ADDENDUM # 5

To prospective Proposer(s) on RFP # 57557 for Management of Retail Concessions & Loading Dock Operations at Newark Liberty International Airport.

Now due back on 8/15/2019, no later than 02:00PM.

CHANGES/MODIFICATIONS

The following changes/modifications are hereby made to the solicitation documents:

A. A draft version of the Concession Management Agreement is attached.
B. Proposers are to submit blacklines of the attached agreement to be considered with their proposals.

This communication should be initialed by you and annexed to your Bid upon submission.

In case any Bidder fails to conform to these instructions, its Bid will nevertheless be construed as though this communication had been so physically annexed and initialed.

THE PORT AUTHORITY OF NY & NJ

BIDDER'S FIRM NAME: ______________________________________________________

INITIALED: ________________________________________________________________

DATE: ___________________________________________________________________

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO JASMAINE GREEN AT jrgreen@panynj.gov OR (212) 435-4654.
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

NEWARK LIBERTY INTERNATIONAL AIRPORT TERMINAL B
CONCESSION MANAGEMENT AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

and

[CONTRACTOR]

Dated as of [__________]
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AGREEMENT

THIS AGREEMENT (hereinafter called the “agreement” or “Contract”), made as of the [___________] by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the “Port Authority” or the “Authority” or the “Airport Operator”), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at 4 World Trade Center, 150 Greenwich St., New York, New York 10007 and [______________] (hereinafter called "Contractor"), a [__________] organized and existing under the laws of the State of [__________] and having an office and place of business at [__________], whose representative is [____________].

W I T N E S S E T H:

WHEREAS, by Chapters Forty-three and Eight Hundred and Two, respectively, of the Laws of New Jersey and the Laws of New York of 1947, as amended and now in force, the states of New York and New Jersey have authorized the Port Authority to improve, develop, operate and maintain air terminals; and

WHEREAS, the Port Authority desires to see a qualified firm manage, lease (on behalf of the Port Authority) and market the concession program at Passenger Terminal B (“Terminal B”) (Terminal B being sometimes called the “Terminal”) at Newark Liberty International Airport located in the Counties of Essex and Union and in State of New Jersey (hereinafter called the “Airport” or “Facility”); and

WHEREAS, the Contractor represents that it has the professional experience and expertise to provide the services that are required hereunder and further warrants that it is ready, willing and able to perform such professional services in accordance with the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the fees, covenants and mutual agreements hereinafter contained, the Port Authority and the Contractor hereby covenant and agree as follows:

ARTICLE 1. GENERAL TERMS AND CONDITIONS

The Contractor and the Port Authority hereby acknowledge and agree that this agreement is subject to (i) “Exhibit D”, the Standard Contract Terms and Conditions and (ii) “Exhibit A”, copies of which are attached hereto and hereby made a part hereof. In the event of any inconsistency between the provisions of this agreement and those of the Standard Contract Terms and Conditions, or between the provisions of this agreement and those of any of the exhibits, the provisions of this agreement shall prevail and control.
ARTICLE 2. TERM

a. The term of this agreement ("Term") shall be for a five (5) year period commencing as of [___________], at 12:01 a.m. (said date and time hereinafter called the "Commencement Date") and, unless sooner terminated (including the right of the Port Authority to terminate this agreement upon thirty (30) days written notice to the Contractor as provided in Paragraph 14(f) of the Standard Contract Terms and Conditions and this article or extended as provided in paragraph (b) of this article, shall expire on [___________] at 11:59 p.m. (said date and time hereinafter called the "Expiration Date").

b. The Port Authority shall have the option, at its sole discretion, to extend this agreement for two additional terms, each for a duration of one (1) year. The first extension period shall commence on the day subsequent to the Expiration Date and continue for 365 days ("First Extension Term") and the second extension period, if the Port Authority’s extension option is exercised, shall commence on the day subsequent to the expiration of the First Extension Term and continue for 365 days ("Second Extension Option Term"). The terms and conditions of such extension(s) during the First Extension Term and the Second Extension Term, as applicable, shall be on the same terms and conditions as set forth in this agreement and in effect on the day immediately preceding the relevant extension term. The Port Authority will advise the Contractor in writing, at least three (3) months prior to the Expiration Date, and thereafter (if applicable) prior to the expiration of the First Extension Term, if it elects to exercise its right to so extend the Term of this agreement. Upon the exercise of the Port Authority of its option to extend as aforesaid, no execution by either party of any other document or instrument shall be required to effect such extension of the Term of this agreement.

c. The Port Authority shall have the right at any time, without cause, to terminate this agreement upon thirty (30) calendar days' written notice to the Contractor. Termination hereunder shall not relieve or discharge the Contractor of any liabilities or obligations under this agreement which shall have accrued on or prior to, or which shall take effect on, the effective date of termination, all of which shall survive said termination. Termination hereunder shall have the same effect as though such date was the original expiration date of this agreement. Termination pursuant hereto shall create no obligation on the part of the Port Authority other than as may be expressly set forth elsewhere in this agreement.

d. In the event the Port Authority exercises its right to revoke or terminate this agreement if the Contractor shall fail to keep, perform and observe each and every promise, agreement, condition, term and provision contained in this agreement, the Contractor shall be obligated to reimburse the Port Authority for any and all personnel and reasonable legal costs (including but not limited to the cost to the Port Authority of in-house legal services) and disbursements incurred by it arising out of, relating to, or in connection with the enforcement or revocation of this agreement including, without limitation, legal proceedings initiated by the Port Authority to
exercise its revocation or termination rights and to collect all amounts due and owing to the Port Authority under this agreement.

e. After the effective date of any such termination or upon the Expiration Date of this agreement, no further Services shall be performed by the Contractor, except that the Contractor shall cooperate to accomplish an orderly transfer of the Services to the Port Authority or to any entity designated by Port Authority (including, without limitation, the transfer of the Port Authority's property (including, without limitation, the Contractor's non-proprietary work- product). The terms of this article 2(e) shall survive the expiration or earlier termination of this agreement.

ARTICLE 3. SCOPE OF WORK- CONCESSION MANAGEMENT SERVICES

a. Scope of Services. The Contractor hereby agrees, subject to and in accordance with all of the terms and conditions of this agreement, to provide the following services hereafter referred to as the “Concession Management Services” or the “Services”. The Contractor shall perform, on a 24 hour per day, 7 days per week basis, all the duties normally associated with sound, safe, innovative, prudent and efficient Airport concessions management and shall provide all Services as are customary and normal to such an operation, following the Port Authority's policy direction, as such Services are identified on Exhibit A. For the avoidance of doubt, all Services shall be provided by applying Best Management Practices (as herein defined) (This paragraph supersedes the section 40 of the attached Standard Contract Terms and Conditions).

b. Management Staffing. The Contractor shall employ a full time, trained professional staff at all times during the Term of sufficient size, expertise, ability, suitability and experience to carry out its responsibilities hereunder. This shall include, but not be limited to, employing at the Premises (as hereinafter defined), on full-time basis a general manager and one or more assistants, the employment thereof to be subject to the prior written approval of the General Manager of the Airport, with sufficient authority and support, staff and appropriate equipment, supplies and means to manage and perform the Services and obligations of the Contractor with respect to the concession space at the Terminal, and the loading dock and storage facilities relating to the concession space (“Concession Storage facility”) at the Terminal; to administer those leases (it being understood that the term “leases”, for purposes of this agreement, includes subleases, permits, licenses, sublicenses and the like) and agreements with tenants (it being understood that the term “tenants”, for purposes of this agreement, includes subtenants, permittees, licensees, sub-licensees, and the like), other third parties, if any, to which the Port Authority is a party or by which it is bound relating to operations at the concession space at the Terminal which is the subject of this agreement, as well as
administration of agreements to be entered into by the Contractor with third parties for such third parties' services relating to the loading dock and Concession Storage facility at the Terminal; to monitor and use commercially reasonable efforts to compel performance by the above-referenced tenants and third parties under said leases and agreements relating to the concession space at the Terminal, the loading dock and Concession Storage facility (exclusive of initiating and diligently pursuing legal action to enforce the Contractor's agreements with third parties in connection with the loading dock and Concession Storage facilities), the foregoing responsibilities of the Contractor to include cooperation of Contractor with the Port Authority and its counsel in connection with such legal actions and to serve as on-site liaison with the Port Authority. The Port Authority shall be an intended third party beneficiary of all such Contractor agreements with third parties (and shall agreement shall expressly provide for this), with the right, but with no obligation, to enforce the same. The Contractor's general manager and assistant general manager(s) shall each have the power and authority on behalf of the Contractor to resolve all operational issues and the Contractor represents and warrants to the Port Authority that it shall vest such authority in the aforesaid general manager and assistant general manager(s) and the Port Authority shall be entitled to rely on this representation and warranty in its dealings with such individuals. One of either the Contractor’s general manager or assistant general manager shall be available in person at Terminal B for a minimum time span of ten (10) hours each day from Monday through Friday and six (6) hours on either Saturday or Sunday and available to meet with representatives of the Port Authority when and at the place on the Airport designated by such representatives during such hours. The same management individual(s) shall be available at other times by telephone and in an emergency situation to be able to arrive at the Airport by car within two hours after being called. If any management, supervisory or other personnel of the Contractor including, without limitation, such general manager, assistant general manager(s) or if any contractor or subcontractor, representative, employee or agent of the Contractor is deemed unsatisfactory or does not perform the functions to be performed by the Contractor hereunder in a proper manner and satisfactory to the Port Authority, or in the determination of the Executive Director of the Port Authority has taken any action which constitutes a conflict of interest or which is inconsistent with the highest level of honesty, ethical conduct or public trust or which the said Executive Director determines is adverse to the public interest or to the best interest of the Port Authority, whichever of the foregoing shall apply as indicated in writing to the Contractor, the Contractor shall remove or cause such other entity to remove any such personnel and replace them with personnel satisfactory to the Port Authority within forty-eight (48) hours, upon notice from the Port Authority.

