative maintenance and routine service necessary to ensure the ATMs remain in fully operational condition.

14. ATMs must have system management capabilities for predicting, assisting and reporting maintenance and the need for cash replenishment. The Contractor's response time to service calls on ATMs and replenishment of funds must be within four (4) hours of notification by the ATM's internal system to the Contractor. Each ATM shall bear in a plainly visible location the Contractor's name, ATM machine number, the location it is in, and have a twenty-four (24) hours a day, seven (7) days a week toll free telephone number to call for inquiries, maintenance issues, customer service issues or complaints. In addition, the each ATM must display a map showing ATM locations at the airport for customer convenience when the Contractor is servicing an ATM or in case of ATM malfunction.

4.2 Utilities. The Authority shall provide, at no charge to the Contractor, electricity required for consumption by the Contractor in the normal course of business provided under the terms and conditions of this Contract. The Contractor must separately contract for and pay for any specific data lines required to operate.

ARTICLE 5. FINANCIAL CONSIDERATION

5.01 Concession Fee: In addition to all other charges or costs required to be paid or borne by the Contractor herein, the Contractor shall, during each Contract Year, pay the Authority a Concession Fee which consists of the greater of 1) a Minimum Annual Guarantee (MAG), or 2) a percentage of annual gross receipts (Percentage Rent). The Concession Fees shall be paid to the Authority in lawful currency of the United States of America in the following manner:

1. Minimum Annual Guaranteed Rent. On the first day of each calendar month during the Operating Period of this Contract, the Contractor shall pay to the Authority, without demand or invoice, an amount equal to one twelfth ($1/12^{th}$) of the MAG due for that Contract Year. For any period of less than one calendar month during the term of the Contract, the MAG shall be pro-rated. Said MAG shall be deemed delinquent if not received by the Authority by the tenth (10th) calendar day of the month. The following are the MAG amounts the Contractor shall pay each Contract Year:

Contract Year	MAG Expressed in Numbers	MAG Expressed in Words
1		
2		
3		
4		
5		

Option Year	MAG Expressed in Numbers	MAG Expressed in Words
1		
2		
3		
4		

2. Percentage Rent. The Percentage Rent during the Operating Period of the Contract, as well as during the Option Period(s), if exercised, shall be twenty percent (20%) of all annual gross receipts.

   By no later than the twentieth (20^{th}) day after the beginning of each calendar month during the Operating Period of this Contract, the Contractor shall pay to the Authority, without demand or invoice by the Authority, a sum of money equivalent to the amount by which the Percentage Rent for the previous month exceeds the prorated monthly MAG paid for the previous month. In the event the Percentage Rent for the month does not exceed the monthly MAG paid for that month, then no Percentage Rent shall be due for such month. Percentage Rent payments, if due, shall be deemed delinquent if not received by the twentieth (20^{th}) calendar day of the month.

5.3 Reporting.

1. Certified Statements. The Monthly and Annual Certified Statements, in addition to requirements contained in Section 13 of the Standard Provisions, shall enumerate all payments, MAG and/or Percentage Rent calculations, overall gross receipts, and number of transactions for different types of services for the previous month in such form and detail which the Authority may reasonably

request (See Exhibit C). Monthly Certified Statements are due no later than the 15th day of the following month. Annual Certified Statements are due no later than 90 days after the close of the previous Contract Year.

2. Mailing Addresses. The Contractor shall clearly identify the purpose and send its Monthly and Annual Certified Statements, MAG payments and Percentage Concession Fee payments to the following addresses:

(Certified Statements and Payments)
Via USPS

Payee: Metropolitan Washington Airports Authority

MWAA AVI Receipts
P.O. Box 22491
Brooklyn, NY 10087-2491

Via Wire/ACH Transfers

Bank Routing and Transit Number (for wires and ACHs):

Bank Name: J.P. Morgan
Account Number: 623035588
ABA Number: 021000021
Swift Number CHASUS33

Account Name: Metropolitan Washington Airports Authority AVI Receipts AR

MWAA Contact: Nancy Edwards 703-417-8727 (for ACH and wire transfers only)

(Copy of Certified Statement) to COTR

Peggy Garcia
Director, Concessions Operations & Administration
Metropolitan Washington Airports Authority
One Aviation Circle
Washington, DC 20001-6000

5.4 Liquidated Damages for Late Submission. If the Contractor fails to submit an Annual Statement of Gross Receipts and Concession Fees for the Contract Year within ninety (90) days following the end of the Contract Year, the Contractor shall pay within ten (10) days of demand by the Authority liquidated damages of one hundred dollars ($100) per day for each day that the Annual Statement is late.

ARTICLE 6. PERFORMANCE GUARANTEE

6.1 Performance Guarantee Amount. The Contractor shall deliver to the Authority upon the execution of this Contract a Performance Guarantee in the amount of________________, which is fifty percent (50%) of the First Year's MAG. This Performance Guarantee is required in order to guarantee performance of the Contract by the Contractor and shall be subject to claim in full or in part by the Authority in the event of default of the Contractor or failure to fully perform the Contract. The Contractor shall ensure that the Performance Guarantee is maintained at all times in the proper amount throughout the full term of the Contract. The amount of said Performance Guarantee shall be subject to adjustment at the end of each Contract Year to an amount equal to fifty (50%) percent of the MAG for the next Contract Year or 50% of the total payments (MAG and Percentage Rent) made to the Authority during the previous Contract Year, whichever is greater.

6.2 Performance Guarantee Form. The Performance Guarantee, at the option of the Contractor, may be in the form of an irrevocable letter of credit issued by a bank (with a bank rating "B" or better by Kroll Bond Ratings), a certified check, cashier's check, or money order acceptable to the Authority and made payable to the Authority. The Performance Guarantee may also be in the form of a performance bond issued by an insurance company acceptable to the Authority. If a check or money order is issued, it will be deposited in an interest-bearing account for the benefit of the Authority.

6.3 Liquidated Damages. The Contractor shall pay within ten (10) days of demand by the Authority liquidated damages of One Hundred and Fifty Dollars ($150) per day for each day that the Contractor does not maintain the correct amount of the Performance Guarantee.

ARTICLE 7. INDEMNIFICATION AND INSURANCE

7.1 The Contractor shall procure and maintain at its expense during the Contract the following insurance coverage from an insurance company or companies that is/are financially sound possessing a rating of A- VII or higher from the A.M. Best Company or an equivalent rating service, insuring the Contractor against all liability, subject to policy terms, conditions, and exclusions, for injuries to persons (including wrongful death) and damages to property and any other liability arising from or caused by the Contractor's activities on Airports Authority premises or for services performed under this Contract. For those companies not subject to A.M. Best's ratings or equivalent, they shall have a nationally or internationally recognized reputation and responsibility and shall be approved by the Airports Authority with such approval not to be unreasonably withheld.

7.2 Contractor shall advise the Airports Authority of any cancellation, non-renewal, or material change in any policy within ten (10) business days of Contractor receiving notification of such action from the insurer.

7.3 All of the policies, excluding Professional Liability, required of the Contractor shall be primary and the Contractor agrees that any insurance, including self-insurance, whether primary, excess, or on any other basis, maintained by the Airports Authority shall be non-contributing with respect to the Contractor's insurance. Any self-insured retention, deductible, or similar obligation on all of the policies shall be the sole responsibility of the Contractor.

7.4 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity as defined in the Contract. The Contractor must protect the Personally Identifiable Information data to which the Contractor has access to or is holding.

7.5 The Contractor may use commercial umbrella/excess liability insurance so that Contractor has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Contract. Any umbrella or excess liability coverage must be at least as broad as the primary coverage and contain all coverage provisions that are required of the primary coverage.

7.6 The Contractor and its Subcontractors are prohibited from operating Airports Authority owned vehicles and mobile equipment.

7.7 The Contractor and its Subcontractors are prohibited from operating any vehicle, including mobile equipment, on the restricted areas of the airport such as Air Operations Area (AOA).

7.8 **Insurance Coverage and Minimum Limits**

1. **Commercial General Liability**
    a. Shall be written on an "occurrence" basis with a limit of not less than Five Million Dollars ($5,000,000) per occurrence. Coverage written on a "claims-made" basis is not acceptable.
    b. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Products-Completed Operations, Personal Injury and Advertising Injury Liability, Premises-Operations, Independent Contractors and Subcontractors, and Damage to Rented Premises.
    c. <u>Additional Insured:</u> The *Metropolitan Washington Airports Authority* shall be included as an Additional Insured. A copy of the endorsement must be submitted.
    d. <u>Waiver of Subrogation:</u> Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the *Metropolitan Washington Airports Authority*. A copy of the endorsement must be submitted.

2. **Business Automobile Liability**
    a. In the event Contractor does not own automobiles in the corporate name, Contractor shall maintain coverage with the each accident limit identified below for Hired and Non-Owned Autos, which may be satisfied by way of endorsement to the Commercial General Liability policy described above or separate Business Auto Liability policy. Evidence of either must be provided.
    b. Shall be a limit of not less than One Million Dollars ($1,000,000) each accident for any vehicle (owned, non-owned, or hired/leased) used by the Contractor to fulfill the services contemplated by this Contract.
    c. Coverage shall include handling of property for loading and unloading.
    e. <u>Additional Insured for Vicarious Liability:</u> The *Metropolitan Washington Airports Authority* shall be included as an Additional Insured for Vicarious Liability. This shall be documented using ISO (Insurance Services Office, Inc.) endorsement CA 20 48 DESIGNATED INSURED or an equivalent form. A copy of the endorsement must be submitted.
    f. <u>Waiver of Subrogation:</u> Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the *Metropolitan Washington Airports Authority*. A copy of the endorsement must be submitted.

3. **Workers Compensation and Employers Liability**
    a. Contractor shall satisfy all compulsory requirements relating to workers compensation in any jurisdiction in which benefits may be claimed to cover each employee who is or may be engaged in work under this Contract.

b. Coverage is compulsory in the Commonwealth of Virginia for employers of three or more employees, to include the employer and subcontractors. If the Contractor is required by Virginia law to carry Workers Compensation coverage, the coverage shall be at Virginia Statutory Limits with Virginia coverage added to item 3A of the policy; a Virginia listing under item 3C of the policy is not sufficient.

c. Employers Liability shall be a limit of not be less than One Million Dollars ($1,000,000) for bodily injury by accident and One Million Dollars ($1,000,000) each employee for bodily injury by disease.

g. Waiver of Subrogation: Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the *Metropolitan Washington Airports Authority*. A copy of the endorsement must be submitted.

4. **Fidelity Bond or Commercial Crime Insurance**
   a. Shall be a limit of not less than Ten Million Dollars ($10,000,000) per occurrence.
   b. Coverage shall include, but not be limited to, loss of, and loss from damage to, covered property such as money and security.
   c. Coverage shall also include comprehensive dishonesty, negligence, disappearance and destruction; larceny; burglary; robbery; money orders and counterfeit currency; depositors' forgery; computer fraud and all losses of funds belonging to the Authority while in the custody and control of the Contractor.
   d. Loss Payee: The *Metropolitan Washington Airports Authority* shall be listed as the Loss Payee.

5. **"All Risk" Property (Contractor's Property)**
   Full value and full replacement cost coverage under an "All Risk" policy for any of the Contractor's real or personal property used or situated on Airports Authority's property.

   If Contractor chooses to provide self-insurance for any of the Contractor's real or personal property used or situated on Airports Authority's property, the Contractor shall indicate by initialing on the line below that the self-insurance option has been chosen.

   _______ Contractor elects to provide self-insurance for "All-Risk" Property.

7.9 By requiring insurance herein, the Airports Authority does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the Airports Authority in this Contract.

7.10 The Airports Authority reserves the right at any time throughout the term of the Contract to adjust the aforementioned insurance requirements, if, in Airports Authority's reasonable judgment, the insurance required by the Contract is deemed inadequate to properly protect the Airports Authority's interest. The Contractor agrees that it will procure the adjusted insurance provided the coverage is available at commercially reasonable rates.

7.11 The Airports Authority reserves the right to inspect relevant endorsements, declaration pages, and/or a complete copy of the insurance policy(s) from the Contractor, evidencing the coverage required herein, upon written demand. The Contractor shall provide a reasonable opportunity for the Airports Authority to inspect such insurance documents, at the Contractor's corporate office located closest to the Airports Authority's main administrative office, within ten (10) business days of the Airports Authority's written request for such inspection.