c. Premises. The Contractor is hereby retained to perform the Services at the Airport (i) in the spaces at the Terminal shown on the exhibit attached hereto as
"Exhibit B" and hereby made a part hereof and located in its passenger Concourses (on the “Concourse Level”), collectively herein the “Concourses”, the operational level (used primarily for storage) and in the Terminal' satellites (on the Concourse and Operations Levels), collectively herein the “Satellites”, and in the connectors to the satellites in the Terminal (collectively herein the “Connectors”), subject to and on the terms and conditions set forth in this agreement; and (ii) in the areas of the loading dock and Concession Storage facility shown in "Exhibit C" attached hereto and hereby made a part hereof, and further subject to (x) the Airline Leases (as defined herein); and (y) the agreements, permits, leases, tenancies, users and occupancies identified in "Schedule A" attached to this agreement and made a part hereof, the aforesaid areas being collectively referred to as the “Premises”. The parties agree that certain space in the passenger Concourses referred to above constitutes the transverse corridor in the Terminal, which transverse corridors nevertheless exclude the Connectors and Satellites in the Terminal and exclude the escalators, staircases, elevators, restrooms, airline clubs, VIP lounges, monorail facilities and fire exit doors off of the Concourse Level which may be located on such transverse corridors. In connection with the Contractor's obligation to identify prospective tenants to enter into concession leases with the Port Authority at the Premises, this shall exclude seating areas in the food courts and traffic corridors. The Contractor acknowledges that it has received from the Port Authority or has had an opportunity to fully review copies of all of the agreements, permits, leases, tenancies, users and occupancies identified in the aforesaid Schedule A, as well as having had an opportunity to fully review copies of the applicable consumer services and non-exclusive area provisions, and any related provisions, if any, in all the Airline Leases, and represents that such review was conducted solely in connection with performing its obligations under this agreement and for no other purpose whatsoever.

If the Port Authority at any time or times during the Term determines in its sole and absolute judgment that it requires any one or more portions of the Premises in order to meet or help meet governmental requirements, or in connection with its operation of Terminal B or the Airport, or in connection with or to facilitate or improve operations in, of, or at the Airport, or for one or more aircraft operators using the same, or to better accommodate the needs or interests of the public, then the Port Authority shall have the right to remove such area(s) from the Premises which are the subject of this agreement. No such removal shall result, or be deemed to result, in a reduction or diminishment in any way of the Contractor's responsibilities hereunder, except that its Services would no longer be required with respect to the removed space.

The term “Airline Leases” shall mean those leases in effect at the Terminal between the Port Authority, as lessor, and airlines, as lessees, at and Terminal B from time to time during the Term, as the same have been or shall be supplemented or amended, including without limitation all letter agreements entered into between the Port Authority and the relevant airline lessee(s).
d. Leasing and Marketing to Unaffiliated Third Persons.

In performing its Services hereunder, any and all actions taken by the Contractor hereunder or in connection with or affecting the Premises shall be subject to and in compliance with the terms of all Airline Leases, it being understood that nothing herein is intended to make the Contractor a party to any Airline Lease, but that the Contractor's performance under this agreement shall be in conformance with those terms and provisions of such Airline Leases which are relevant to the operations of the Contractor hereunder. The Port Authority shall advise the Contractor from time to time of any modifications to the Airline Leases to the extent the Port Authority determines such modifications affect the Premises and shall advise the Contractor from time to time of the terms of any new or other airline leases at the Terminal which may be entered into by the Port Authority to the extent the Port Authority determines such terms affect the Premises. At no time during the Term shall the Contractor or any affiliate of the Contractor conduct any concession activity in the Premises involving the sale or offer by it of goods or services, unless the Port Authority has explicitly approved in writing specific exceptions after having been furnished such information as it may require and subject to such qualifications, conditions, limitations and restrictions specified by the Port Authority as part of any such approval.

For purposes of this agreement, the term “affiliate” shall mean any person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Contractor and any entity in which the Contractor or any member or manager of the Contractor (or general or limited partner or shareholder of any such member of manager) has an ownership, licensor/licensee or franchiser/franchisee interest or relationship, but if the Contractor shall be a corporation whose voting securities shall be registered with the Securities and Exchange Commission and publicly traded on a regular basis then only such shareholder of the Contractor having an ownership interest greater than five percent (5%). The term “control” (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

e. Reserved Uses.

(i) The Port Authority reserves exclusively to itself and its designees the right to implement, conduct, control and receive any fees, rents or profits, with respect to any and all of the following uses, operations or installations at Terminal B (collectively, the "Reserved Uses"): 

a. advertising (other than (x) branding and (y) promotions by concessionaires or Airlines in non-public, exclusive spaces),
including static display, interactive display, screensavers or programs on any electronic device, audio-visual display, broadcast and other;

b. except as noted herein, cellphone/cellular technology and any technology or system that substitutes for, replaces or is used in conjunction with cellphone/cellular technology;

c. except as noted herein, the technology commonly known as Wi-Fi, and any technology or system that substitutes for, replaces or is used in conjunction with Wi-Fi and also including all Port Authority-owned or operated information and communications technology infrastructure for common Airport use;

d. public telephones (sometimes also referred to as pay phones or pay telephones), pre-paid phone cards, facsimile transmission machines and other public communications services and facilities;

e. vending machines other than automated retail machines and food and beverage vending machines in non-public spaces;

f. concierge services (i.e., a welcome center or other location which offers a variety of services for passengers (including, but not limited to, hotel reservations, sale of entertainment events tickets and lottery tickets, luggage storage and delivery, sightseeing tours, business services and provision of touring information));

g. ground transportation, including vehicle rentals and taxi dispatchers and preferential allocation of or access to ground transportation services at other parts of the Airport;

h. provision of on-Airport baggage carts or other on-Airport baggage-moving devices (other than shopping carts made available free of charge to retail shoppers within the Concessions space) or other on-Airport baggage-moving devices (other than the baggage system);

i. any and all sponsorship and naming rights available to the Port Authority at the Airport;

j. premium or convenience services or space offered at Terminal B or at other parts of the Airport other than such services or spaces within the exclusive use spaces of the concessionaire provided free of charge;
k. such further uses, operations or installations that may arise through any technological development or emerging technology (including opportunities generated by the collection, use or transfer of passenger data) that the Port Authority may determine at any time during the Term constitute Reserved Uses;

l. any public or airline passenger-related transit facilities; and

m. facilities and uses not contemplated in this agreement, including hotel accommodations.

(ii) The Port Authority will be entitled to receive and retain all rents, fees, profits and other consideration derived from the Reserved Uses.

(iii) Prohibition with respect to Reserved Uses

a. The Contractor:
   i. Shall not implement, conduct or control, and shall not receive any fees, rents or profits with respect to, the Reserved Uses without the prior written consent of the Port Authority; and
   ii. Shall ensure that no concessionaire implements, conducts or controls, or receives any fees, rents or profits with respect to, the Reserved Uses, without the prior written consent of the Port Authority.

(iv) Wi-Fi and Cellular Service

a. With respect to Wi-Fi or cell phone technology (and any technology or system that substitutes for, replaces or is used in conjunction therewith), the Contractor will be permitted to provide such services at Terminal B facility; provided, that the Contractor complies with all terms and conditions imposed by the Port Authority with respect thereto, including the terms set out herein.


(i) From time to time during the Term, the Port Authority shall conduct or cause to be conducted customer service surveys on-site at both Terminals. The Contractor shall not interfere with, obstruct, delay or otherwise hinder the process taking such surveys. Moreover, the Contractor shall participate and cooperate with the Port Authority and its designees with regard to such surveys, by way of example only, by making space available, providing surveys to concession customers for completion, collecting surveys upon completion and delivering same to the Port Authority, and
otherwise undertaking managerial and administrative functions requested by the Port Authority related to survey-taking. Neither the Port Authority nor any person or entity retained by it to conduct a survey shall have any obligation to compensate the Contractor for the above-described participation and cooperation.

(ii). The Contractor shall provide for training in customer service techniques and other concession-related matters for its staff on a quarterly basis, and perform such other customer service functions as may be identified in Exhibit A hereto.

g. Monthly Reporting.

Without limiting the generality of Exhibit A hereto, the Contractor shall submit to the Port Authority monthly concession summary reports on a tenant-by-tenant, concession category-by-concession category, which shall include, without limitation, the following:

(i) Gross receipts per tenant, gross receipts per Enplaned Passenger (based on the Port Authority's determination of the number of Enplaned Passengers at the Terminal for the immediately preceding calendar year then ended, as provided by the Port Authority to the Contractor in writing), gross receipts per square foot and gross receipts per concession category.

(a) The term "Enplaned Passenger" shall mean any local originating or connecting passenger determined by the Port Authority to have boarded an aircraft at Terminal B, excluding passengers who disembarked and re-boarded the same aircraft with the same flight number for the purpose of continuing their journey. The Contractor hereby acknowledges that the Port Authority's determination as to the actual number of Enplaned Passengers is final and binding and that it will based in whole or in part on information supplied to it by various airlines and aircraft operators using the Terminal for a portion or all of their flights at the Airport.

(b) The term “Gross Receipts” shall include all monies paid or payable to the Contractor for sales made and for services rendered at or from the Terminal, regardless of when or where the order therefor is received, and outside the Terminal, if the order therefor is received at the Terminal, and any other revenues of any type arising out of or in connection with the Contractor’s operations at the Terminal provided, however, that any taxes imposed by law which are separately stated to and paid by the customer and directly payable to the taxing authority by the Contractor, shall be excluded therefrom.
(ii) Total gross receipts;

(iii) Effective rent on a monthly basis for each tenant (as defined herein), for each Terminal; and

(iv) Amount of arrearage (including breakdown of type of arrearage) for each tenant (as defined herein).

h. Lease Administration and Compliance.

Without limiting the generality of Exhibit A, except as otherwise specifically directed or consented to in writing by the Port Authority, the Contractor shall not take any action to terminate any of the leases identified in Schedule A (or any new leases entered into during the Term) with or without cause, to amend or extend any such leases, to waive, surrender, compromise or jeopardize any right or privilege of the Port Authority under or respect to any said leases, or to pursue any remedies or relief to which the Port Authority shall be entitled thereunder or as a matter of law, including but not limited to accepting any compromise or settlement of an arrearage or disputed amount. The Contractor shall cooperate with the Port Authority in the latter's collection efforts; provided, however, the Contractor shall be responsible for any and all internal corporate costs and expenses incurred by it in connection with such collection efforts but shall not be required to incur any other out-of-pocket costs or expenses.

As approved by the Port Authority, the Contractor's Services shall include, among other things, negotiation of leases (using only agreements in form and substance prepared by and satisfactory to the Port Authority), coordination of tenant design and construction work, and negotiation of relocations, amendments or modifications, but no arrangement negotiated by the Contractor shall be or be deemed enforceable against or binding upon the Port Authority unless and until a fully executed lease, or amendment thereto, has been entered into between the Port Authority and a prospective tenant, and any arrangement or agreement to which the Port Authority has not consented in writing shall be void ab initio and of no force or effect. Any and all construction work done by or on behalf of tenants at the Terminal shall be done in accordance with plans and specifications to be submitted to and approved by the Port Authority prior to the construction work, and shall require the payment of any fee imposed by the Port Authority for review of such plans and specifications, it being understood that until such approval has been obtained a tenant shall continue to resubmit plans and specifications as required by the Port Authority. agreements entered into between the Contractor and third-party contractors shall be the responsibility of Contractor and the cost and expense of defending or bringing any claims by or against third party contractors shall be the sole responsibility of the Contractor.

i. Cleaning and Maintenance

The Contractor shall use commercially reasonable efforts to ensure
that tenants perform preventive maintenance by regularly cleaning, repairing and maintaining (other than structurally): (x) all grease traps in all drainage pipes exclusively used in operations at the Premises, whether such pipes are located on the Premises or elsewhere at the Terminal, and (y) all kitchen exhaust ducts including the replacement of all filters where such ducts are exclusively used by tenants in such operations and whether such ducts are located on the Premises or elsewhere at the Terminal. As part of the tenants' maintenance responsibilities, the hood and ventilation system servicing the Premises shall be cleaned and maintained from inside the unit through the ductwork to the roof top fan, on a monthly basis and at the tenants' sole cost and expense. In addition, should any corrective work be necessary for any portion of the grease traps, hood and ventilation system, the tenants shall be responsible for the immediate repair and cost, whether such repair is required inside the unit or outside the unit. Tenants shall be required to provide documentation of all of such work to the Contractor which shall be supplied to the Port Authority on or before the twentieth (20th) day of each calendar month, relating to servicing during the preceding calendar month to the extent such documentation has in fact been provided by the tenants to Contractor.

j. Street Pricing

(i) The Contractor shall ensure that each concessionaire does not charge prices to its customers in excess of the "Street Prices" determined in accordance with subsection (2) hereof, or such other street pricing policy as may be adopted by the Port Authority from time to time.

(ii) "Street Prices" will be determined as follows:

a. if the concessionaire conducts a similar business in one or more off-Airport locations in the Greater New York City-Northern New Jersey Metropolitan Area (the "Metro Area"), "Street Prices" means the price regularly charged by the concessionaire for the same or similar item in the Metro Area;

b. if the concessionaire does not conduct a similar business in one or more off-Airport locations in the Metro Area, "Street Prices" means the average price regularly charged in the Metro Area by similar retailers for the same or similar item;

c. if neither the concessionaire nor other similar retailers sell a particular item in the Metro Area, "Street Prices" means the price regularly charged by the concessionaire or similar retailers for the same or similar item in any other geographic area, with a reasonable adjustment for any cost-of-living variance between that area and the Metro Area; and
d. if a concessionaire is in the business of selling duty-free goods, "Street Prices" means the price regularly charged by the concessionaire or other similar concession operators for the same or similar duty-free items at other major airports serving large urban areas in the northeast region of the United States of America, including the Airport.

(iii) The Contractor shall post, and shall ensure that all concessionaires post, in each sales area at the Terminal (including any temporary sales space), a notice in form and substance satisfactory to the Port Authority informing the public that the Contractor (or the concessionaire, as applicable) subscribes to a Street Pricing policy, and that policy shall be clearly visible and unobstructed.

(iv) If the Contractor or a concessionaire, as applicable, charges any price to a customer in excess of the price that would satisfy the Street Pricing policy, in violation of its obligations under this agreement or concessionaire agreement, the amount of the excess will constitute an overcharge that shall, upon demand by the Port Authority or the Contractor's customer (or a concessionaire's customer, as applicable), be promptly refunded to the customer.

(v) For purposes of establishing the Street Price of an item, any difference in the size or quality of a product or service will constitute the basis for a price differential.

(vi) Street Pricing Report. Within thirty (30) days after the end of each calendar year, the Contractor shall deliver to the Port Authority a report for each concessionaire that compares prices for a representative sample of products (which representative sample of products shall be agreed by the Port Authority and the Contractor) to the same or substantially similar products sold in comparable locations, demonstrating that the Contractor and each relevant concessionaire is in compliance with the pricing requirements described in this section.

ARTICLE 4. PAYMENT

a) Subject to the provisions of this agreement, the Port Authority shall pay to the Contractor an annual management fee ("Management Fee") for each calendar year or portion thereof during the Term ("Contract Year"). The Management Fee will be derived from total Gross Receipts generated during the Term from the Concession operations at the Terminal, both Concession operations which are existing as of the Commencement Date and those developed thereafter, which are developed, leased, managed and marketed by the Contractor under this agreement, and specifically excluding revenues relating to Port Authority Reserved Uses.
1. ______ percent (___%) of all tenant Gross Receipts generated in the Terminal which are up to _____ Dollars ($______) in any Contract Year; plus,

2. One and three-quarter percent ( ____%) of all tenant Gross Receipts generated in the Terminal which are between _______ and 01/100 Dollars ($ ________.01) and _________ Dollars ($________) in any Contract Year; plus,

3. _______ percent (________%) of all tenant Gross Receipts generated in the Terminal which are in excess of _________ Dollars ($___________) in any Contract Year.

b) Management Fees shall be payable on a monthly basis, to be calculated in accordance with the percentages and applicable cumulative tenant Gross Receipts amounts referenced in paragraph (a), above, as such cumulative tenant Gross Receipts are achieved on the last day of each month during each Contract Year. Payment of Management Fees shall commence on the first date of the month following the Commencement Date and continue through and including the Expiration Date of the Term. The procedure for making said monthly payment of Management Fees and third party vendor fees shall be as follows: Contractor shall invoice the Port Authority for its Management Fee for the preceding month just ended, and shall invoice the Port Authority for any other fees charged by third party vendors retained by the Contractor in relation to certain Services to be provided in the management of the concession programs in the Terminal including but not limited to loading dock services, product distribution services and marketing and promotional activities (which marketing/promotional activities and materials relating thereto may include secret shopping services, customer service training services, and visual merchandising services), all of which must be approved in advance by the Port Authority from time to time. The funds for the foregoing third party vendor services shall be initially collected by the Port Authority on a monthly basis from tenants pursuant to tenants' leases, as additional rentals/fees. Invoicing by the Contractor to the Port Authority shall occur after the collected amount of tenants' rentals/fees paid to the Port Authority have first been delivered to the Port Authority by the Contractor for each calendar month (i.e., the basic rent/fee collected for the prior month; percentage rent/fee collected for the month immediately preceding the prior month as defined herein; and additional collected rentals/fees). The Contractor's invoices for reimbursement of third party vendor fees as described above will be paid within thirty (30) days of receipt so that the Contractor shall have sufficient funds at all times to pay third party vendors providing services to the Contractor for loading dock services and promotion/marketing activities and the Contractor's invoices for its Management Fees similarly will be paid within thirty (30) days of receipt.

c) (i) Within forty-five (45) calendar days after the end of each Contract Year during the Term there shall be a reconciliation of the Management Fees and third party vendor fees due to the Contractor against the amount of Management Fees and third party vendor fees theretofore paid to the Contractor during the Contract Year just ended. Any required
adjustment as a result of the reconciliation shall be made in the form of a reduction (if an excess amount previously paid by the Port Authority) or an increase (if a shortfall exists in the amount previously paid by the Port Authority) in the next accruing monthly payment of the Management Fee and third party vendor fees, as the case may be; provided, however, that at the expiration or earlier termination of this agreement any required adjustment shall be in the form of an offset against any amounts otherwise due to the Contractor by the Port Authority, or a reconciliation payment in favor of the Contractor, as the case may be. All out-of-pocket, and internal administrative, managerial and other corporate, costs and expenses (whether such costs and expenses are those of the Contractor's home office, the Contractor's operations at the Airport, or otherwise) incurred by the Contractor in connection with this agreement shall be the sole responsibility of the Contractor and Contractor expressly agrees that it shall not seek any reimbursement from the Port Authority for same. The Management Fee shall not be decreased in the event of a reduction of the Premises (or a part thereof), nor increased in the event of an expansion to or relocation of the Premises (or a part thereof), at the Terminal, regardless of the reason(s) for such reduction, expansion and/or relocation; provided, however, that a reduction in the Premises and/or Concession Storage facility may be made by the Port Authority as described below.