7.12 The failure of the Airports Authority at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Contractor to maintain such insurance or to defend and hold the Airports Authority harmless with respect to any items of injury or damage covered by this Contract.

7.13 Should any required insurance lapse during the contract term, requests for payments originating after such lapse may not be processed at the Airports Authority's discretion until the Airports Authority's Contracting Officer receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. The Contractor's failure to maintain the insurance required by this Contract shall also be the basis for immediate termination of this Contract at the Airports Authority's option.

7.14 The Contractor is responsible to ensure that all its Subcontractors independently carry insurance appropriate to cover the Subcontractors' exposures, or are covered under the Contractor's policies. The Contractor is responsible for monitoring its Subcontractors' evidence of insurance to ensure compliance with their subcontract with Contractor. Copies of all Subcontractors' evidence of insurance should be maintained by the Contractor, and upon request, be supplied to the Contracting Officer.

7.15 The Contractor shall provide the Contracting Officer with a valid Certificate of Insurance, in advance of the performance of any work and as soon as possible after renewal but no later than ten (10) business days after said renewal, exhibiting coverage as required by the Metropolitan Washington Airports Authority's contract terms and conditions for the entire term of the Contract, including any renewal or extension terms, and until all work has been completed to the satisfaction of the Airports Authority.

1. The Airports Authority has the right, but not the obligation, of prohibiting Contractor from performing work under this Contract until such evidence of insurance has been provided to the Contracting Officer in complete compliance with the contract terms and conditions.
2. The Certificate of Insurance shall be provided on the most current industry standard form by ACORD (Association for Cooperative Operations Research and Development) or other form acceptable to the Airports Authority.
    a. For Liability Insurance, the ACORD 25 (2016/03) is the most current industry standard form. ACORD 25 forms older than 2016/03 may not be acceptable.
    b. Other evidence of insurance forms which may be acceptable include, but are not limited to, certificate forms created by the insurance company, Memorandum of Insurance, Certificate of Commercial Liability Insurance by ISO (Insurance Services Office, Inc.), and Manuscript Certificate of Insurance for certain offshore policy placements. Forms of these types will be considered on a case-by-case basis.
3. The Certificate of Insurance shall include the Contract Number.
4. If the Contractor is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Contractor shall provide the evidence of insurance in the name of Contractor's entity or partnership as the primary insured.

5. If an Umbrella policy is used to meet the total insurance limits required by this Contract and covers more than General Liability and Automobile Liability, a statement must be provided on the Certificate of Insurance to indicate which policies are covered by the Umbrella policy.
6. If an Excess policy is used to meet the total insurance limits required by this Contract, a statement must be provided on the Certificate of Insurance to indicate which policy it follows.
7. The ***Metropolitan Washington Airports Authority*** must be specifically named as Certificate Holder on the Certificate of Insurance and the Certificate of Insurance and any other insurance-related notices shall be issued to:

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
Procurement and Contracts Department
ATTN: Contract Number SC-21-000__
1 Aviation Circle
Washington DC 20001-6000

ARTICLE 8. AUDIT

8.01 Authority's Right to Audit. The Authority shall have the right, upon reasonable notice to Contractor, to audit the corporate books and records relating to the operation of the Contractor, as outlined in **Article 14: Records and Books; Inspections; Audits** of the Standard Provisions (Exhibit D), in order to determine the correctness of the fees paid to the Authority for any Contract Year. The Authority's right to inspect and audit extends to the books and records of all subcontractors and/or partners under this Contract as they relate to this Contract. If the audit discloses intentional inaccuracies, this Contract, at the option of the Authority, may be terminated.

ARTICLE 9. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE), MINORITY BUSINESS ENTERPRISE (MBE) AND WOMAN BUSINESS ENTERPRISE (WBE)

By accepting this contract, the Contractor, commits to make voluntary efforts to obtain ACDBE and M/WBE participation for this contract. To monitor and evaluate ACDBE and M/WBE participation in its contracting programs, the Airports Authority is collecting information on the voluntary efforts made by Offerors in securing ACDBE and M/WBE participation for this contract.

Acceptable forms of ACDBE and M/WBE participation that the Contractor may report for this contract include but are not limited to goods and services procured from ACDBE and M/WBE contractors, consultants, suppliers, and/or manufacturers providing services to the Contractor's Airports Authority facilities included in this contract.

POST-AWARD COMPLIANCE

By accepting this contract, the Contractor agrees to the following requirements:

1. The Contractor shall submit a completed Invoice Attachment Form (Exhibit J) with each monthly Certified Statement. Delineated on each Exhibit J, the Contractor shall state the activities of all contractors, consultants, suppliers, and/or manufacturers providing services to the Airports Authority facilities included in this contract.

2. The Contractor shall maintain and allow the Authority access to records relating to the contract, including but not limited to, contracts, purchase orders and accounting records, for the purpose of ascertaining whether the ACDBEs and M/WBEs, if any, are performing the contracted work.

3. The Contractor shall maintain contractor records that evidence payments to ACDBEs and M/WBEs contractors, including but not limited to, copies of canceled checks and paid invoices. Copies of these records will be available to the Contracting Officer or the Equal Opportunity Programs Department to review upon request.

ACDBE and M/WBE ELIGIBILITY

To be eligible for participation as an ACDBE, a company must be a business organized for profit and must qualify as a Airport Concession Disadvantaged Business Enterprise (ACDBE) under 49 CFR Part 23 and 26. ACDBE certification must be obtained from the Virginia Unified Certification Program (the Metropolitan Washington Airports Authority and the Virginia Department of Minority Business Enterprise), in accordance with the criteria specified in 49 CFR Part 26.

To be eligible for participation as a "Minority Business Enterprise" (MBE) a business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.

To be eligible for participation as a "Women Business Enterprise" (WBE) the business concern must be at least 51 percent owned and controlled by one or more female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.

> "Virginia Unified Certification Program (VUCP)" The certifying entity that is responsible for the certification of DBEs under 49 CFR Part 26 for the Commonwealth of Virginia. The two organizations that comprise the VUCP are the Metropolitan Washington Airports Authority and the Virginia Department of Minority Business Enterprise.

ARTICLE 10. MISCELLANEOUS PROVISIONS

11.1 Incorporation of Standard Provisions. The "Standard Provisions for Concession Contracts of the Metropolitan Washington Airports Authority", dated January 10, 2020, attached hereto as Exhibit D are hereby incorporated into and made a part of this Contract. The Contractor shall be obligated to meet all specifications described in the Standard Provisions, PROVIDED, HOWEVER, that where an express provision of this Contract is in conflict with any provisions of the Standard Provisions, this Contract shall control.

11.2 Notices. All notices, consents and approvals required under the terms of this Contract shall be given by a designated representative or the party or by in whose behalf they are given and delivered either by hand or certified mail, postage prepaid, return receipt requested, and addressed as follows:

1. To the Authority:

Donald Laffert
Contracting Officer
Procurement and Contracts Department
Metropolitan Washington Airports Authority
One Aviation Circle
Washington, D.C. 20001

2. To the Contractor:

A copy shall be sent to:

11.3 Liquidated Damages. Wherever liquidated damages are stated in this Contract, the Contractor specifically agrees:

1. That the amount of such liquidated damages is reasonable and does not constitute an unenforceable penalty; and

2. The payment of the liquidated damages amount shall be due within ten (10) days of the Contractor's receipt of written notice from the Authority of the amount of liquidated damages that have been assessed.

The Authority will send the Contractor written notice of the Authority's decision to assess liquidated damages no later than thirty (30) days from the date the event leading to the assessment of liquidated damages occurred.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the dates shown below.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

Witness:

________________________________ By: _____________________________
Donald Laffert
Contracting Officer

Date: __________________________

____

Witness:

________________________________ By: ____________________________

Title: ________________________________

Date: ________________________________

SECRETARY'S CERTIFICATE

I, _____________________________________, certify that I am the Secretary of ______________________, the named Contractor herein; that__________________________, who signed this Contract on behalf of the Contractor was then__________________________of said corporation; and that said Contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_________________________________(Corporate Seal)
Secretary's Signature

Standard Provisions

for

Concession Contracts

January 10, 2020

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Article 1. Definitions and Interpretation

1.01 Definitions. Except as otherwise clearly indicated by the context, the following words, terms and phrases wherever used in this Contract shall for the purpose of this Contract have the following meanings:

"Airport" or "Airports" means either or both Ronald Reagan Washington National Airport (DCA) or Washington Dulles International Airport (IAD) as the context of this Contract shall indicate.

"Airline" shall mean a company operating scheduled air transportation services that has entered into a standard airline use and lease agreement with the Authority.

"Authority" means the Metropolitan Washington Airports Authority, the entity that operates and controls Washington National and Washington Dulles International Airports, or its successor.

"Contracting Officer" means the Vice President, Office of Customer and Concessions Development for the Authority, or, for the ground transportation, rental car, Fixed Base Operator or parking concession contracts, the Manager of Airport Administration for the Airport at which the contract will be performed, or such other authorized individual to whom contracting authority is properly delegated in accordance with Authority delegations of authority. The Contracting Officer is authorized to change any of the terms and conditions of the Contract and is also the party responsible for the on-site administration and enforcement of the terms and conditions of this concession Contract in all areas.

"Contractor" means the person or entity that has been awarded the right to establish and operate the Airport concession activity that is authorized by this Contract.

"Day" means business day unless otherwise specified.

"Expiration Date" means the scheduled last day of the period of this Contract. If the period of this Contract is extended, the Expiration Date shall be the scheduled last day of the period so extended. If the Contract is canceled or terminated, prior to the originally fixed Expiration Date, then the Expiration Date shall be the date on which this Contract is canceled or terminated, as established by the Authority; provided, that if this Contract is canceled or terminated prior to the originally fixed Expiration Date for default by the Contractor, this definition shall not be construed to preclude the Contractor's liability to the Authority for the period beyond the effective date of the termination or cancellation.

"Fixed Improvement" means any alteration, addition, annexation or improvement to the Premises or a portion thereof that cannot be removed or changed without material damage to, or destruction of, either itself or the Premises or a portion thereof.

"Gross Receipts" means the total amount received or realized by or accruing to the Contractor from all cash or credit sales at the Airport of services, materials, or other merchandise made pursuant to the privileges authorized by this Contract. Losses due to "bad" checks or credit cards are the responsibility of the Contractor and shall not be deducted from gross receipts. A sale shall be deemed made at the Airport if: (1) the merchandise or services are ordered at the Airport and filled at the Airport or elsewhere; or (2) if the merchandise or services are ordered elsewhere, but the order is filled at the Airport or the merchandise or services are delivered from the Airport. All revenue shall be deemed to be received at the time of determination of the amount due the Contractor for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this Contract; PROVIDED, HOWEVER, Gross Receipts exclude (1) refunds made by the Contractor to its customers for merchandise returned to the Contractor and (2) any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Contractor.

"Interior Maintenance" means the maintenance and keeping in good repair of the assigned Premises. This includes, but is not limited to, janitorial services, removal of trash, pest control, painting and maintenance of wall coverings, relamping and maintenance of light fixtures, interior and exterior washing of windows, repainting of Premises, and replacement of floor covering. It does not include maintenance and repairs required because of structural defects.

"Operating Equipment" means furniture, furnishings, special lighting fixtures, carpeting, draperies, decorations or other special finishing work, signs, appliances and trade fixtures and equipment that is furnished, installed or used by the Contractor in its operations on the Airport. It does not include Fixed Improvements, or repair or maintenance of Operating Equipment or Fixed Improvements or displays or decorations that are of a seasonal or temporary promotional nature.

"Premises" includes the areas at the Airports that the Contractor is authorized to use under this Contract, including any alterations, additions, repairs or Fixed Improvements made thereto.

"President" means the President and Chief Executive Officer, Metropolitan Washington Airports Authority, or such person or persons as may from time to time be authorized by the President to act for the President on matters pertaining to this Contract.

<u>1.02 Interpretation.</u> In this Contract, unless the context otherwise requires:

1. The terms "hereby," "herein," "hereof," "hereto," and "hereunder" and any similar terms used in this Contract refer to this Contract.

2. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies as well as natural persons.

3. Any headings preceding the text of the Articles and Sections of this Contract, and any table of contents, shall be solely for convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect.