(ii) With respect to any space in the Terminal(s) as to which the Contractor is providing Services, including without limitation any space which constitutes a Concession Storage facility, the Port Authority may, at any time or times during the term of this agreement, deem it advisable in its sole and absolute judgment, to recapture or reduce such space so as to remove it from the subject of this agreement in order to meet or help meet governmental requirements, or in connection with its operation of the Terminal or the Airport, or in connection with or to facilitate or improve operations of one or more aircraft operators using the Terminal or the Airport, or for any purpose which is in the public interest, all as determined by the Port Authority. Such recapture or reduction shall not release the Contractor of any liabilities or obligations under this agreement as to such recaptured or reduced space accruing through the effective date of such recapture or reduction (but Contractor shall no longer have the obligation to perform its Services for any such removed space from and after such effective date), and shall not release or modify to any extent any of the Contractor's other obligations under the agreement or entitle it to any claim against or compensation from the Port Authority.

d) Upon the Commencement Date, the Contractor shall assume responsibility for the rent collection from the concession tenants in the Premises. The Port Authority shall direct the concession tenants to remit their rental payments and fees payable to the Port Authority directly to the Contractor as its collection agent (rather than to the Port Authority or any previous contractor) for deposit, beginning with the first full month following the Commencement Date. On the 30th day of each month during the Term and any months following the expiration or earlier termination necessary to account for all tenant payments received, the Contractor shall render to the Port Authority a statement identifying all funds received by the Contractor from tenants in the payment of rents/fees, including any fees assessed to the tenants for services performed by third party vendors. Contractor shall prepare such statement in a form acceptable to the Port Authority. Tenant
shall be identified by name, type (e.g., retail, food and beverage) and Terminal. The items which constitute deposits from tenants received and, accordingly, the items which shall be reflected on such monthly statements, shall include the following:

(i) any and all basic rent received from the tenants for the month in which the statement is made (together with any arrearages in basic rent received by the Contractor from tenants for any prior periods). Basic rent (also referred to as fixed rent or minimum guaranteed rent) is payable from tenants in monthly installments in advance on the first day of each current month;

(ii) any and all percentage rent received from tenants for the prior month (the percentage rent payment received, if any, for sales in the month prior to which the statement is made). Percentage rent is payable following the end of the month for which percentage rent is due, i.e., the prior month;

(iii) any and all other fees and payments received from tenants (for example, late fees, promotion/marketing fees, food court maintenance fees, loading dock fees, other third party vendor fees (if any are pre-approved by the Port Authority), and any fees imposed on the tenants by the Contractor in Terminal B associated with the trash compactor and cardboard bailer).

The Contractor acknowledges that the Management Fee is paid in arrears, and not in advance, of each monthly period. Inasmuch as any and all amounts received by the Contractor and payable to the Port Authority shall be held by the Contractor in trust for the Port Authority, as described below, such amounts shall be, and be deemed to be, solely the property of the Port Authority. With respect to any pre-approved third party service vendor fees relating solely and only to loading dock operations, the Port Authority acknowledges that the Contractor may invoice the Port Authority in advance of each monthly period for the estimated amounts necessary to pay its third party service vendor(s) for such loading dock operations for amounts due for such month. All estimated amounts for loading dock operations so invoiced shall be reconciled against the actual amounts due and paid to any such third-party service vendor(s) following the end of each month.

e) At any time that the Port Authority permits Contractor to serve as a collection agent for the Port Authority with respect to all amounts paid by tenants and any other amounts that would otherwise be paid directly to the Port Authority hereunder, several requirements shall be met by Contractor. Such requirements include, without limitation, the following:

(i) Contractor shall be deemed, and shall hold itself out as, a fiduciary vis-a-vis the Port Authority;
(ii) Contractor shall hold all rents and other fees received by it in a separate account in trust for the Port Authority in which Contractor may not commingle such rents and fees with any of Contractor's other revenues, at an institution acceptable to the Port Authority having an office within the New York-New Jersey metropolitan area and qualified to do business in the States of New York or New Jersey;

(iii) Contractor shall obtain additional protections on behalf of the Port Authority, including a written agreement by the institution at which the account is located providing for access by the Port Authority to the funds on deposit in such account in the event of insolvency, appointment of a receiver, bankruptcy action (whether voluntary or involuntary), or creditor's lien;

(iv) Contractor shall obtain insurance protecting against employee dishonesty, embezzlement, theft, etc. in amounts and otherwise in a form acceptable to the Port Authority and naming the Port Authority as additional insured thereunder; and

(v) any other reasonable requirements of the Port Authority with respect to collection of such rents and fees by the Contractor.

ARTICLE 5. RIGHTS OF SELF-HELP

a) If the Contractor fails to perform any of its obligations under this agreement within the time period specified in this agreement (or if no time period is specified, within fifteen (15) Business Days after notice from the Port Authority), then the Port Authority may perform such obligations without further notice.

b) In the event of an emergency, the Port Authority may perform any of the Contractor's obligations in order to alleviate such emergency without providing any cure period or notice to the Contractor.

c) Nothing in this agreement, including this section, will impose any duty on the Port Authority to perform any obligation required to be performed by the Contractor and the performance of any of the Contractor's obligations by the Port Authority will not constitute a waiver of the Contractor’s default in failing to perform the same.

d) Any action taken by the Port Authority in accordance with this section will not be deemed a breach of this agreement by the Port Authority, will not expose the Port Authority to any liability to the Contractor and will not entitle the Contractor to any remedy.

e) The Port Authority's remedy under this section shall not limit any other remedies available to it under this agreement, under law or otherwise.
ARTICLE 6. INDEMNITY AND INSURANCE
[INSURANCE RESERVED]

To the full extent allowed by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives, employees and agents from and against all claims and demands, just or unjust, of third persons arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the Contract and all Services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for loss of or damage to property, direct or consequential, whether they arise from the acts or omissions of the Contractor (including, without limitation, its officers, employees, contractors or agents), or from any breach of this agreement by Contractor or act or omission which is beyond the scope of Contractor's authority under this agreement, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

As between the Contractor and the Port Authority, the Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons or from any other cause, excepting only risks occasioned solely by the gross negligence or willful misconduct of the Port Authority, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the actual cost thereof.

b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.

c. The risk of claim, whether made against the Contractor or the Port Authority,
for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, material men and others performing work hereunder.

d. The risk of claims for injuries, damage or loss of any kind, just or unjust, of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall, at its own expense, defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property arising out of its operations.

ARTICLE 7. AIRPORT MANAGER'S AUTHORITY

The terms "Airport Manager" or "Manager" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the General Manager of New Jersey Airports at the time of this agreement, or his or her duly authorized representative.

In the performance of this agreement, the Contractor shall conform to all orders, directions and requirements of the Airport Manager and shall perform this agreement to the satisfaction of the Airport Manager at such times and places, by such methods and in such manner and sequence as the Airport Manager may require, and the Contractor's performance shall at all stages be subject to his/her inspection. The Airport Manager shall determine the amount, quality, acceptability and fitness of all parts of the Services and shall interpret the specifications. Upon request, the Airport Manager shall confirm in writing any oral order, direction, requirement, or determination.
ARTICLE 8. AREAS AVAILABLE FOR CONTRACTOR USE

a) During the Term, the managerial and administrative staff of the Contractor shall have the use of no less than 1,000 square feet of office space at 35 Terminal B-Building 74, designated and provided by the Port Authority to be used by managerial and administrative personnel only, solely in connection with the management/administrative functions referred to above. Such space shall be furnished (i.e., desk and chairs) but shall not be equipped (e.g., with copiers, facsimile machines, printers, computers and related hardware, as well as trade fixtures) by the Port Authority and no representation or covenant is made by the Port Authority that it will be suitable for the Contractor's purposes as described above. Utilities services to such office space shall be supplied by the Port Authority and paid for as hereinafter described. The Port Authority shall provide, at no cost to the Contractor, electricity at such office space to be used by the Contractor solely for lighting and the operation of small business machines and routine office computers serving only the aforesaid functions of the Contractor at the Terminal, on the same basis, including under the same limitations and conditions, as applicable generally to tenants of the Port Authority in similar space at the Airport who pay for electricity. Heating and air-conditioning shall also be supplied to the office space on the same basis as applicable to electricity as aforesaid. No other utility or service will be supplied to or for such office space by the Port Authority.

b) The Port Authority, its officers, employees and representatives shall have the right, at all times during normal office business hours, to enter upon the facilities and/or office space provided the Contractor for the purpose of inspecting the same, for observing the performance of the Contractor of its obligations under this agreement, and for the doing of any act or duty which the Port Authority may be obligated or have the right to do under this agreement or otherwise.

c) The Contractor acknowledges that it has examined the space to be used for office purposes carefully and hereby accepts the same in its present condition. The Contractor shall repair all damage to the office space and all damage to fixtures, improvements, and personal property of the Port Authority which may now or may hereafter be located thereon, which may be caused by the operations of the Contractor under this agreement or by any acts or omissions of the Contractor, its officers, employees, agents or representatives whether or not the damage occurs during the course of their employment by the Contractor. The Contractor is responsible for cleaning and maintenance of office space. Contractor shall not be responsible for making any improvements to such office space, and shall not be responsible for the aforesaid damage, if any, which may have occurred prior to the Commencement Date, but shall be responsible for routine cleaning, maintenance and repair at and to such office space during the Term.

d) The Contractor acknowledges and agrees that no relationship of landlord and
tenant or licensor and licensee is created or intended to be created hereunder and that the use of any space or other facilities by the Contractor is merely incident to and dependent upon its operations hereunder as a Port Authority contractor. Upon the expiration or earlier termination or revocation of this agreement, or upon a change of office space, the Contractor shall remove its equipment, materials, supplies, and other personal property from the Premises. If the Contractor shall fail to remove its property on or before the expiration, termination or revocation of this agreement, or upon a change of office space, the Port Authority in its sole discretion may dispose of the same as waste material or may remove such property to a public warehouse for deposit or retain the same in its own possession, and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed to the Port Authority by the Contractor; if the expenses of such removal, storage and sale exceed the proceeds of sale, the Contractor shall pay such excess to the Port Authority upon demand.

e) The Contractor shall not perform any maintenance or repairs, nor erect any structures, make any improvements or do any other construction work in, on or about the office space provided to the Contractor hereunder or elsewhere at the Airport or alter, modify, or make additions or repairs to or replacements of any existing structures or improvements, or install any fixtures (other than trade fixtures, removable without injury to the office space) without the prior written approval of the Port Authority and in the event any construction, improvements, alterations, modifications, additions, repairs or replacements are made without such approval, then upon notice so to do, the Contractor will remove the same, or at the option of the Port Authority, cause the same to be changed to the satisfaction of the Port Authority, at the sole expense of the Contractor. In case of any failure on the part of the Contractor to comply with such notice, the Port Authority may effect the removal or change and the Contractor shall pay the cost thereof to the Port Authority on demand.