4. Words importing the male gender shall include the female gender and vice versa.

5. Words importing the singular shall include the plural and vice versa, unless the context clearly indicates otherwise.

6. A provision of this Contract that prohibits a party from performing an action shall be construed so as to prohibit the party from performing the action or permitting others to perform the action.

7. A provision of this Contract that requires a party to perform an action shall be construed so as to require the party to perform the action or cause the action to be performed.

8. "Including" means "including but not limited to."

9. The parties agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein. Except as otherwise provided in this Contract, none of the provisions, terms, and conditions contained in this Contract may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

10. All attachments to this Contract shall be deemed to be a part of this Contract.

11. In the event of a conflict between the body of the Contract and these Standard Provisions, the Contract shall take precedence.

Article 2. Incorporation of Proposal and Rights In Data

2.01 Incorporation of Proposal. Unless otherwise provided in this Contract, the Contractor's proposal is hereby made a part of the Contract. The Contractor's proposal may be subject to public disclosure in accordance with the Authority's Freedom of Information Policy. Notwithstanding the foregoing, however, the Authority will not publicly disclose commercial or financial information contained in the proposal which the Contractor specifically designates as confidential and provides the Authority with specific reasons protection is necessary.

2.02 Rights in Data. If the Contractor is required during the period of the Contract to submit data regarding revenue generated under the Contract, the Authority has the right to use such data in contract solicitations and the data may also be subject to public disclosure pursuant to the Authority's Freedom of Information Policy.

Article 3. Use of Premises and Operation of Concession

3.01 Use of Premises. The Contractor shall use the Premises only to operate the concession specified herein. No other uses are permitted unless previously authorized by the Authority in writing, which authorization may be withheld in the Authority's sole discretion.

3.02 Operation of Concession. Except as otherwise authorized by the Authority in writing, the Contractor shall:

1. Operate this business during such hours as may be deemed reasonably necessary by the Authority, or as specifically stated elsewhere herein.

2. Keep its Premises used for retail business fully staffed with knowledgeable, helpful, courteous, considerate and efficient employees. The Contractor shall require its employees to observe a strict impartiality as to services. The Contractor shall prohibit and restrain its agents, servants, and employees from loud, noisy and/or persistent announcement of its services on or about the Premises or the Airport.

3. Make every reasonable and lawful effort to maintain, develop and increase the business conducted by it under this Contract. The Contractor shall use its best efforts to achieve a maximum sales volume for the concession. It further agrees not to divert, or cause or allow to be diverted, any business from the Airport.

4. Use for office, clerical, storage or other non-selling purposes only such space in the Premises as is reasonably necessary for Contractor's business therein, and shall not perform any office, clerical, storage or other functions in the Premises for any other concession, business or store.

5. Not use the space outside or adjacent to the Premises for displays, sales or any other similar undertaking.

6. Not place any load on any floor in the Premises that exceeds the floor load per square foot that such floor was designed to carry.

7. Not use any roof over the Premises for any purpose. Contractor shall not use exterior walls of the Premises except that the Contractor may use any display windows that are part of the Premises and except that the Contractor may erect signs approved by the Contracting Officer.

8. Not use the Premises for any illegal trade or business, or for any other illegal purpose.

9. The Contractor shall not employ or retain in its service, or permit to remain upon the Premises, any person reasonably found by the Contracting Officer to be objectionable or unfit for such employment.

10. Not install or have installed or allow to be installed upon the Premises any sign, either lighted or unlighted, display, video, poster, magazine or other printed materials containing advertising. The Contractor expressly acknowledges that the Authority maintains separate exclusive advertising concessions at the Airport for the dissemination of local and national advertising and the distribution of a complementary magazine relating to the Airports. The Contractor warrants that it shall not engage in any conduct which conflicts with such other concessions. Any sign, video, poster, magazine or printed material containing advertising, or other displays not approved by the Authority shall be removed from the Premises by the Contractor within one (1) day after notice from the Authority. The Authority may enter the Premises and remove the unapproved item(s) if the Contractor does not remove the item(s) itself.

11. Not install vending machines, public telephones and other similar equipment on the Premises unless authorized by the Contracting Officer.

<u>3.03 Merchandise; Prices to be charged.</u> The Contractor shall keep the concession continuously stocked with high quality, saleable merchandise and establish reasonable prices to be charged for the products and services to be sold or exchanged that are consistent with the pricing set forth in its proposal. The Contractor may, subject to the written consent of the Contracting Officer, grant complementary or reduced rates to certain persons as are customary in businesses of similar character.

1. Reasonableness of prices shall be judged by comparison with the Contractor's pricing contained in its proposal and by comparison to prices currently charged for comparable goods or services furnished or sold outside the Airport in the Washington, DC Metropolitan Area under similar conditions with due allowance for accessibility, availability, cost of labor and materials, type of patronage and other conditions customarily considered in determining charges. However, consideration may also be given to such other factors as the Contracting Officer may reasonably deem significant. The Contractor shall within forty-eight (48) hours after notice from the Contracting Officer, reduce any prices judged by the Contracting Officer to be unreasonable under this Section 3.03.

2. The Contractor shall sell only the merchandise and services specifically authorized herein and provide the Operating Equipment, Fixed Improvements, management, personnel, goods and commodities necessary therefor. The Authority reserves the right to determine the nature and type of merchandise and services that may be sold or furnished by the Contractor. The Contractor shall, within forty-eight (48) hours after receipt of written notice from the Contracting Officer, discontinue the sale of any product or service that the Contracting Officer reasonably determines to be in violation of the rights granted hereunder.

<u>3.04 Insurance Rate.</u> The Contractor shall comply with all insurance requirements relating to or affecting the Premises. If insurance premiums payable by the Authority for the Premises or the Airport exceed the rate that would have been applicable, because of a failure by the Contractor to comply with insurance requirements, or as a

result of or in connection with the use to which the Premises are put by the Contractor (if such use is other than a use authorized under this Contract), Contractor shall, upon demand by the Authority, immediately reimburse the Authority for the excess insurance premiums paid by the Authority.

3.05 Hazardous Materials. Any Hazardous Materials shall be handled, stored, transported and disposed of in accordance with all applicable Federal, state and local statutes, ordinances, and regulations. The term "Hazardous Materials" shall mean any substance, chemical, or waste which at any time shall be defined as hazardous, toxic, or dangerous under applicable federal, state or local laws or regulations that govern (1) the existence, cleanup, or remedy of contamination on property; (2) the protection of the environment from spilled, deposited or otherwise emplaced contamination; (3) control of hazardous wastes; or (4) the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

Article 4. Condition of Premises, Alterations, Discharge of Liens

4.01 No Representations or Warranties. The Authority makes no representations, covenants or warranties with respect to the Premises except as expressly set forth in this Contract.

4.02 Construction, Alterations or Repairs to Premises.

1. Contractor shall not make or permit anyone to undertake any construction or make any alterations, additions or improvements, structural or otherwise, or install any Fixed Improvements or Operating Equipment (hereinafter collectively referred to as "Alterations"), in or to the Premises without the prior written consent of the Contracting Officer. Prior to the commencement of work on any Alterations, the Contracting Officer's written approval must be obtained as to comprehensive plans and specifications showing all the proposed Alterations, including detailed descriptions of the effect of the proposed Alterations on the mechanical and electrical systems of the building in which the Premises are located and the compatibility of the Alterations with the design and general character of the Airport and the area in which the Premises are located. The Authority shall have the right to stop such work if the Authority or its designated agent determines that such work is not being done in a workmanlike manner or in accordance with the plans and specifications provided to the Authority. In such event, the Contractor shall promptly correct the problem that gave rise to the work stoppage. If the Contractor fails to do so within a time period determined by the Authority to be reasonable, then the Authority may, at its sole option, and at Contractor's expense, correct such problem(s), and complete the Alterations.

2. Said Alterations shall in all respects comply with the Virginia Uniform Statewide Building Code, the Authority's Design Manual; Authority regulations and directives; Federal Aviation Administration regulations, orders and advisory circulars; federal and state environmental regulations; the Authority's Construction Safety Manual; Authority insurance requirements; Virginia Occupational Safety and Health standards; applicable food and beverage codes and other health regulations (Arlington, Fairfax or Loudoun County, U.S. Public Health Service); and any other applicable federal, state and local laws and regulations. All construction, alterations or repairs to the Premises shall also be required to meet any other standards specifically referenced or stated elsewhere in this Contract.

3. Within a reasonable time after this Contract has been fully executed, the Contractor shall apply to the appropriate authorities for any permits that may be required in connection with the Alterations to be done by the Contractor pursuant to this Contract. The time in which the Contractor is required to comply with this subparagraph shall take into account the time needed to develop and obtain the Contracting Officer's approval of plans, drawings and specifications.

4.03 Discharge of Liens. If any mechanic's or materialman's lien is filed against the Premises as a result of any work or act of the Contractor, the Contractor shall discharge the lien within twenty (20) days after the filing of the lien. In addition to any other remedies available to the Authority, if the Contractor fails to discharge the lien, the Authority may bond or pay the lien or claim for the account of the Contractor without inquiring into the validity thereof. The Contractor is required to reimburse the Authority for any funds so spent by the Authority.

4.04 Incorporation of Plans, Drawings and Specifications. Upon approval, the final plans, drawings and specifications associated with any Alterations shall be deemed to be a part of this Contract. All Alterations done by the Contractor pursuant to this Contract shall be consistent with the plans, drawings and specifications approved by the Contracting Officer for this Contract.

4.05 Fire Extinguishers. The Contractor agrees to supply and maintain such adequate and readily accessible fire extinguishers, approved by fire underwriters for the protection of the Premises, it being understood and agreed that the Contractor shall not be required to maintain equipment necessary to fight successfully a fire of major proportions in the Premises.

4.06 Locks. The Contractor agrees to install a Best lock keying system compatible with the Authority's system on all entrances to the Premises and mechanical room entrances, for police, security, fire protection and maintenance reasons.

Article 5. Maintenance and Utilities

5.01 Maintenance by Contractor. Contractor shall keep the Premises (including but not limited to, surfaces of walls, windows and window casings and sills, both inside and outside, ceilings, floors, inside and outside doors and door jambs, and interior and exterior lighting) and Fixed Improvements and Operating Equipment located within the Premises in safe, neat, and clean condition and good order and repair, cause no waste or injury thereto, shall make any necessary repairs or replacements, and will, at the expiration or other termination of this Contract, surrender the same, broom clean, in the same order and condition in which they are on the commencement date of this Contract, ordinary wear and tear excepted. Maintenance, repair, and replacement of all Operating Equipment and/or Fixed Improvements within or for the exclusive benefit of the Premises, including but not limited to, air conditioning or heating equipment (except at Dulles Airport), bathroom fixtures, or any other type of equipment or improvements, shall be the sole responsibility of Contractor. The Contractor shall promptly undertake any maintenance, or replacement as may be considered necessary by the Authority and shall be done with material and personnel approved by the Contracting Officer. The Contractor shall also keep and maintain in good order any loading platform, truck dock and/or truck maneuvering space used by it.

5.02 Releases of Hazardous Materials. Promptly respond to and clean up any release or threatened release of any Hazardous Material (see definition in Article 3.05) into the drainage systems, soils, groundwater, waters or atmosphere, in a safe manner, in accordance with applicable federal, state, and local statutes, ordinances, and regulations, and as authorized or approved by all federal, state or local agencies having authority to regulate the permitting, handling and cleanup of Hazardous Materials. The Authority and the Airport Fire Department shall be notified immediately of any release or threatened release of any Hazardous Material.

5.03 Structural Maintenance by the Authority. The Authority shall maintain in good repair the foundation, sprinkler system, exterior structural walls excluding doors, windows, and interior surfaces of any walls, roof, utility distribution systems leading to the Premises, and the common areas adjacent to the Premises. Reasonable notice and opportunity to cure must be provided by the Contractor to the Authority in the event the Contractor believes that the Authority has failed to comply with this provision before the Authority may be considered in default. The Authority shall not be required to undertake any maintenance or repair required by reason of any act or omission of the Contractor, or caused by any alteration, addition, construction, or improvement by the Contractor.

5.04 Facilities and Services to be provided by the Authority. The Authority shall:

1. Provide outlets as they presently exist, or which the Authority may approve in writing to be installed at the cost and expense of the Contractor, for public utility services, including light, electric power, gas, running water, heat, air conditioning, CATV, data lines and telephone for such area.

2. Provide reasonable and normal requirements of heat, air conditioning, electricity and water to the Premises through such utility distribution system as may exist in the building in which the Premises are located. The Authority shall not be liable for failure to furnish or for suspension or delay in furnishing any or all of such utilities or services for any cause whatsoever.

5.05 Contractor Undertakings; Utilities. The Contractor covenants and agrees that, at its own cost and expense, it will arrange for, and pay for, all utilities consumed by it during the period of the Contract except for those utilities specified by this Contract to be provided by the Airport at no additional cost to the Contractor. The Authority shall have the right to charge the Contractor, and all other users of public utilities systems (including sewerage systems) serving Airport users, a reasonably allocated share of any costs that the Authority incurs in providing these services. Such charges shall be apportioned among the Contractor and all other users of the Airport systems, in a manner reasonably calculated to distribute such cost fairly in proportion to the respective use of such systems.

Article 6. Fixed Improvements and Operating Equipment

6.01 General. The Contractor covenants and agrees that, at its own cost and expense, it will provide and install all Fixed Improvements and Operating Equipment required for proper and adequate furnishing and performance of the concession services and goods to be provided under the terms of this Contract. All such installations are subject to the Contracting Officer's approval as specified in Article 4.

6.02 Title. Except as otherwise specifically provided herein, title to any Fixed Improvements and Operating Equipment installed by or assigned to the Contractor under this Contract, shall rest with the Contractor during the period of the Contract. The Contractor shall be responsible for maintaining such Fixed Improvements and Operating Equipment in good condition, ordinary wear and tear excepted. The Contractor shall not demolish, replace or modify Fixed Improvements or Operating Equipment already in place or installed by it unless otherwise authorized by the Contract or by prior written permission from the Authority. At the expiration or termination of this Contract, title to all Fixed Improvements and Operating Equipment shall vest in the Authority or its designee, unless otherwise authorized by the Contract. The Contractor agrees to execute all documents requested and deemed necessary by the Authority as evidence of said transfer of title.

6.03 Certified Statement of Costs of Fixed Improvements and Operating Equipment. Except as otherwise provided herein, within ninety (90) days after the substantial completion of the Fixed Improvements and Operating Equipment, the Contractor shall furnish to the Contracting Officer a certified statement setting forth in detail the total cost of the Fixed Improvements and Operating Equipment. The total cost of Fixed Improvements and Operating Equipment to be included on the statement is limited to construction, equipment and material costs, architectural and engineering fees (for Fixed Improvements only), taxes, freight fees, and performance and payment bond premiums attributable to construction. Overhead, "in-house", or personnel costs of the Contractor or its affiliates are not allowable except as otherwise provided herein. The costs of Fixed Improvements and Operating Equipment are subject to Authority audit.

Article 7. Authority Performance of Contractor Obligations

The Authority reserves the option with regard to maintenance, alterations, repairs, or improvements, if any, to be made by the Contractor under this Contract, to perform, or have performed, such maintenance, alterations, repairs or improvements itself and charge the Contractor the cost and expense thereof, whenever:

1. The Contractor has failed to take all practicable steps promptly to perform such maintenance, alterations, repairs, or improvements, after five (5) days written notice from the Authority requiring the same; or,

2. Performance of any such maintenance, alterations, repairs or improvements by other than the Authority is prohibited by law.

Article 8. Defaults; Termination by the Authority

8.01 General. Each of the following events shall constitute a Default:

1. The occurrence of an event of insolvency of the Contractor, including, but not limited to, an assignment for the benefit of creditors.

2. The occurrence of any act that operates to deprive the Contractor of the rights, powers and privileges necessary for the proper conduct of the concession.

3. Failure to operate the concession for a period of five consecutive days without prior written authorization from the Authority.

4. The assignment of the Contractor's interest in this Contract by operation of law.

5. The failure of the Contractor to perform, keep or observe any of the terms, covenants and obligations under the Contract and the failure continues for ten (10) days after written notice by the Authority of such failure.

8.02 Notices of Termination. This Contract is subject to the limitation that, if a Default occurs, the Authority may give to the Contractor a Notice of Termination of this Contract. The Notice shall specify the termination date. The termination date may occur no sooner than seven (7) calendar days from the date of the Notice. In the event the Default involves a failure to perform obligations and such failure occurs more than once in any twelve-month period, the Authority shall not be required during the remaining period of the Contract to provide any notice and opportunity to cure prior to issuing a Notice of Termination. At the termination date, the period of this Contract shall expire and all of the rights and interests of the Contractor under this Contract shall end. The Contractor shall then surrender the assigned Premises to the Authority. The Contractor's liability under all of the provisions of this Contract shall continue as though the termination had not occurred, however.

8.03 Re-entry by the Authority. If this Contract is terminated because of a Default, the Authority or its agents, employees or designee may immediately or at any time thereafter, re-enter the Premises and remove the Contractor, Contractor's agents, subcontractors, invites and property from the assigned premises. Re-entry and removal may be affected by summary dispossess proceedings, by any suitable action or proceeding at law, by force, or otherwise. The Authority shall be entitled to the benefits of all provisions of law respecting speedy recovery of the assigned Premises held over by the Contractor or the proceedings in forcible entry and retainer. Contractor waives any right to the service of any notice of the Authority's intention to re-enter provided for by any present or future law. The Authority shall not be liable in any way in connection with any action it takes pursuant to this subparagraph. The Contractor's liability shall survive the Authority's re-entry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

8.04 Contractor Remains Liable. If this Contract is terminated under this Article, the Contractor shall remain liable (in addition to accrued liabilities) to the extent legally permissible for the amounts that the Contractor would have been required to pay to the Authority under this Contract had the contract not been terminated. The Contractor shall pay, as damages, the difference between amounts obtained by adding the amounts owed to the Authority plus the Authority's expense in reentering or repossessing the Premises, putting the Premises in proper repair, altering the assigned Premises for a new contractor, protecting the Premises, and contracting expenses to obtain a new contractor, minus the revenue to be paid to the Authority by a new contractor occupying the Premises for the remaining contract period. In addition, the Contractor shall pay to the Authority such sums as the court which has jurisdiction there over may adjudge as reasonable attorney's fees with respect to any lawsuit or action instituted by the Authority to enforce the provisions of this Contract. If this Contract requires the payment of a percentage of gross receipts to the Authority, the percentage of gross receipts owed after a Default shall be based upon the average of the Contractor's gross receipts under this Contract during the last twelve months of the contract or during the period of the contract, whichever is shorter.

<u>8.05 Replacement Contractor.</u> The Authority may enter into a new contract with another contractor that will occupy the Premises for all or any part of the unexpired portion of the period of this Contract or for any longer period. The Authority has the sole and absolute discretion with respect to the selection of a new contractor and the use of the Premises. The Authority shall be under no obligation to enter into or attempt to enter into a new contract for the Premises.

<u>8.06 Cure by Authority.</u> If the Contractor is in Default under this Contract, the Authority may cure the Default at any time through any action deemed appropriate by the Authority for the account and at the expense of the Contractor. Contractor shall reimburse the Authority for any amounts expended by the Authority in connection with the cure. Such cure shall not constitute a waiver of the Authority's rights with respect to that or any other Default, unless otherwise expressly stated in writing by the Authority.

<u>8.07 No Waiver by Authority.</u> The Authority's rights and remedies set forth herein shall be in addition to any other right and remedy now and hereafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No delay by the Authority in exercising a right or remedy shall constitute a waiver or acquiescence to the Default. No waiver of a Default shall be effective unless it is in writing. No waiver of a Default shall extend or affect any other Default, excuse future similar Defaults, or impair any right or remedy with respect thereto.

<u>8.08 Right of Authority to Lien.</u> The right to lien on the inventory and other property of the Contractor is expressly granted to the Authority in any case where the Contractor fails to pay amounts due to the Authority under this Contract.

<u>8.09 No Authority Liability for Damage.</u> The Authority shall not be liable for any damage, including, but not limited to, loss of profit, and the Contractor shall not make a claim of any kind whatsoever against the Authority, its agents or representatives, by reason of any action taken pursuant to this Article.

<u>8.10 Bankruptcy or Reorganization of the Contractor.</u> To the extent that the Authority's right to terminate this Contract in accordance with this Article is determined to be unenforceable under 11 U.S.C. Section 101 et.seq. as amended from time to time (the "Code"), or under any other statute, then Contractor as well as any trustee for the estate of Contractor agree to: (1) perform promptly every obligation of Contractor under this Contract (other than non-monetary obligations of the Contractor that are not capable of being performed due to the filing of a bankruptcy case by the Contractor under the Bankruptcy Code) until this Contract is either rejected, assumed or deemed rejected under the Bankruptcy Code; (2) pay the post-petition monthly payments of rent and other fees and expenses as and when such payments become due under the Contract; (3) assume or reject this Contract within the minimum period of time provided for so doing under the Bankruptcy Code and in connection therewith, Contractor hereby waives any right to request extensions of such time period unless Authority agrees in writing to permit an extended time period; (4) provide the Authority at least forty five (45) days prior written notice of any intended filing relating to its assumption of this Contract and in such notice, provide detail regarding any proposed assignee of the Contract, including financial information regarding such intended assignee; (5) upon the assumption of the Contract, cure any pre-petition default of Contractor under the Contract and provide Authority

with adequate assurance regarding the ability of Contractor to continue to comply with the Contract; (6) provide the Authority adequate assurance of future performance under the Lease by the Contractor or Contractor's assignee. Nothing herein shall be deemed a consent by Authority regarding Contractor's ability to assign this Contract to any third party without Authority's written consent. For purposes of this paragraph, "adequate assurance of future performance" shall be determined by the Authority in its sole discretion, provided however that Authority shall be reasonable in such determination. If there exists any post-petition default under the Contract, Contractor agrees to consent in writing to relief from the automatic stay under the Bankruptcy Code in favor of the Authority to enable Authority to terminate the Contract as expeditiously as possible.

Article 9. Laws, Regulations and Compliance

9.01 Laws and Regulations. The Contractor and the Authority shall each comply with all applicable Federal, state and local laws, codes, regulations, including regulations of the Authority, ordinances, rules and orders now or hereafter enacted. The Contractor agrees to take any action necessary to provide for its or the Authority's compliance with the same.

9.02 Safety and Fire Regulations. The Contractor shall conduct its operations and activities under this Contract in compliance with all safety regulations and directives of the Authority and applicable Federal, state and local laws. The Contractor shall procure and maintain such fire prevention and extinguishing devices as required by the Authority and shall at all times be familiar with and comply with the fire regulations and orders of the Authority.

9.03 Airport Security. The Contractor shall be familiar with and conduct its operations in accordance with all regulations and directives of the Authority and the Transportation Security Administration, and any other federal, state or local government having jurisdiction over the airport, with respect to the maintenance of airport security.

9.04 Authority Issuance of Rules and Regulations. The Authority shall have the right to prescribe, in its sole discretion, such reasonable rules and regulations that in the Authority's reasonable judgment are necessary or appropriate for the general well-being, safety, security, care, and cleanliness of the Airport.

9.05 Compliance by Other Concessionaires and Tenants. The Authority shall, whenever possible, make reasonable efforts to obtain uniform compliance with the Authority's rules and regulations; however, the Authority shall not be liable to the Contractor for any violation or non-observance of such rules and regulations by any user, tenant, concessionaire, invitee, licensee, or trespasser at the Airports nor shall such violation or non-observance by a user, tenant, concessionaire, invitee, licensee, or trespasser at the Airports, constitute a waiver of the Contractor's obligation to comply with Authority rules and regulations.

9.06 Notification of Theft or Damage. The Contractor shall inform the Authority and the Airport Police Department, in writing, within twenty-four (24) hours after the Contractor becomes aware of any damage to or alleged theft of Authority or private property.

Article 10. Damage or Destruction of the Premises

10.01 Partial Damage. If all or a portion of the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but not rendered untenantable, the same will be repaired with due diligence by the Authority at its own cost and expense, and there will be no abatement of rent, subject to the limitations of Section 10.04; provided, however, that if the damage is caused by the act or omission of the Contractor, its sublessees, agents, or employees, to the extent that such damage is not covered by insurance, the Contractor shall be responsible for reimbursing the Authority for the cost and expense incurred in such repair.