ARTICLE 9. INTENTIONALLY OMITTED

ARTICLE 10. RIGHT OF ACCESS AND INSPECTION

The Port Authority reserves the right to observe, monitor, review, and inspect any aspect of the Concession Management Services at the Terminal or the Contractor's operations at any time.

ARTICLE 11. AUDIT OF RECORDS

a) All statements required hereunder shall be prepared in accordance with sound accounting practice acceptable to the Port Authority and sworn to by a responsible
fiscal officer of the Contractor. Submission of a statement shall be deemed to constitute a representation by the Contractor that all matters set forth therein are true and accurate and that the Contractor performed the Services for which payment is described in the statement in accordance with this agreement. Each statement shall be subject to verification and audit by the Port Authority and no payments made by the Port Authority or credits given by the Port Authority as herein provided shall be deemed to be final until the statement upon which the payment is based has been approved by the Port Authority. No payment or credit, if not final and mutually agreed upon, shall operate to release the Contractor from any of its obligations related to such payment or credit under this agreement. In the event that after verification and audit by the Port Authority and approval of the statement of the Contractor, it is determined that payments previously made by the Port Authority are in excess of those required under this agreement then the Contractor shall pay to the Port Authority on demand the amount of said excess, or the Port Authority shall deduct said excess from any subsequent payments due to the Contractor.

b) In the event that upon conducting an examination and audit pursuant to this agreement, the Port Authority determines that unpaid amounts are due to the Port Authority by the Contractor (the "Audit Findings"), the Contractor shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount of five percent (5%) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge (s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Contractor under this agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority to payment of any late charge(s) or other service charge(s) payable under the provisions of this article with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid hereunder. Nothing in this article is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this agreement, including, without limitation, the Port Authority's rights to revoke or terminate this agreement, including, without limitation, the Port Authority's rights to revoke or terminate this agreement or (ii) any obligations of the Contractor under this agreement.

ARTICLE 12. FEDERAL AIRPORT AID

The Port Authority has applied for and received a grant or grants of money from the Administrator of the Federal Aviation Administration (or “FAA”) pursuant to the Airport and Airways Development Act of 1970, as the same has been amended and supplemented and under prior federal statutes which said Act superseded and the Port Authority may in the future apply for and receive further such grants. The FAA current grant program is known as the Airport Improvement Program, or “AIP”, established under the Airport and Airway Improvement Act of 1982 (Public Law 97-248). In connection therewith, the Port Authority has undertaken and may
in the future undertake certain obligations respecting its operation of the Airport and the activities of its contractors, lessees and permittees thereon. The performance by the Contractor of the covenants and obligations contained in this agreement is therefore a special consideration and inducement to the making of this agreement by the Port Authority, and the Contractor further covenants and agrees that if the Administrator of the Federal Aviation Administration or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with Federal Airport Aid shall make any orders, recommendations or suggestions respecting the performance by the Contractor of its covenants and obligations under this agreement, the Contractor will promptly comply therewith at the time or times, when and to the extent that the Port Authority may direct in writing.

**ARTICLE 13. PUBLIC POLICY REQUIREMENTS**

a) Non-Discrimination

The Contractor shall comply with section 1 (*No Discrimination*) of Exhibit E (*Public Policy Requirements*).


(1) The Contractor shall comply with section 2 (*Affirmative Action*) of Exhibit E (*Public Policy Requirements*).


c) Labor Harmony

The Contractor shall comply with section 3 (*Labor Harmony*) of Exhibit E (*Public Policy Requirements*).

d) Local Business Enterprise and Employment Opportunity

The Contractor shall comply with Schedule F (*Local Business Enterprise and Employment Opportunity*) of Exhibit E (*Public Policy Requirements*).

e) ACDBE Participation

The Contractor shall comply with Schedule G (*ACDBE Participation*) of Exhibit E (*Public Policy Requirements*).
f) Office of Inspector General and Integrity Monitor

(1) The Port Authority, the Office of Inspector General for the Port Authority (or “OIG”) and the Integrity Monitor (“Integrity Monitor” means the private independent organization with legal, auditing, accounting, engineering and investigative expertise (and its subcontractors and sub-consultants) that the Port Authority has engaged to assist it in its fraud prevention efforts) each have the right at any time and without cause to audit or investigate any and all records of the Contractor and its subcontractors and concessionaires with respect to the Services, the concessionaire activities and the Airport facility, including records pertaining to any compensation paid, payable, or to be paid under any subcontracts, and for compliance with this section. Neither the Contractor nor any of its subcontractors or concessionaires shall be entitled to any reimbursement or other compensation for costs associated with any audit or investigation under this section.

(2) The Contractor shall, within fourteen (14) days of receiving an invoice from the Port Authority, reimburse the Port Authority for the cost (including attorney fees) of any audit, investigation or lawsuit conducted by or on behalf of the Port Authority, the OIG or the Integrity Monitor where any fraud, corruption, or other criminal activity or non-compliance with this article by a Contractor Party (“Contractor Party” is defined as any subcontractor or concessionaire or other party performing any of the Airport Contractor’s Services, any other party for whom the Contractor may be legally responsible, including invitees and trespassers, and the affiliates, agents, officers, directors, representatives, employees, consultants, partners, members, managers, successors, assigns, guests and invitees of, and any other parties doing business with, any of them) is discovered or confirmed by the Port Authority to have occurred. The Port Authority or the OIG shall determine, in its absolute discretion, the value of these costs and shall decide whether to charge the Contractor for these costs, which may be deducted from any amounts owed to the Contractor by the Port Authority.

(3) The Contractor shall cooperate fully and shall ensure that all subcontractors and concessionaires cooperate fully, with the Port Authority, the OIG and Integrity Monitor, including by promptly providing complete access to the Airport facility and all personnel and records in any way related to the Services or the concessionaire activities.

(4) If there is a failure to cooperate with the OIG or the Integrity Monitor by the Contractor or any subcontractor or concessionaire:

(i) this failure shall constitute a Contractor default; and
the Port Authority, in its absolute discretion, may direct the Contractor to remove and terminate any uncooperative subcontractor or concessionaire, in which case the Contractor shall comply with such direction.

(5) The Contractor shall ensure that all subcontracts and concessionaire agreements, including lower-tier subcontracts and sub-consultant agreements, comply with the provisions of the OIG "Background Qualifications Questionnaire Package," available from the OIG.

(6) This section shall be included in any agreement that the Contractor enters into with any subcontractor or concessionaire, including lower-tier subcontractors and sub-consultants.

(7) E-Verify

(i) The Contractor shall confirm and verify that all Persons (both citizens and noncitizens) performing the Services or the concessionaire activities in the United States are legally present in the United States and authorized to work in accordance with the I-9 employment eligibility verification program derived from the Immigration Reform and Control Act of 1986 and its implementing regulations.

ARTICLE 14. PORT AUTHORITY OPERATIONAL APPROVALS

On any matter under this agreement of a solely operational nature, whenever the approval or consent of the Port Authority is expressly required hereunder and such matter does not involve or result in any modification or supplementation of this agreement, the Contractor shall communicate with the Manager of the Airport and, as to the specific subject matter thereof, shall be entitled to rely on such decision which she/he or her/his duly designated representative as to such matter.

ARTICLE 15. INTENTIONALLY OMITTED

ARTICLE 16. OWNERSHIP OF MATERIALS

f) All of the files, books, records and other personal property which are transferred to the possession or control of the Contractor upon or in connection with the execution of this agreement are and shall remain the sole and exclusive property of the Port Authority. All files, books and records set up or maintained by the Contractor thereafter in connection with this agreement, of the type presently used or which may be necessary or convenient for the Contractor to develop, prepare or use in the performance of services during the Term, shall also be and remain the sole and
exclusive property of the Port Authority, whether or not the same are patentable or registrable, all of which shall be considered a work made for hire within the meaning of the copyright laws of the United States. If for any reason whatsoever such work prepared or developed by the Contractor in connection with its Services under this agreement is not considered a work made for hire under such laws, then the Contractor hereby grants and assigns to the Port Authority all of its right, title and interest to such work. The foregoing shall not be applicable to any proprietary systems or documentation or other items of personal or intellectual property which was developed by the Contractor independent of this agreement but may be used by the Contractor in the performance of its Services under this agreement, any such proprietary systems or documentation or other items of personal or intellectual property to remain the sole and exclusive property of the Contractor.

g) To the extent the Port Authority provides the Contractor with access to market research it has available on the users of the Terminal or the Airport, such market research shall be maintained on a confidential basis by the Contractor and shall not be shared with or otherwise communicated to third parties without the prior written approval of the Port Authority; provided, however, that information shall not be deemed to be "confidential" for purposes of this paragraph if it is information which (i) the Contractor can demonstrate was in its possession prior to the Port Authority disclosing same to Contractor, (ii) is disclosed to the Contractor by a third party where such third party is not under a duty of confidentiality not to so disclose the relevant information, (iii) is in the public domain, or (iv) the Contractor is required to disclose pursuant to court or administrative order or subpoena (after prior adequate notice to the Port Authority so as to provide the Port Authority an opportunity to prevent or limit such required disclosure). The Contractor agrees to utilize this market research information and any other research the parties may mutually agree to conduct, in order to ensure that concession concepts developed for the Terminal closely match the needs and desires of the users of the Terminal.