10.02 Extensive Damage. If the damages referred to in Section 10.01 shall be so extensive as to render the Premises untenantable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by the Authority at its own cost and expense, subject to the limitations of Section 10.04. An appropriate portion of the concession fee shall abate unless the damage is caused by the act or omission of the Contractor, its subcontractors, agents or employees. If the damage is caused by the act or omission of the Contractor, its subcontractors, agents or employees, to the extent that such damage or destruction is not covered by insurance, the Contractor shall be responsible for reimbursing the Authority for the cost and expense incurred in such repair.

10.03 Complete Destruction.

1. Except as stated in Section 10.03(2), in the event the Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty or so damaged that they are untenantable and cannot be repaired or replaced except after more than thirty (30) days, the Authority shall undertake the repair, replacement, and reconstruction of the Premises. All or a portion of the concession fees shall abate as of the time or such damage or destruction until such time as said Premises are fully restored and certified by the Authority's Engineers as ready for occupancy, provided, however, if within twelve (12) months after the time or such damage or destruction said Premises shall not have been repaired or reconstructed, the Contractor may give the Authority written notice of its intention to cancel this Contract in its entirety.

2. Notwithstanding the foregoing, if said Premises are completely destroyed as a result of the act or omission of the Contractor, its subcontractors, agents or employees, rentals and fees shall not abate and the Authority may, at its discretion, require the Contractor to repair and reconstruct the Premises within twelve (12) months of such destruction and pay the costs therefor; or the Authority may repair and reconstruct the Premises within twelve (12) months of such destruction and the Contractor shall be responsible for reimbursing the Authority for the costs and expenses incurred in such repair to the extent such costs and expenses exceed the insurance proceeds.

10.04 Limits of the Authority's Obligations Defined. It is understood that, in the application of the foregoing Sections in this Article, the Authority's obligations shall be limited to repair and reconstruction of the terminal buildings, to, as nearly as possible, a condition and quality as existed at the commencement of their operations hereunder. Redecoration and replacement of furniture, fixtures, equipment and supplies shall be the responsibility of the Contractor and any such redecoration and refurnishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

Article 11. Additional Bond Security

When the Contract requires the posting of a bond, guarantee or security, the Contractor shall promptly furnish additional security required to protect the Authority under this Contract when:

1. Any surety upon any bond required furnished with this Contract becomes unacceptable to the Authority;

2. Any surety fails to furnish reports on its financial condition as required by the Authority; or

3. The revenue payable to the Authority by the Contractor is increased so that the penal sum of any bond or guarantee as set forth in the contract becomes inadequate in the opinion of the Contracting Officer.

Article 12. Damage and Injury; Indemnification and Insurance

12.01 Damage Caused by the Contractor. All damage to the Premises or to the Airport in any way caused by the Contractor or its agents, employees, contractors, visitors, guests or invites, shall be repaired at the expense of the

Contractor. In the event of such damage, the Authority shall have the option to make such repairs as are necessary, and any charge, costs, or damages so incurred by the Authority shall be paid by the Contractor.

<u>12.02 Indemnification - General.</u> The Contractor shall defend, indemnify, and hold the Authority and its agents, officers and employees completely harmless from and against any and all claims, suits, demands, actions, liabilities, losses, damages, judgments, or fines, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney fees, court costs and expert fees), of any nature whatsoever arising out of or relating to the Contractor's conduct of its business on the Airports, or in its use or occupancy of the Premises, except to the extent caused by the negligence of the Authority. The Authority shall give to the Contractor reasonable notice of, and an opportunity to defend against, any such claims or actions, and the Authority shall take reasonable actions to mitigate its damages.

<u>12.03 Indemnification - Violation of Laws.</u> The Contractor shall defend, indemnify, and hold the Authority, and its agents, officers, and employees, completely harmless from and against any claim, suit, demand, action, liability, loss, damage, judgment, fine, or civil penalty and all costs and expenses of whatever kind or nature (including, but not limited to, attorney fees, court costs and expert fees) associated therewith in any way arising from, relating to, or based upon the violation of any Federal, state, or municipal laws, statutes, resolutions, or regulations by the Contractor, its agents, employees, subcontractors, or sublessees, in conjunction with the Contractor's use and/or occupancy of the Airport. The Authority shall give the Contractor reasonable notice of, and an opportunity to defend against, any such claims or actions, and the Authority shall take reasonable actions to mitigate its damages.

<u>12.04 Indemnification - Airport Security.</u> If the Authority is deemed to be in noncompliance with laws or regulations governing access to secure areas of the Airport and said non-compliance is the result of or due to the act or omission of the Contractor or of any of the Contractor's employees, agents, subcontractors or sublessees, and such breach results in an action against the Authority by the Transportation Security Administration or any other federal, state or local government with authority over security at the airport, the Contractor agrees to reimburse the Authority for all expenses, including reasonable attorney fees incurred by the Authority in defending against the action and for any fine, penalty or settlement amount paid by the Authority as a result of the action. The Authority shall give the Contractor reasonable notice of any allegation, investigation, or proposed or actual penalty that relates to acts or omissions of the Contractor.

<u>12.05 Survival of Indemnification.</u> The provisions of Sections 12.02, 12.03 and 12.04 shall survive the expiration, termination, or early cancellation of this Contract.

<u>12.06 Notice by Contractor; Types of Insurance Coverage.</u> Notwithstanding the above indemnification, the Contractor shall give the Authority notice of any matter that may be covered by the indemnification and shall forward to the Authority every demand, notice, summons, or other process received in any claim or legal proceeding covered thereby. Further, the Contractor, at its sole cost and expense, shall throughout the Period of this Contract, keep all of its operations on the Airports, and its obligation to indemnify the Authority pursuant to this Article, continuously and fully insured, and shall provide a certificate of insurance evidencing all required coverages are in effect, prior to the commencement of this Contract. The following types of insurance are required; the specific minimum amounts and limits of such insurance, as well as any additional types of required insurance, are specified elsewhere in this Contract. Said limits shall in no event be construed to limit or modify the Contractor's obligation to indemnify the Authority as set forth above.

1. Virginia Statutory limits with All States Endorsement for Workers' Compensation and Employer's Liability.

2. Commercial General Liability Insurance. Coverage must include Broad Form Contractual, Property Damage, Products-Completed Operations, Personal Injury, Premises-Operations, Independent

Contractors and Subcontractors, Liquor Legal Liability and Fire Legal Liability. Such policy or policies shall be issued on an occurrence basis.

3. Comprehensive Automobile Liability Insurance. Coverage must include bodily injury and property damage per occurrence for owned, non-owned and hired vehicles.

4. Property coverage for the Contractor's personal property used on Authority property. Policy must provide replacement cost and contain a waiver of subrogation by the carrier for all claims and suits against the Authority, including recovery of any deductibles.

12.07 Insurance Requirements.

1. All insurance maintained by the Contractor pursuant to this Contract shall be obtained from an insurance company or companies possessing a rating of A VII or higher from the A.M. Best Company or an equivalent rating.
2. Said policy or policies of insurance shall contain a provision that written notice of cancellation, alteration, or any material change thereof shall be delivered to the Authority not less than thirty (30) days in advance of the effective date of this Contract, and in no event shall such policies be canceled by the Contractor without the Authority's prior written consent unless equivalent replacement policies are then issued and available. All policies, except Workers' Compensation and Employer's Liability shall identify the Authority, its agents, employees, and representatives, if any, as additional insured in a manner satisfactory to the Authority. Said policy shall cover only claims arising from events addressed in the Contract.

3. If, in the Authority's opinion, the minimum limits of the insurance herein required have become inadequate during the period of the Contract, the Contractor shall increase such minimum limits by reasonable amounts on request of the Authority provided that said coverage is available at standard commercial rates.

4. The Contractor shall deliver each policy and certificate of required coverage to the Contracting Officer for approval upon the Contractor's execution of the Contract.

Article 13. Method of Payment; Late Charges; Gross Receipts Reports

13.01 Commencement of Payment Obligation. The Contractor's obligation to make payments to the Authority under this Contract shall commence on the effective date of the Contract, unless otherwise specified in the Contract. All payments shall be made in coin or currency of the United States of America, which at the time of payment is legal tender for public and private debts.

13.02 Payment by Checks. All checks shall be made payable to the "Metropolitan Washington Airports Authority" and forwarded to the address designated in this Contract for receipt of payment.

13.03 Payment by Other Methods. Payment may also be made by Automated Clearing House Debit or by bank wire transfer.

13.04 Late Charges. Without waiving any other right of action available to the Authority in the event of default in payment of charges and fees hereunder, if the Contractor fails to make a payment when due, late charges will be assessed from the date payment was due. Late charges may consist of interest and penalties.

13.05 Interest. The interest rate shall be at the rate per annum which is four percent (4%) higher than the "prime rate" published in The Wall Street Journal on the date such payment was due.

<u>13.06 Charges.</u> In addition to interest, monthly penalty charges at the rate of six percent (6%) per annum (or as established periodically) of the amount due will be assessed on the unpaid portion of accounts more than thirty (30) days past due.

<u>13.07 Certified Statements.</u>

1. <u>Monthly Statement</u>. Contractor shall submit to the Authority not later than the fifteen (15th) day of each calendar month during the period of this Contract, or at such other intervals as specified herein, a certified statement setting forth the Contractor's Gross Receipts for the preceding calendar month. Said statement shall be in the format specified by the Authority, shall include all information required by the Authority and be certified as complete by the Contractor's principal financial officer.

2. <u>Annual Statement.</u> Within ninety (90) days following the end of each Contract Year, the Contractor, at its own cost and expense, shall provide to the Authority an Annual Statement of Gross Receipts and concession fees paid to the Authority for the Contract Year just ended. The Annual Statement shall also include a statement by the independent CPA that in its opinion such Gross Receipts and fees paid have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) and in accordance with the terms and conditions of the Contract including the definition of Gross Receipts set forth herein. Such Annual Statement shall also contain a list of the Gross Receipts, by month, as shown on the books and records of the Contractor and which were used to compute the fees paid to the Authority during the period covered by the Annual Statement. The Authority reserves the right to reject the Contractor's choice of independent CPA if said independent CPA does not, in the Authority's view, have the appropriate standing and reputation.

3. <u>Additional Payment if Fees Underpaid.</u> If the Annual Statement provided by the Contractor to the Authority pursuant to Section 13.07 herein with respect to any Contract Year indicate that the amount of percentage and fixed concession fees, which the Contractor actually paid to the Authority with respect to such Contract Year was less than the amount of fees due and owing for such Contract Year under the terms of this Contract, then the Contractor shall pay the difference to the Authority at the same time it provides the Annual Statement to the Authority, together with interest on the amount of such difference at the rate specified in Section 13.05 and 13.06 herein.

4. <u>Credit if Fees Overpaid.</u> If the Annual Statement provided by the Contractor to the Authority pursuant to Section 13.07(b) with respect to any Contract Year indicate that the amount of concession fees which the Contractor actually paid to the Authority with respect to such Contract Year was greater than the amount of concession percentage fees due and owing for that Contract Year under the terms of this Contract, then the amount of such excess shall, at the option of the Authority, either be paid in lump sum within a thirty (30) day period or credited to the concession fees next due and owing from the Contractor to the Authority, unless the period of the Contract has expired, in which event such amount shall be promptly refunded by the Authority to the Contractor.

5. <u>Proration for Portion of Contract Year.</u> For the purposes of paying the concession fees due for any portion of a Contract Year, the fees shall be prorated on the basis of the actual number of days in such portion of such Contract Year.

<u>Article 14. Records and Books; Inspections; Audits</u>

<u>14.01 Contractor to Maintain Certain Books and Records.</u> Contractor shall maintain in a true and accurate manner and in accordance with GAAP, such accounts, books, records and data as would reasonably be expected

to be examined by an independent certified public accountant in performing an audit or examination of Contractor's revenue and expenses in accordance with GAAP and with generally accepted auditing standards.

14.02 Location of Books and Records. The Contractor may keep the books and records it is required to maintain under Section 14.01 at its corporate office, or available for inspection under the provisions of Section 14.05 herein. Such books and records shall be kept segregated from the Contractor's books and records relating to operations other than pursuant to this Contract.

14.03 Books, Records and Information. Books, records, and information to be made available to the Authority shall include, but not be limited to all supporting documentation that is fundamental for the performance of an audit in accordance with Generally Accepted Auditing Standards.

14.04 Controls. In addition to maintaining the books and records required by Article 14 herein, Contractor shall install on the Premises, and shall at all times use, cash registers, invoicing machines, sales slips and other accounting equipment, devices and forms necessary to record properly, accurately and completely all sales of goods and services under any part of this Contract on or from the Premises.

14.05 Authority's Right to Inspect and Audit

1. Books and Records Available for Inspection. Contractor shall make such books and records available to the Authority or its designee within seven (7) business days of receiving said request from the Authority. Should Contractor not wish to make the corporate books and records available in the Washington, D.C. area, then the Contractor shall pay reasonable travel and accommodation expenses for the Authority or the Authority's authorized representatives to travel to the Contractor's office to conduct the audit.

2. Authority's Right to Audit. The Authority shall have the right, upon reasonable notice to Contractor to audit the corporate books and records relating to the operation of the Contractor in order to determine the correctness of the fees paid to the Authority for any Contract Year. The Authority's right to inspect and audit extends to the books and records of all subcontractors and/or partners under this Contract as they relate to this Contract. If the audit discloses intentional inaccuracies, this Contract, at the option of the Authority, may be terminated. The Authority reserves the right to require an agreed upon procedures audit and will provide the procedures for such audit.

3. Fees and Interest if Underpayment Discovered by Audit. If, as a result of the audit performed under Article 14 herein, additional fees are due from the Contractor to the Authority, the Contractor shall immediately pay to the Authority such additional fees, together with interest on the amount of such additional fees at the rate specified herein from the date such additional fees should have been paid. Further, if the audit establishes that the Contractor has understated and underpaid fees by three percent (3%) or more for any Contract year, then the entire expense of such audit, whether internal or external, shall be paid by the Contractor.

4. Delinquent Audit Fees. In the event that it is established through an audit conducted by the Authority that fees or charges otherwise due to the Authority under this Contract have not been paid to the Authority as a result of the Contractor's improper recording of its Gross Receipts, the Contractor shall pay to the Authority as delinquent fees and charges (with interest and charges in accordance with Sections 13.05 and 13.06 herein) an amount equal to the amount of fees or charges reasonably estimated to have been lost to the Authority.

5. Inspection and Audit Rights Survive Expiration. The Authority's rights under Article 14 to inspect and audit the books and records of the Contractor shall survive the expiration or earlier termination

of this Contract. The Contractor shall retain and keep available all documents and records relating to this Contract for not less than three (3) years after the expiration or termination date of the Contract term or any extension, on in the event of litigation or claims relating to this Contract until such litigation or claims are completely disposed of and all time limits for appeal have expired.

Article 15. Applicability of Contract Terms to Subcontractors

15.01 Inclusion of Contract Terms. Any restriction or requirement imposed upon the Contractor under this Contract shall be deemed to extend to Contractor's agents, employees, subcontractors, and guarantors. It shall be the Contractor's obligation to cause these persons to comply with the restrictions and requirements.

15.02 Inclusion of Contract Terms in Contractor's Documents. The Contractor shall include all of the clauses and Standard Provisions of this Contract in all subcontracts it enters into pursuant to this Contract. The clauses and provisions shall be altered only as necessary to identify properly the contracting parties and the Contracting Officer under this Contract or as otherwise deemed necessary by the Authority. Notwithstanding anything to the contrary herein, the damage and indemnification provisions contained in Sections 12.01,12.02, 12.03 12.04, 12.05, and 12.06 herein, when incorporated into a subcontract, shall clearly state that the subcontractor's indemnification relates only to the subcontractor's activities on the Airport, not to all of the Contractor's activities on the Airport.

Article 16. Surrender of Occupancy; Abandonment

16.01 Surrender of Occupancy. Except as otherwise provided in this Contract, when this Contract expires or is terminated in whole or in part as provided for elsewhere in this Contract, the Contractor shall surrender its assigned Premises and all Fixed Improvements and Operating Equipment therein broom clean and in good condition and repair, with the exception of reasonable wear and tear and damage by loss or casualty not covered by insurance which the Contractor is required to maintain pursuant to this Contract and not otherwise attributable to the Contractor's fault or negligence.

16.02 Abandonment. The Contractor shall be deemed to have abandoned to the Authority any property that it has failed to remove from its assigned Premises within fifteen (15) calendar days after the end of the period of the Contract or the effective date of termination thereof, unless the Authority grants additional time for this purpose in writing. After the expiration of the fifteen-day period, or any extension thereof granted by the Authority, the Contracting Officer shall have the right to remove the property and restore the area to a satisfactory condition and hold the Contractor liable for all costs incident thereto. In the event it is necessary for the Authority to remove such property, the Authority shall not sustain or be charged with any liability by reason of the removal or custodial care of the same.

Article 17. Impact of Construction Activities

The Contractor recognizes that from time to time during the period of this Contract, it will be necessary for the Authority to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair on the Airport, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience or impair the Contractor in its operation at the Airport. The Contractor agrees that no liability shall attach to the Authority, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences or impairment, and the Contractor waives any right to claim damages or other consideration for such inconveniences or impairment.

Article 18. Assignment

18.01. Prohibition. Contractor shall not transfer or assign its rights, or delegate its performance, under this Contract or its interest in this Contract, or subcontract its rights under this Contract, without the express written consent of the Authority. Transfers or assignments occurring by operation of law are also prohibited. Any attempted transfer, assignment, delegation or subcontract shall be void and confer no rights upon any third person. No assignment or subcontract shall relieve Contractor of any obligations under this Contract. The consent by the Authority to any transfer, assignment or subcontract shall not be deemed to be a waiver on the part of the Authority to any prohibition against any future transfer, assignment or subcontract.

18.02 Sale of Stock or Sale of Partnership Interest. Except as provided below, the sale of any of the stock of Contractor, or, if the Contractor is a partnership, sale of any partnership interest therein, shall constitute an assignment of the Contract in the context of this Section if, after giving effect to all previous transfers of the stock or partnership interests after the date of this Contract, more than fifty (50) percent of the stock of, or partnership interests in, the Contractor shall have been transferred. This clause shall not apply to the sale of stock or to a merger or consolidation of a public corporation; to the sale of a subsidiary of a public corporation to its parent or another subsidiary of the public corporation; to a merger or consolidation of a public corporation with one or more of its subsidiaries; or to a merger or consolidation of one or more subsidiaries of a public corporation with each other.

18.03 Transfers. The term "transfer" includes, but is not limited to, transactions in which the Contractor's interest in the Contract or Premises is mortgaged or otherwise encumbered, or in which the Contractor sublets, rents or otherwise permits occupancy or use of the Premises by a third party.

18.04 Consent. If the Authority consents to any transfer, assignment or subcontract, that consent shall not be effective unless and until Contractor gives notice of the transfer or assignment and a copy of the transfer, assignment or subcontract agreement to the Authority, and the transferee, assignee, or subcontractor assumes all of the obligations and liabilities of the Contractor under this Contract.

Article 19. Subordination to Federal Agreements and Actions

19.01 Relationship to Federal Lease. This Contract shall be subordinate and subject to the provisions of the Federal Lease dated March 2, 1987, between the United States Department of Transportation and the Authority, providing for the Authority's lease of the Airports effective June 7, 1987. The Authority will use its best efforts to notify the Contractor of any material amendments to the Federal Lease that would affect the Contractor.

19.02 Other Government Agreements. This Contract shall be subordinate and subject to (a) the terms of any “Airport Sponsor’s Assurances” or like agreement that has been or may be made between the Authority and the United States of America, its boards, commissions, or agencies, including without limitation the Federal Aviation Administration (FAA), or required by applicable Federal, state or local laws, codes, regulations, ordinances, rules and orders (now or hereafter enacted) as a condition precedent to receiving Federal financial assistance for development of the Airports or other programs for and activities of the Airports, and (b) the terms of any agreement that has been or may be made between the Authority and the United States of America related to the transfer of rights or property to the Authority for airport purposes, or the operation, improvement, maintenance or development of the Airports. The Contractor shall abide by the requirements of agreements entered into between the Authority and the United States of America, and shall consent to amendments and modifications of this Contract if required by such agreements, or if required as a condition of the Authority’s entry into such agreements.

19.03 Federal Government's Emergency Clause. All provisions of this Contract shall be subordinate and subject to the rights of the United States of America to operate or close the Airports or any portion thereof during time of war or declared national emergency in accordance with established lawful procedures. Such rights shall supersede any provision of this Contract that is inconsistent with the operation of the Airports by the United States of America during time of war or national emergency.

Article 20. Non-Discrimination and Affirmative Action

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

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

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the Contractor for the longer of the following periods:

(a) The period during which the property is used by the Authority for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
(b) The period during which the Authority retains ownership or possession of the property.

20.02 Participation by Airport Concession Disadvantaged Business Enterprises. This Contract is subject to the requirements of the United States Department of Transportation's regulations, 49 CFR Part 23. The Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

20.03 Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees as follows:

1. Compliance with Regulations**:** The Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are set forth in Section 20.04 of these Standard Provisions for Concessions Contracts.

2. Non-discrimination: The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails

or refuses to furnish the information, the Contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this Contract, the Authority will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to: withholding payments to the Contractor under the Contract until the Contractor complies; and/or cancelling, terminating, or suspending a Contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of subparagraphs one through six of this Section 20.03 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

20.04 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et Seq.).

<u>20.05 Title VI Grant Assurances</u>

1. The Contractor 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 land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the List of Pertinent Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. The Contractor 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 land that (i) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (iii) that the Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts And Authorities.

3. With respect to the Contract, in the event of breach of any of the above Nondiscrimination covenants, the Authority will have the right to terminate the Contract and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Contract had never been made or issued.

<u>20.06 Affirmative Action.</u> The Contractor assures that: (a) it shall undertake an affirmative action program as required by the Authority, and by all federal and state laws, rules and regulations pertaining to Civil Rights (and any and all amendments thereto), including, without limitation, 49 CFR Part 21 and 49 U.S.C. § 47123 , to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the benefits of the program or activity conducted with or benefitting from Federal financial assistance received by the Authority from the FAA; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the

benefits of any program or activity conducted with or benefitting from Federal financial assistance received by the Authority from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section in the Contractor's subcontracts and other applicable documents under this Contract, and shall require that its contractors and others similarly include these statements in their subcontracts and applicable documents.

20.07 Compliance with DBE Requirements. Contract Assurance (§ 26.13). When DBE participation is required under federal law, the Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the Contractor from future bidding as non-responsible. Prompt Payment (§ 26.29). The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DB and non-DBE subcontractors.

Article 21 Fair Labor Standards Act

The provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), are incorporated in this Contract with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division. All subcontracts shall include this Article 21.

Article 22 Occupational Safety and Health Act

The requirements of 29 CFR Part 1910 are incorporated in this Contract with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration. All subcontracts shall include this Article 22.

Article 23. Strikes or Picketing Affecting Access to Airport

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (1) is directed at the Contractor and/or subcontractor or any employee or either, and (2) impedes or threatens to impede access by any person to the facility or facilities where the site(s) of the work is (are) located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the utilization of any other available judicial or administrative remedies. In the event the Contractor's operations are curtailed, interrupted, or otherwise handicapped, in whole or in part, because of an employee strike against the Contractor, such condition shall not operate to relieve the Contractor of its obligation to pay charges and fees required under this Contract, except as otherwise specifically provided for elsewhere in this Contract.

Article 24. Disputes

24.01. It is the Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the contractor. Consistent with this intent, the Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative dispute procedure contained in the Contract. If the dispute is not resolved by the administrative disputes procedure, the Contractor may proceed to court litigation.

24.02. The Contractor shall proceed diligently with performance of the Contract's requirements, including the disputed portions, pending resolution of any dispute.

24.03. In order to initiate the administrative disputes procedure, the Contractor shall submit a written monetary or non-monetary claim, certified as true and accurate by a dully authorized officer of the Contractor. The written claim or statement shall at a minimum include a) a full explanation of the claim or reason why the Contractor believes the Authority has acted contrary to the Contract; b) the relief requested; c) a full explanation of the reason why the Contractor believes it is entitled to this relief or why the Authority is liable; c) the claim must state that it is made in good faith, that the supporting facts and data are current, accurate, and complete as of the date of certification, and that the relief requested by the Contractor reasonably reflects the damage the Contractor believes it has incurred; and c) the claim must include or specifically reference all records, data or facts that relate to the Contractor's claim.