ARTICLE 17. BROKERAGE

a) The Contractor and the Port Authority each represent and warrant to the other that no broker or finder has been concerned or involved on its respective behalf in the negotiation of this agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Contractor and the Port Authority shall indemnify and save each other harmless of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to the Contractor or the Port Authority, as the case may be, in connection with the negotiation and execution of this agreement.

b) Without limiting the generality of Exhibit A hereto, without the prior written consent of the Port Authority in each and every instance, the Contractor shall not be authorized or entitled to retain, contract with or use the services of a broker to identify, select, negotiate or otherwise procure a prospective tenant or other
user/occupant at the Terminal and, unless the Contractor obtains such prior written consent, the Contractor shall indemnify and save harmless the Port Authority, its commissioners, officers, employees and representatives of and from any and all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the identification, selection, negotiation or procurement of said tenant or other user/occupant.

ARTICLE 18. OFAC REPRESENTATION

a) Contractor’s Representation and Warranty. The Contractor hereby represents and warrants to the Port Authority that the Contractor (i) is not a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Assets Control (“OFAC”) of the United States Department of the Treasury (including, without limitation, those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order or other regulation relating to national security or foreign policy (including, without limitation, Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism), or other governmental action related to national security, the violation of which would also constitute a violation of law (such persons being referred to herein as “Blocked Persons”, and such regulations, statutes, executive orders and governmental actions being referred to herein as “Blocked Persons Laws”) and (ii) is not engaging in any dealings or transactions or is otherwise associated with Blocked Persons in violation of any Blocked Persons Laws. The Contractor acknowledges that the Port Authority is entering into this agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this agreement.

b) Contractor’s Covenant. The Contractor covenants that during the Term of this agreement it shall not (i) become a Blocked Person nor (ii) engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of the aforesaid covenant, the same shall constitute a default under this agreement which may subject the Contractor to termination of the letting hereunder. In the event of any termination by the Port Authority as authorized under applicable sanctions law requirements or enforced pursuant thereto, or in accordance with the terms hereof, the Contractor shall, immediately on receipt of the Port Authority’s termination notice, cease all use of and operations permitted under this agreement and surrender possession of the Premises to the Port Authority without the Port Authority being required to resort to any other legal process.

c) Contractor’s Indemnification Obligation. The Contractor shall indemnify and hold harmless the Port Authority Indemnified Parties from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney’s fees (including fees of in-house and outside counsel to the Port Authority) and disbursements) arising out of, relating to, or in connection with the Contractor’s breach of any of its representations and warranties made in this section. Upon the request of the Port Authority, the Contractor shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim

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or demand is groundless, false or fraudulent) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

d) Survival. The provisions of this section shall survive the expiration or earlier termination of the term of the letting hereunder.

**ARTICLE 19. DISALLOWED CHARGES**

a) The Contractor shall not charge any concessionaire for (and no concessionaire at Terminal B will be obligated to pay) any amounts with respect to costs that the Contractor incurs in connection with:

(i) repair, maintenance, lighting, waste management and removal or operation costs of the food court (if any) except on the food-and-beverage concessionaires actually operating their business within the designated food court area (on a pass-through basis only with no added administrative or other up-charge);

(ii) receipt, storage, transportation or delivery of goods, inventory or equipment of any kind, except on concessionaires (on a pass-through basis only with no added administrative or other up-charge) to receive, store, transport and deliver concessionaires’ goods, inventory and equipment to and from loading docks and the concessionaires’ concession spaces or storage space;

(iii) marketing and advertising, except on concessionaires (on a pass-through basis only with no added administrative or other up-charge) for charges relating to marketing the concessions program at Terminal B, including for directories and similar wayfinding devices; and

(iv) Utilities, except for utilities provided by the Contractor directly to concessionaires for consumption in the premises (on a pass-through basis only with no added administrative or other up-charge) in lieu of such concessionaires making direct payments to utility providers.

b) No concession-management fees or related fees, or fees for the review of construction-related or refurbishment-related work to be performed by concessionaires, may be imposed on concessionaires and no rent, charges or other fees may be imposed on concessionaires for expenses relating to (x) the screening and identification of badging or (y) the receiving, storing or transporting of goods, inventory or equipment of any
kind (from a location off-Premises or otherwise) other than to or from the loading docks located at the Terminal, as elsewhere permitted in this agreement

c) The Contractor shall not impose a charge of any kind on any concessionaire or prospective concessionaire (or on any employee, agent, affiliate, consultant, representative or contractor of a concessionaire) in connection with the review, approval, or construction administration of any construction work which is subject to the Port Authority’s Tenant Construction and Alteration Process Manual, or “TCAP”. This prohibition applies regardless of whether the review, approval or construction administration is conducted directly by the Contractor.

d) The Contractor shall not impose a charge of any kind on any concessionaire or prospective concessionaire (or on any employee, agent, affiliate, consultant, representative or contractor of a concessionaire) for, and no concessionaire or prospective concessionaire will be obligated to pay for, or reimburse, the cost of an audit of close-out documents relating to any Construction Work which is subject to TCAP, regardless of the percentage discrepancy that such audit might reveal in calculating the cost of fixed improvements installed by or on behalf of the Contractor. This prohibition applies whether or not the audit is conducted by or on behalf of the Contractor.

ARTICLE 20. SECURITY [RESERVED]

ARTICLE 21. COMPLIANCE WITH APPLICABLE LAWS AND GOVERNMENTAL APPROVALS AND REGULATIONS

(a) Compliance with Applicable Law and Applicable Standards

The Contractor shall perform, and shall ensure that all Contractor Parties perform, the Concession Management Services and the concessionaire activities in accordance with all applicable laws and standards.

The Contractor shall, within forty-eight (48) hours after its receipt of any notice of violation, warning, notice, summons, or other legal process for the enforcement of any governmental laws, rules, regulations, requirements, orders, directions, enactments, ordinances, or resolutions, relating to the Contractor’s Services or the concessionaire activities, deliver the same to the Port Authority for examination. Unless otherwise directed in writing by the Port Authority, the Contractor shall conform (and shall ensure that the Contractor Parties conform) to such enactments, ordinances, resolutions and regulations insofar as they relate to the Contractor’s Services or the concessionaire activities. In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the Contractor, acting in good faith, commenced after such delivery to the Port Authority but prior to the receipt by the Contractor of a written direction from the Port Authority, such compliance shall not constitute a breach of this
agreement, although the Port Authority may thereafter notify the Contractor to refrain from such compliance, provided that the Contractor shall not be required to comply with the Port Authority's notification if it may result in the Contractor's violation of applicable laws or standards. Nothing in this section shall release the Contractor from compliance with any other provision of this section respecting governmental requirements.

(b) Governmental approvals

The Contractor shall obtain, maintain and comply with, and shall ensure that all Contractor Parties obtain, maintain and comply with, all Governmental approvals, required for performance by the Contractor of the Contractor’s Services and the concessionaire activities in accordance with this agreement.

The Contractor's obligation to comply with Governmental approvals is not to be construed as a submission by the Port Authority to the application to itself of those Governmental approvals.

(c) Facility Rules and Regulations of the Port Authority

Throughout the Term, the Contractor shall observe and comply with, and shall ensure that the other Contractor Parties observe and comply with:

(i) the Port Authority Air Terminal Rules and Regulations ("Air Terminal Rules and Regulations") promulgated by the Port Authority then in effect as of the Effective Date (Air Terminal Rules and Regulations shall be understood to include General Manager Bulletins); and

(ii) the applicable Port Authority Standards Manual ("Airport Standards Manual").

In addition, the Contractor shall observe and comply with, and shall ensure that the other Contractor Parties observe and comply with all future revisions to or amendments of the Air Terminal Rules and Regulations and the Airport Standards Manual that are made by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance of the Airport, quality passenger experience, or for the safe and efficient operation of the Airport.

Except in cases of emergency, the Port Authority will generally provide at least ten (10) days' prior notice to the Contractor of each Air Terminal Rule and Regulation and any changes to the Airport Standards Manual adopted after the Effective Date before the Contractor will be required to comply with the new Air Terminal Rule and Regulation and/or the change to the Airport Standards Manual.
A copy of the facility Air Terminal Rules and Regulations of the Port Authority will be available for the Contractor's review at the Office of the Secretary of the Port Authority.

The Port Authority reserves the right to require the Contractor to provide written reports detailing its compliance with the Air Terminal Rules and Regulations and Airport Standards Manual. In the event of non-compliance, the Port Authority may opt to require the Contractor to provide a remedial plan to become compliant forthwith.

In the event that the Contractor does not become compliant with the Air Terminal Rules and Regulations and Airport Standards Manual in accordance with a remedial plan approved by the Port Authority, or the Port Authority and the Contractor are not able to agree upon such a remedial plan within thirty (30) days after the Port Authority first notifies the Contractor that it is non-compliant, then the Port Authority may in its sole discretion take steps to perform as required to achieve compliance in lieu of the Contractor, and to charge the Contractor for the Port Authority’s performance in an amount equal to the Port Authority’s costs plus an additional thirty percent (30%) for supervisory, administrative and headquarters fees and expenses. The Contractor confirms that the fees and expenses in the preceding sentence are reasonable for provision by the Port Authority of those actions in lieu of the Contractor. Nothing in this paragraph shall create any duty on the part of the Port Authority to perform in lieu of the Contractor, and no third party shall have any rights to demand Port Authority performance as a result of the option provided to the Port Authority in this provision. In the event such costs and expenses are charged to the Contractor by the Port Authority, they shall be due and payable thirty (30) days following receipt of a demand for payment by the Contractor or, at the option of the Port Authority, applied against the security posted and held upon prior notice to the Contractor. Failure to provide payment within the thirty (30) day period will result in late charges.

The Contractor shall not perform (and shall ensure that no Contractor Party performs) any activity or services at the Airport for which the Applicable Standards or Port Authority policy requires the issuance of a Port Authority permit unless the relevant Contractor Party has obtained the Port Authority-issued permit and paid any relevant fees associated with the permit.