24.04. Monetary claims based on anticipatory profits are prohibited.

24.05. Discussions between the Contracting Officer and the Contractor concerning the claim presented shall occur within a reasonable time after submission of the claim and receipt by the Contracting Officer of sufficient information, including information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. The Contractor shall provide any additional information or audit access deemed necessary by the Contracting Officer. Failure to provide requested information or audit access shall be a bar to further consideration of the Contractor's claim or issue.

24.06. The Contracting Officer and the Contractor may agree to engage in non-binding evaluative mediation or some other reasonable method of alternative disputes resolution before the Contractor may litigate the claim or issue. Such mediation or alternative dispute resolution shall be conducted in accordance with the Virginia Code. Each party shall bear its own costs of such alternative dispute resolution, and shall evenly split the costs of the mediation proceeding or other alternative dispute resolution proceeding.

24.07. If discussions with the Contracting Officer, or if required, alternative dispute resolution, do not result in an agreement, an impasse can be declared. Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer. The Contracting Officer shall issue a final decision within sixty (60) days following receipt of the request and adequate documentation, unless the dispute is determined to be complex in nature by the Contracting Officer in which case the Contracting Officer shall establish a reasonable deadline for the issuance of the final decision. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) days from the receipt of the Contracting Officer's final decision, the Contractor mails or otherwise furnishes a written notice of appeal to the Vice President of Business Administration or, if the contract is a ground transportation, rental car, fixed base operator or parking concession contract, to the appropriate Vice President and Airport Manager.

24.08. Following completion of the administrative process, including providing the notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of

Virginia. To the extent allowed by law, the venue for any action arising from this Contract shall be Arlington County, Virginia, for National Airport and Loudoun County, Virginia, for Dulles Airport.

24.09. The Contractor hereby waives all right to trial by jury in any claim, action, proceeding or counterclaim by either the Contractor or the Authority against each other or any matters arising out of or in any way connected with this Contract.

24.10. In the event the Contractor makes a claim that is found by a court to be based upon any reckless statement contained in the certification of the claim or is found by a court to be of frivolous nature or materially overstated in amount, then the Contractor shall be liable to the Authority and shall pay to it a percentage of the costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorney fees) the frivolous or overstated claim. The percentage of costs referenced shall be equal to the percentage of the Contractor's total claim which is determined through litigation to be the result of a reckless statement or frivolous claim. "Frivolous" shall mean having no basis in law or in fact. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

24.11. Any claim by the Contractor that is based on false or misleading statements or material misrepresentations shall entitle the Authority to a full recovery of all costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorney fees) the claim. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

Article 25. Miscellaneous

25.01 Rights Reserved to the Authority. All rights not specifically granted to the Contractor by this Contract are reserved to the Authority.

25.02 Authority Not Liable. Except as specifically provided for in this Contract, the Authority shall not be under any duty or obligation to the Contractor to repair or maintain the Premises, or any portion thereof, or any facilities or equipment constructed thereon. The Authority shall not be responsible or liable to the Contractor for any claims, losses, damages, or injury, including lost profits, sustained by the Contractor or any of its joint venturers or subcontractors, resulting from any failure of water supply, heat, air conditioning, electrical power, or sewer or drainage facility, or from natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado or other physical event, or from any act of God, state of war, civilian commotion or riot, act of the Federal government or any other cause beyond the reasonable control of the Authority.

25.03 Security. The Contractor understands that the police security protection provided by the Authority is finite and limited to that generally provided to any other businesses on the Airports and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises, equipment, improvements, and the Contractor's personal property, and that of its employees and invitees shall be the sole responsibility of the Contractor and shall involve no cost to the Authority.

25.04 Inspection. The Contractor shall allow the Authority's authorized representatives entry to the Premises for the purpose of examining and inspecting said Premises, for purposes necessary, incidental to, or connected with the performance of the Authority's rights and obligations under this Contract or in the exercise of its governmental functions. Except in the case of an emergency, or except if a Default has occurred, the Authority shall conduct such inspections during reasonable business hours, and in the presence of the Contractor's representative.

25.05 Relationship of the Parties. The Contractor is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the Authority shall in no way be responsible therefor. Nothing in this Contract shall be construed as making the Contractor an agent or representative of the Authority for any purpose whatsoever. Further, nothing in this Contract is intended or shall be construed as in any way creating or establishing the relationship of copartners between the Parties hereto.

25.06 Ingress and Egress. For the purpose of Contract performance, the Contracting Officer will grant the Contractor without charge therefor, the right of ingress and egress from said Premises by the Contractor, its employees, contractors, suppliers, servicemen, licensees, guests, patrons, and invites. PROVIDED that such right of ingress and egress shall at all times be exercised in compliance with any and all regulations promulgated by lawful authority for the care, operation, maintenance, and protection of the Airport that apply to all users of the Airport. PROVIDED further, that such right of ingress and egress shall not be construed to prohibit the Airport Manager from establishing and assessing a fee or charge for the privilege of entry upon the Airport when such fee or charge is levied upon all users of the Airport, nor to prohibit the Airport Manager from assessing a fee or charge on the Contractor's employees for parking their personal vehicles in the employee parking areas or on persons conducting a business on the Airport. For purposes of this Article, a person shall be deemed to conduct business on the Airport if he occupies any space on the Airport or if he provides any services on the Airport, other than utilities, on a regular or continuing basis.

25.07 Waiver of Performance. The failure of the Authority or the Contractor, in any one or more instances, to invoke a provision, term, covenant, reservation, condition, or stipulation of this Contract, or to enforce or take action to enforce, or to demand performance by the other party hereto, or to insist upon a strict performance by the other of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Contract shall not be considered a waiver or relinquishment of the rights to invoke enforce, demand, or insist thereon, but the same shall continue and remain in full force and effect, and no waiver by either party of any provision, term, covenant, reservation, condition, or stipulation hereof shall be deemed to have been made in any instance unless expressed in writing. In the event any provision contained in this Contract is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder.

25.08 Force Majeure. Except as herein provided, neither the Authority nor the Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations of this Contract, by reason of circumstances beyond the party's reasonable control, such as strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, acts of the federal government, riots, rebellion, or sabotage; provided, however, the Contractor shall pay all rentals, fees, and charges associated with performance prior to the force majeure event when due, even if such rentals, fees, and charges are not due and payable until after the occurrence of the force majeure event.

25.09 Severability. If any article, section, provision, term or condition of this Contract is held to be invalid by a court of competent jurisdiction, the remainder of this Agreement, including the remaining rights and obligations of the Authority and the Contractor, shall not be affected thereby.

25.10 Prohibition Against Exclusive Rights. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the Authority reserves the right to grant to others the privileges and right of conducting any or all activities of an aeronautical nature.

25.11 No Third Party Beneficiaries. This Contract is for the benefit of the parties hereto only and is not intended to and shall not create any rights in or confer any benefits upon any person or entity other that the parties hereto.

25.12 Covenant Against Contingent Fees. The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.

1. "Bona fide agency", as used in this clause, means an established commercial or selling agency, maintained by the Contractor for the purpose of securing business, that neither exerts nor proposed to exert improper influence to solicit or obtain Authority contracts nor holds itself out as being able to obtain any Authority contract or contracts through improper influence.

2. "Bona fide employee", as used in this clause, means a person, employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Authority contracts nor holds himself out as being able to obtain any Authority contract or contracts through improper influence.

3. "Contingent fee", as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing an Authority contract.

4. "Improper influence", as used in this clause, means any influence that induces or tends to induce an Authority employee or officer to give consideration or to act regarding an Authority contract on any basis other than the merits of the matter.

<u>25.13 Prohibition Against Board Member Participation.</u> No member of the Authority's Board of Directors shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

<u>25.14 Governing Law.</u> This Contract shall be governed by and in accordance with the laws of the Commonwealth of Virginia.

<u>25.15 Notices.</u> All notices to be given to the Parties hereto shall be in writing unless otherwise stated and shall be properly given when personally delivered to the address specified in the Contract and left with a responsible person, or delivered by overnight service such as Federal Express, and, in both instances, an appropriate receipt is obtained, or when sent by facsimile to the facsimile numbers specified in the Contract and an appropriate receipt is obtained, or when sent by registered or certified mail addressed to the Parties at their respective addresses specified in the Contract. The Parties may change the notice address information at any time by giving notice as provided for in this section. The date of notice shall be deemed, when notice is mailed, to be the date of mailing so long as the Postal Service certified actual delivery. A refusal of overnight service or a registered or certified mail notice shall constitute actual delivery hereunder.

<u>25.16 Effectiveness.</u> The submission of an unsigned copy of this Contract to the Contractor for the Contractor's consideration does not constitute an offer to enter into a Contract. This Contract shall not be binding upon either party until executed by both parties.

<u>25.17 Duplicate Counterpart Originals.</u> This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

<u>25.18 Capacity to Execute.</u> The individuals executing this Contract warrant that they each have full authority to execute this Agreement on behalf of the Contractor or the Authority as the case may be.

<u>25.19 Execution.</u> The parties hereto acknowledge that they have thoroughly read this Contract, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

25.20 Clear Title. The Authority covenants that at the granting and delivery of this Contract, it has the right and authority to lease or assign the Premises to the Contractor as set forth in this Contract.

25.21 Binding Effect. The terms, conditions, and covenants of this Contract shall inure to the benefit of, and be binding upon, the parties hereto and upon their successors and assigns, if any. This provision shall not constitute a waiver of any conditions regarding assignments contained in this Contract. No party shall be bound by this Contract until it is executed by both parties.

25.22 Modifications. This Contract may be modified in writing by mutual agreement of the Contractor and the Authority. Modifications beyond the scope of the original Contract may require approval of the Authority's Board of Directors.

ATTACHMENT 2

ELIGIBILITY FORM

ATTACHMENT 02

ELIGIBILITY FORM

FOR AUTOMATED TELLER MACHINE SERVICES CONCESSION AT RONALD REAGANWASHINGTON NATIONAL AIRPORT AND WASHINGTON DULLES INTERNATIONAL AIRPORT

As required in the Request for Proposals, offerors submitting for a proposal for Automated Teller Machine Services Concession at Ronald Reagan Washington National Airport and Washington Dulles International Airport must complete this form in full and submit it to the Authority with the other contents of offeror's proposal. This form will enable the Authority to determine whether the offeror has met the minimum eligibility requirements for submitting a proposal. Use additional pages as necessary, but please indicate at the top of each page the number and/or letter of the paragraph to which each such page relates. If this Eligibility Form is not submitted, or if, the information contained herein is incomplete or not responsive, or the offeror does not have the financial capability to provide the required goods and services, the offeror's proposal may be rejected by the Authority.

Note: If the offeror is a subcontractor, affiliate, or joint venture partner, then the information requested below shall be provided for both the offeror and for the prime Contractor or parent entity.

A. Offeror

1. Name: ______________________________

2. Address: ______________________________

____

3. Telephone Number: ______________________________

4. Contact Person: ______________________________

5. Type of Organization (check all that apply):

( ) Corporation - Please give state and year of incorporation:
( ) Partnership
( ) Joint Venture
( ) Sole proprietorship
( ) Other (explain)

B. Financial Information

1. Please attach evidence of offeror's financial responsibility, such as a credit rating from a qualified firm preparing credit ratings, a letter of credit worthiness from a bank, a letter of credit from an FDIC-insured bank describing an offeror's credit line, or other trade reference.

2. If offeror is currently an operating business entity, provide full and complete audited financial statements for the two most recent years, prepared in accordance with Generally Accepted Accounting Principles (GAAP). The financial statements shall be audited and certified by a Certified Public Accountant (CPA). The Offeror shall provide a financial profile covering complete operations (i.e., profit/loss of all of the offeror's businesses), and a statement of any significant financial events occurring subsequent to the closing date of the most recent financial statements. If offeror, or corporation or other entity which has, directly or indirectly, a controlling interest in the offeror, or any subsidiary corporation or other entity in which the offeror has a controlling interest, or any affiliate of the offeror is required to file reports with the Securities and Exchange Commission, offeror shall provide copies of all Annual Reports on Form 10-K filed by the offeror or any partner or principal owner of offeror during the past two years.

3. In the event the offeror anticipates the establishment of a new business entity, a subsidiary or spin-off of an existing corporation to perform the services contemplated under this Request, sufficient data must be provided to demonstrate financial capability of the proposed entity. The Authority reserves the right to require at its discretion additional financial information and/or a guarantee from the offeror's parent company or owners, or a letter of credit for a predetermined amount each Contract Year. Personal net worth statements will not be acceptable to establish financial capability under the Request unless such net worth is pledged to the entity to be established and is accompanied by the principal's appropriate, signed, tax return statements for the last two years. The offeror shall also provide bank references, including addresses, telephone numbers, and names of bank officials familiar with the offeror's account.

4. Has offeror ever had a performance guarantee bond or surety canceled or forfeited?

   YES ( ) NO ( )

   If yes, and a bond, state name of bonding company, date, amount of bond and reason for cancellation or forfeiture.

5. Has offeror or any director, principal officer, or owner of 10 percent or more of stock of offeror ever reorganized under the Bankruptcy Code or declared bankruptcy?

   YES ( ) NO ( )

   If yes, state case name, date of the proceedings, court jurisdiction, amount of liabilities and amount of assets as of the date filed and disposition.

6. Has offeror or any entity affiliated with it ever been awarded a concession at any airport and failed to operate the concession for the full term thereof?

   YES ( ) NO ( )

   If yes, please state name of airport, date of award and describe the circumstances.

7. Have any leases for the company's operation or other business enterprises held by your organization ever been canceled?

   YES ( ) NO ( )

   If yes, provide additional details.

8. Has offeror been involved in litigation in the previous five years as plaintiff or defendant as a result of offeror's concession?

   YES ( ) NO ( )

   If yes, state the date, court jurisdiction, case number and outcome. This response should include litigation under the current or prior entities or affiliates and any litigation involving the officers or majority stockholders.

C. Ownership and Control of Offeror

1. If offeror is a corporation, please list all officers, directors and owners of 10 percent or more of its capital stock.

2. If offeror is an entity other than a corporation, please list all persons or entities with an interest of 10 percent or more in the operations of the offeror, indicating the title if any and the percentage of the interest of each.

3. Please provide names, titles, mailing addresses and business telephone numbers of the corporate officers.

4. Please submit a copy of the offeror's company's organizational chart, including the names of the individuals in the various positions.

D. Authorization to do Business in the Commonwealth of Virginia

The offeror shall attach a certification signed by its authorized representative, which states to the Authority that offeror is authorized to do business in the Commonwealth of Virginia. Please attach a copy of the certificate hereto. If not authorized by the date bids are due to the Authority, the offeror must certify to the Authority that it is authorized to do business no later than the date the Authority receives a Contract for execution from an offeror.

The undersigned hereby certifies that all of the information contained herein, and in any and all attachments hereto, is true and accurate.

ATTEST:

______________________________ ______________________________
(Name of Offeror)

By: ____________________________

Dated:______________________, 2020

ATTACHMENT 3

REPRESENTATIONS AND CERTIFICATIONS FORM

ATTACHMENT 03

REPRESENTATIONS AND CERTIFICATIONS

01 PARENT COMPANY AND IDENTIFYING DATA

A. A "parent" company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the offeror. To own the offeror's company means that the parent company must own at least 51% of the voting rights in that company. A company may control an offeror as a parent company even though not meeting the requirement for such ownership if the parent company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

B. The offeror [ ] is, [ ] is not (check applicable box) owned or controlled by a parent company.

C. If the offeror checked "is" in paragraph B. above, it shall provide the following information:

Name and Main Office Address of Parent Company (include zip code)	Parent Company's Employer's Identification Number
____________________________	____________________________
____________________________	
____________________________	
____________________________	

D. If the offeror checked "is not" in paragraph B. above, it shall insert its own Employer's Identification Number on the following line:

____________________________.

E. The offeror (or its parent company) [ ] is, [ ] is not (check applicable box) a publicly traded company.

F. The offeror shall insert the name(s) of its principal(s) on the following line:

____.

02 TYPE OF BUSINESS ORGANIZATION

The offeror, by checking the applicable box, represents that:

A. It operates as [ ] a corporation incorporated under the laws of the State of _______________________, [ ] an individual, [ ] a partnership, [ ] a nonprofit organization, or [ ] a joint venture.

B. If the offeror is a foreign entity, it operates as [ ] an individual, [ ] a partnership, [ ] a nonprofit organization, [ ] a joint venture, or [ ] a corporation, registered for business in _____________ (country).

03 AUTHORIZED NEGOTIATORS

The offeror represents that the following persons are authorized to negotiate on its behalf with the Authority in connection with this request for proposals or quotations:

____

____

04 LOCAL DISADVANTAGED BUSINESS ENTERPRISE REPRESENTATION

A. <u>Representation</u> The offeror represents and certifies as part of its offer that it [ ] is, [ ] is not a local disadvantaged business enterprise.

B. <u>Definitions</u> ***"Local Disadvantaged Business Enterprise" (LDBE)*** is defined as a disadvantaged business concern which is organized for profit and which is located within a 100-mile radius of Washington, DC's zero mile marker. Those business entities located within counties that fall partially within the aforementioned boundary would also be eligible to participate in the Authority's LDBE Program. ***"Located"*** means that, as of the date of the contract solicitation, a business entity has an established office or place of business within a city, county, town, or political jurisdiction within the 100-mile radius referenced above. Evidence of whether a business is ***"located"*** within the region includes, but is not limited to: an address that is not a Post Office Box; employees at that address; business license; payment of taxes; previous performance of work similar to work to be performed under contract, or related work; and other indicia. A ***"disadvantaged business"*** is defined as a firm which is not dominant in its field, and which meets the Authority's disadvantaged business size standard(s) for this solicitation.

C. <u>Certification</u> Proposed LDBEs must apply to the Authority's Equal Opportunity Programs Office for certification. For further instruction, see **Attachment VI on Local Disadvantaged Business Enterprise Participation (LDBE)** in this Solicitation.

05 MINORITY BUSINESS ENTERPRISE REPRESENTATION

A. <u>Representation</u>. The offeror represents that it [ ] is, [ ] is not a Minority Business Enterprise.

B. <u>Definition</u>. A ***Minority Business Enterprise*** is:

1. A firm of any size which is at least **51%** owned by one or more minority persons or, in the case of a publicly-owned corporation, at least **51%** of all stock must be owned by one or more minority persons; and whose management and daily business operations are controlled by such persons. A person is considered to be a minority if he or she is a citizen of lawful resident of the United States and is:

    a. Black (a person having origins in any of the black racial groups in Africa);

    b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

    c. Portuguese (a person of Portugal, Brazilian, or other Portuguese culture or origin, regardless of race);

d. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

e. American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

06 WOMEN BUSINESS ENTERPRISE REPRESENTATION

A. Representation. The offeror represents that it [ ] is, [ ] is not a Women Business Enterprise.

B. Definitions. A ***Women Business Enterprise*** is:

1. A firm of any size which is at least **51%** owned by one or more women or, in the case of a publicly-owned corporation, at least **51%** of stock must be owned by one or more such women; and

2. Whose management and daily business operations are controlled by such persons.

C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

07 CONTRACTOR IDENTIFICATION

Each offeror is requested to fill in the appropriate information set forth below:

DUNS Identification Number __________________ (this number is assigned by Dun and Bradstreet, Inc., and is contained in that company's Data Universal Numbering System (DUNS). If the number is not known, it can be obtained from the local Dun & Bradstreet office. If no number has been assigned by Dun & Bradstreet, insert the word "none."

08 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

A. The offeror certifies that --

1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (a) those prices, (b) the intention to submit a offer, or (c) the methods or factors used to calculate the prices offered;

2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

B. Each signature of the offeror is considered to be a certification by the signatory that the signatory:

1. Is the person in the offeror's organization responsible for determining the prices being offered in its offer, and that the signatory has not participated and will not participate in any action contrary to subparagraphs A.1. through A.3. above; or

2. a. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs A.1. through A.3. above

____

(Insert full name of person(s)in the offeror's organization responsible for determining the prices offered in this offer or proposal, and the title of his or her position in the offeror's organization);

b. As an authorized agent, does certify that the principals named in subdivision B.2.a. above have not participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.

c. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.

C. If the offeror deletes or modifies subparagraph A.2. above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

09 SUBCONTRACTORS

The offeror represents that it intends to utilize the below listed subcontractor(s) if it is awarded a contract as a result of this solicitation.

NAME OF SUBCONTRACTOR	SUBCONTRACTOR ADDRESS
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________

Once contract award has been made, the prime contractor shall not deviate from use of the above subcontractor(s) without prior submission and Contracting Officer approval of revised LDBE Exhibits, as applicable.

10 CERTIFICATION OF COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9

The offeror certifies that it [ ] has [ ] has not read and [ ] is [ ] is not in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under. The offeror also certifies that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under.

11 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

A. 1. The Offeror certifies, to the best of its knowledge and belief, that -

a. The Offeror and/or any of its Principals -

(1) Have [ ] have not [ ] been debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal, state, or local agency within the three (3) year period preceding this offer;

(2) Have [ ] have not [ ] had contractor or business license revoked within the three (3) year period preceding this offer;

(3) Have [ ] have not [ ] been declared non responsible by any public agency within the three (3) year period preceding this offer;

(4) Have [ ] have not [ ], within the three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or sub-contract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; violation of labor, employment, health, safety or environmental laws or regulations;

(5) Have [ ] have not [ ], within the three (3) year period preceding this offer, been indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph A.1.a.(4). of this provision; and

(6) All performance evaluations within the three (3) year period preceding this offer have [ ] have not [ ] received a rating of satisfactory or better. If not, please provide a copy of the evaluation with detailed explanation.

b. The Offeror has [ ] has not [ ] within the three (3) year period preceding this offer, had one or more contracts terminated for default by any Federal, state or local agency.

2. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity

(e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

B. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. A certification that any of the items in paragraph A. of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.

D. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A. of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

E. The certification in paragraph A. of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, the Contracting Officer may terminate the contract resulting from this solicitation for default.

ATTACHMENT 4

FINANCIAL OFFER FOR

FINANCIAL OFFER
FOR AUTOMATED TELLER MACHINE SERVICES CONCESSION
AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT AND
WASHINGTON DULLES INTERNATIONAL AIRPORT

Date: ________________________

TO: Contracting Officer
Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001-6000

RE: RFP No. 21-22988

A. Pursuant to the Authority's RFP for Automated Teller Machine Services Concession at Ronald Reagan Washington National Airport and Washington Dulles International Airport, the undersigned hereby submits a proposal for the operation of such concession based on and subject to the terms and provisions of the RFP, which documents have been read by the undersigned and to which the undersigned agrees.

B. Based upon the terms, provisions and conditions of the RFP documents, the undersigned hereby submits the following financial offer for payment of the first through the fifth Contract Years' Minimum Annual Guarantees (MAG) for the Automated Teller Machine Services Concession at Ronald Reagan Washington National Airport and Washington Dulles International Airport. The Concession Fee to be paid to the Authority under this contract will be the greater of the MAG or twenty percent (20%) of the ATM transaction fees and surcharges collected during the Contract Year, and does not include Facility Rent. The MAG for the second and subsequent Contract Years (including Option years) shall be neither less than the MAG for the preceding year nor greater than 120% of the MAG bid for the preceding Contract Year.

Contract Year MAGs:

____
(Offeror Inserts Proposed First Year MAG)

____
(Offeror Inserts Proposed Second Year MAG)

____
(Offeror Inserts Proposed Third Year MAG)

____
(Offeror Inserts Proposed Fourth Year MAG)

____
(Offeror Inserts Proposed Fifth Year MAG)

First Option Term:

____
(First Option year one (1))

____
(First Option year two (2))

Second Option Term:

____
(Second Option year one (1))

____
(Second Option year two (2))

MAG GRAND TOTAL

____

C. Should the undersigned become the selected Offeror and be awarded the right to operate the Automated Teller Machine Services Concession for the Authority, as aforesaid, the undersigned will execute the required performance guarantee. Release of the proposal guarantee submitted by the Offeror will not be made until after execution of the Contract to be awarded and receipt of the performance guarantee.

ATTEST: ____
Company Name

____
Authorized Official’s Name, Typewritten

____
Authorized Official’s Signature

____
Title