**ARTICLE 22. BEST MANAGEMENT PRACTICES**

The Contractor shall perform, and shall ensure that all Contractor Parties perform, the Concession Management Services in accordance with:

(2) the requirements of this agreement; and
(3) **Best Management Practices.**

(i) **“Best Management Practices”** shall mean the exercise of the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from time to time from a highly skilled and experienced airport Contractor or airport management services provider, or a skilled and experienced designer, engineer, or contractor, as applicable, seeking in good faith and with a high degree of diligence to comply with its contractual obligations (including, in the case of an Airport Contractor or Airport management services provider, obligations to consistently operate and maintain World Class Terminal facilities), complying with applicable law, governmental approvals, and applicable standards, and engaged in the same type of undertaking under similar circumstances and conditions. Best Management Practices is not static but rather will change over time; provided, however, that Best Management Practices with respect to any particular activity will be determined at the time when such particular activity is performed.

**ARTICLE 23. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.**

This section supersedes Section 5 of Part III of the Standard Contract Terms and Conditions.

(a) At all times during the term of this agreement, the Terminal or any affiliate thereof shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this agreement or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this agreement.

(b) As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the agreement or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor or any of its affiliates, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this agreement or any
other Port Authority contract. Where used in this section, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

(c) The Contractor shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Terminal facilities and shall so instruct its personnel. The Contractor shall include the provisions of this clause in each subcontract entered into under this agreement.

(d) The Contractor or any affiliate thereof must not make an offer of employment, use confidential information or act in a manner proscribed by the Code of Ethics and Financial Disclosure dated as of March 11, 2014, as may be revised (a copy is available upon request to the Office of the Secretary of the Port Authority).

(e) Neither the Contractor nor any affiliate thereof knows of any action on the part of any employee or former employee of the Port Authority which constitutes a breach of said Code of Ethics and Financial Disclosure. If the Contractor or any affiliate of the Contractor comes into such knowledge at any time hereafter, including during the term of this agreement, it must report this conduct to the Port Authority's Office of Inspector General within three Business Days of its discovery, any failure to do so will be deemed a material breach of this agreement.

ARTICLE 24. PROHIBITED PARTY

a) The Contractor hereby represents and warrants to the Port Authority that none of the Contractor, any affiliate of the Contractor, or any officer, director, agent, employee, member (if Contractor is a limited liability entity), manager (if Contractor is a limited liability entity), partner (if Contractor is a partnership) or nominal or beneficial owner of a ten percent (10%) or more interest in the Contractor is a Prohibited Party.

b) “Prohibited Party” means any Person who is:

(1) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement transactions with the Federal government or any department, agency or instrumentality thereof pursuant to any of the Debarment Regulations;

(2) indicted, convicted or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and an event has occurred or a condition exists that is likely to result in the debarment or suspension of such Person from contracting with the Federal government or any department, agency or instrumentality thereof;

(3) listed on the “Lists of Parties Excluded from Federal Procurement and
Nonprocurement Programs” issued by the U.S. General Services Administration;

(4) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by OFAC;

(5) designated on the OFAC list of “Specially Designated Nationals”;

(6) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other Federal economic sanctions authority or any divestment or sanctions program of the State of New York or New Jersey;

(7) a banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under section 311 of the USA PATRIOT Act;

(8) located within or is operating from a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;

(9) a financial institution against which the United States Secretary of the Treasury has imposed special measures under section 311 of the USA PATRIOT Act;

(10) a “senior foreign political figure” or a prohibited “foreign shell bank” within the meaning of 31 C.F.R. § 103.175; or

(11) an entity with whom the Port Authority is engaged in litigation relating to performance of contract or business practices (unless the Port Authority has first waived (in Port Authority’s sole discretion) by written notice to the transferring equity holder, with a copy to the Contractor, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

ARTICLE 25. MISCELLANEOUS

a) The captions, if any, in this agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of the provisions and terms hereof.

b) Wherever, under this agreement, written direction or prior written approval or consent of the Port Authority is required, such direction, approval or consent shall be given, conditioned, withdrawn or modified by written notice, in the sole discretion of the Port Authority.

c) The deletion of language from this agreement prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication. Consequently, in the event an ambiguity or question of intent or interpretation arises, this agreement, and any amendments, addendums, supplements, exhibits or Schedules hereto, shall be construed as if drafted jointly by the
parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this agreement. The deletion of language from this Contract prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication.

d) The terms, provisions and obligations contained in any exhibit or schedule attached hereto, whether there set out in full or as amendments of, or supplements to provisions elsewhere in this agreement stated, shall have the same force and effect as if herein set forth in full.

e) The Contractor hereby waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Contractor in respect of the Premises or this agreement or in any action that may be brought by the Port Authority to recover fees, damages, or other sums payable hereunder. The Contractor shall not interpose any claims as counterclaims, set-offs or defenses in any summary proceeding or action for non-payment of fees, or for recovery of possession of Premises, or otherwise in respect of this agreement, which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

f) No Commissioner of the Port Authority, and no officer, employee, agent or representative of either Party will be charged with any liability or held personally liable under any term or provision of this agreement, or because of any of their acts or omissions or because of the execution or attempted execution of this agreement, or because of any breach or attempted or alleged breach of any provision of this agreement.

g) This agreement is binding upon and will inure to the benefit of the Port Authority and the Contractor and their respective successors and permitted assigns.

h) Nothing contained in this agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward, any Person not a party to this agreement, except rights expressly contained in this agreement for the benefit of the Indemnified Parties.

i) This agreement together contains the entire understanding of the Parties with respect to the subject matter of the Contractor’s Concession Management Services and supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

j) If any clause, provision, section, subsection or part of this agreement is invalid or unenforceable or would destroy its mutuality or render it invalid or illegal, that provision will not be deemed to form part of this agreement and the balance of this agreement will remain in full force and effect, and this agreement will be construed and enforced as if it did not contain that provision.
k) This agreement may be signed in any number of counterparts, each of which will be an original.

ARTICLE 26. ENTIRE AGREEMENT

This agreement consists of the following: Articles 1 through 26 inclusive, Schedule A and Exhibits A through E. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Contractor. The Contractor agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By________________________

(Title)____________________

(Seal)

[CONTRACTOR]

By________________________

(Title)____________________

Port Authority Use Only:
STATE OF NEW YORK  )

COUNTY OF NEW YORK  )

On the day of in the year 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument the person upon behalf of which the individual acted, executed the instrument.

(Notes)

(notarial seal and stamp)
STATE OF  
  
COUNTY OF  

On the    day of    in the year 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared    , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument the person upon behalf of which the individual acted, executed the instrument.


(notarial seal and stamp)
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<thead>
<tr>
<th>Tenant Name</th>
<th>Product Category</th>
<th>Terminal Location</th>
<th>No of Locations</th>
<th>Total Square Footage</th>
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**Terminal B Total Concession Square Footage**: 51,186

*List does not include short term space permit arrangements with concessionaires other than in-line stores.*
EXHIBIT A—SCOPE OF SERVICES

SUMMARY OF SCOPE OF WORK

Manage and oversee, on behalf of the Port Authority, over thirty (30) agreements with food, beverage and retail tenants. In addition, ensure the efficient operation of stores and restaurants by providing delivery and storage services to the concession tenants through a highly secured loading dock area where goods and services are shipped and stored.

FOOD & BEVERAGE AND RETAIL RESPONSIBILITIES

1. Planning & Development, Overall Services
   
a. At the direction of the Port Authority, assist in the development of comprehensive concessions program including, but not limited to, specialty retail, news & gift/traveler essentials, food & beverage, foreign currency, banking (including ATMs), employee cafeterias, duty-free, automated retail/vending machine and other miscellaneous consumer/passenger concession services (including providing access to lottery and gaming services but only if and as approved, in writing, in advance by the Port Authority).

b. Conduct comparative airport statistical analyses as required to support proposed space allocation, tenant rental structure, sales and revenue projections.

c. Update concession space requirement analyses based on changes to enplanement and circulation analyses.

d. Prepare a list of prospective tenants and a leasing pro-forma for the project.

e. Prepare analyses of early terminations/extensions to consider potential improvements to the concession program.

f. Monitor compliance with the terms of the leases, including use clauses, insurance, health and similar inspections, performance guarantees, pricing policies, product quality and variety, capital expenditures, operating hours, signage, visual merchandising, employee appearance, customer experience, cleaning and maintenance, and ACDBE policy compliance.

g. Act as a collection agent, on behalf of the Port Authority for all fees, including but not limited to rental payments (basic and percentage rent), promotion fees, distribution charges, loading dock fees, and common area maintenance (CAM) fees and other third party vendor fees (if any other such third party vendor fees are pre-approved by the Port Authority).
2. Overall Property Management

The Contractor will perform day-to-day management of concession operations at Terminal B, provide sufficient on-site staff to perform various concession management-related functions and act as a collection agent on behalf of the Port Authority for all fees, including but not limited to rental payments (minimum and percentage rent), promotion fees, distribution charges, loading dock fees and common area maintenance (CAM) fees and other third party vendor fees. Also, included as the Contractor's duties are the following:

a. Manage the concession program in a way that maximizes the highest and best use and financial return to the Port Authority.

b. Calculate monthly rent and prepare monthly billings, verify collection of rent in accordance with the Port Authority's procedures, generate financial reports and pay amounts due to the Port Authority as directed by the Port Authority.

c. Collect rent, prepare monthly outstanding receivables aged on 30/60/90-day basis. Follow up on delinquent receivables. Default notices and rent relief requests will be issued and/or write off of receivable amounts according to agreed policy.

d. Monitor, using due diligence, tenant compliance with the terms of the leases, including but not limited to exclusive use clauses, insurance, pricing, capital expenditures, quality of merchandise, hours of opening and closing, signage, cleanliness.

e. Generate monthly reports to the Port Authority, and such other financial and management reports as are usual and customary in concession management, and such other reports and analyses as may be reasonably requested by the Port Authority from time to time.

f. Coordinate periodic Port Authority employee training programs.

g. Respond to customer/passenger complaints in a timely fashion, within twenty-four (24) hours. Monitor social media and respond to concessions complaints that are tagged by PA social media monitors as such.

h. Act as liaison between the Port Authority and the concession tenants.

i. Process data for security ID Badging for tenant personnel. The Contractor's responsibilities shall be limited to providing assistance to the Port Authority Badging Office and the tenants to help facilitate the tenant employee badging process and screening of tenant goods, products, materials, equipment and supplies as may be required from time to time by the TSA, but the Contractor shall not have any other or further responsibility for or any liability with respect to security issues relating to such
tenant employee badging requirements, and such process and/or the screening of any such tenant goods, products, materials, supplies and equipment and the screening process.

j. Optimize ACDBE and local participation by meeting or exceeding the Port Authority's ACDBE goal.

k. Use commercially reasonable efforts to cause tenants to maintain their respective space and facilities in a first class manner pursuant to standards which may be promulgated from time to time.

l. Implement a customer experience program and use commercially reasonable efforts to ensure tenant compliance.

m. Provide quality control audits and reports covering compliance with tenant requirements, cleanliness of the Premises, timeliness of service and quality of the product.

n. Provide on-site staff to perform daily functions as required by the Customer Experience Airport Standards Manual (as the same may be amended from time to time).

o. Design, fabricate, locate, install and keep the directory signage up to date & current in coordination with the Port Authority (such expenses to he paid for from fees received from the tenants for marketing and promotional activities).

p. Implement any new concession policies and procedures as directed by the Port Authority but the Contractor shall not be required to incur any out-of-pocket costs and expenses vis-a-vis third parties related thereto but shall be required to incur whatever internal corporate costs and expenses are necessary for such implementation.

q. Coordinate and maintain general oversight of deliveries of tenants' goods and products from any designated on or off Airport storage area.

r. Develop a ACDBE community outreach program for concession opportunities, and coordinate its implementation with the Port Authority.

s. Manage and coordinate the implementation of mutually agreed-upon marketing and communications initiatives including seasonal marketing activities and development of marketing signage, flyers and other on-site advertising.

t. Oversee and manage a secret shopper program that reports on the service, integrity and overall performance of the concession tenants.
3. **Design and Construction Services**

   a. Develop design criteria in conjunction with the Port Authority to be followed by all tenants.

   b. Review tenant design submittals, construction procedures, schedule site surveys, develop design, permit and construction schedules, assist in the Port Authority's Tenant Construction and Alteration Process ("TCAP") process.

   c. Coordinate the TCAP process, attend pre-construction meetings, coordinate construction schedules with the TCAP Office, tenants, and airport staff.

   d. Provide scheduling and construction observation of tenant improvements performed by concession tenants.

   e. Monitor punch list completion and review testing and inspection reports for all concession tenants.

   f. Organize completed project files. Support the Port Authority in handling tenants' contractor claims, if they occur.

   g. Coordinate access to the Premises and equipment prior to opening for all concession tenants, to allow training of staff and testing of all equipment.

4. **Leasing, Budgeting and Financial Analysis**

   Monitor compliance with the terms of the lease, including use clauses, insurance, health and similar inspections, performance guarantees, pricing policies, product quality and variety, capital expenditures, operating hours, signage, visual merchandising, employee appearance, customer experience, cleaning and maintenance, and ACDBE policy compliance.

   Enforce the remedies found in the tenant's leases to ensure compliance with payment obligations and performance standards but shall not be obligated or authorized to commence legal proceedings against tenants. Depending on the nature of the non-compliance and the remedies available to the Port Authority under the lease and the law, Contractor will first work with the concession tenants, without itself commencing legal proceedings, to resolve the matters(s) and also assess and recommend enforcement action to the Port Authority when and if appropriate. Contractor will send preliminary communications to tenants notifying them of lease non-compliance matters including, but not limited to, communications regarding rent arrearages, and contemporaneously will provide copies of such communications to the Port Authority. Subsequent actions and/or notices shall be taken by Contractor after consultation with and/or direction from the Port Authority.
Annually, on or before September 30 during each Contract Year, develop and deliver to the Port Authority in writing annual sales projections (for the succeeding Contract Year) by concessionaire and location, for Terminal B.

a. Develop and maintain lease files, including copies of leases and amendments, abstracts, correspondence, licenses, insurance certificates and letters of credit, etc.

b. Computerize record keeping on a standard, commercially available, mutually acceptable, property management software program.

c. Develop monthly annual revenue projections by tenant, by concession type and by location.

d. Recruit, secure and retain the proper tenant mix.

e. Negotiate agreements with potential tenants to include, but not be limited to:
   i. Negotiating financial terms with potential tenants in accordance with the Port Authority's approved key business terms and baseline pro-forma.

   ii. Perform financial and credit background checks and investigations on all prospective tenants, including partners, joint ventures, and other key participants, to the extent such information is publicly available, or is provided by the prospective tenant, or is obtained with the consent of the prospective tenant, it being understood that the Contractor shall use commercially reasonable efforts to obtain all such background and investigatory information.

   iii. Prepare an abstract of potential tenant deals, outlining all business terms for the Port Authority's approval.

   iv. Coordinate the leasing process with the Port Authority, obtaining approval of each rental arrangement, based upon the standard form of leases approved in advance by the Port Authority.

   v. Prepare the appropriate leases with exhibits for signature by tenants and the Port Authority, based on term sheets previously by the Port Authority.

f. Work with the Port Authority to incorporate leasing activities with planning, design and construction activities.

g. Generate monthly airport revenue reports, ACDBE monthly utilization reports and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and
analyses as may be requested periodically by the Port Authority, including number of
transactions per period, average transaction value and sales per product category.

5. Marketing

Implement a marketing plan, which must include: terminal directories (brochures and signage)
and barricade signage and may include promotional events, special in-terminal advertising and
graphics campaigns, holiday shopping bags, and store discounts. Community organizations or
cultural institutions may also be incorporated into the program. The Contractor should assist
in the development of the Port Authority's internet site that would allow passengers to find out
what concessions are located in their Terminal and browse menus. Each tenant contributes .5%
(one-half percent) of gross receipts to the marketing program.

a. Develop an annual marketing budget for Port Authority approval.

b. Create a marketing campaign that promotes concession awareness in the Terminal as
well as targeting concessions throughout the program.

c. Develop marketing collateral that promotes the Aviation’s "Street" pricing campaign.

6. Facilities Management

Consistently monitor the appearance and maintenance of the Terminal’s common areas,
limited to those in the concession areas, such as food court seating areas. Report all
maintenance or cleaning issues to appropriate Port Authority or contractor staff.

The Contractor must also:

a. Communicate deficiencies in food court cleaning to the Port Authority. The Port
Authority has a separate cleaning contractor for food court floors and furniture and for
concourse floors.

b. Coordinate disposal of trash from tenant premises (non-food-court) to loading dock.
Tenants are responsible to pay for their own trash removal, but Contractor will
coordinate the billing.

c. Manage all aspects of loading dock operations by entering into third party contract(s)
for the loading dock for common area maintenance and delivery distribution.
Responsibilities including staffing, scheduling, employee appearance, facility and
equipment condition, cleanliness, complaint resolution, and similar standards specified
in the third party contracts, and manage such third party contractor's performance for
compliance with such contract.
It is strongly encouraged that all general cleaning and general janitorial services be subcontracted with Port Authority pre-qualified Certified W/M/DBE firms. Contact Small Business Programs at 212-435-7819 for a listing of the firms.

7. **Operations Review**

Conduct comprehensive and thorough monthly tenant operations reviews, which will be documented on a standard form agreed upon with the Port Authority and supported by digital photos. Operations reviews focus on store appearance and maintenance, merchandising, product quality, pricing, use-clause compliance, employee appearance, customer experience, and similar factors that are critical in providing passengers with first-class concession amenities. Tenant corporate offices and on-site managers will be immediately informed in writing of all operations issues, and Contractor's staff will follow up to ensure resolution.

8. **Tenant Communications**

- Develop and distribute orientation and information manuals for tenants.
- Conduct bi-monthly concession tenant meetings to discuss common problems, inform tenants of upcoming events, changes in air service future gate usage, construction and other factors that may affect concession operations.
- Serve as the liaison between the Port Authority and tenants, except when and to the extent that the Port Authority elects to deal directly with tenants.

9. **Customer Experience**

The Airports Council International (ACI)’s Airport Service Quality (ASQ) study “ACI-ASQ” study measures customer satisfaction on over 30 airport attributes, including the availability, quality, and value-for-money aspects of food and shopping places on-airport. The study, which is conducted quarterly and provides a global benchmark against domestic and international airports, has demonstrated that EWR concessions score at or below average scores of the airport’s peers. We are looking for a manager that will be focused on enhancing and delivering a best in class customer experience.

The Port Authority is dedicated to elevate our agency’s airport rankings among the world’s best by delivering an exceptional customer experience, and is currently in the process of updating the Customer Care Mystery Shopping program that will help us meet our objective.

Mystery Shopping is one tool we employ to drive airport performance and gauge the level of success in delivering the experiences our customers expect and deserve, while achieving compliance with our Customer Care Standards. We have taken a bold step together over the last six months to recommit ourselves to providing exceptional service as an airport community, acting and serving as a unified group. These efforts have resulted in the
development of a new training program, entitled WESOAR. This program, developed uniquely for our airports, promulgates the principles to achieve success: Welcome/Exceed expectations/Seek to commit/Own it/Approachable/Respect, and will be introduced over the next year, along with a new mystery shopping program.

In the interim, we are fully committed to meeting existing customer care standards. Starting in 2019, we raised the bar by revising and reweighting the scoring and point values assigned to behaviors that are mystery shopped to reinforce the standards, drive improved performance, and deliver a higher level of customer experience across our airport system.

Contractor to develop a comprehensive customer experience program designed to include the WESOAR Customer Experience program training for tenant managers and employees, performance monitoring and incentives and rewards.

The Program should include, as a minimum, the following:

- Ensure that tenant handbook contains Port Authority's Airport Standards Manual.
- Provide on a quarterly basis a "Mystery Shopper" program. Once tabulated, results will be forwarded to each store manager and corporate office. Contractor will then follow up with store personnel to make sure that all deficiencies are addressed. In addition, store employees that receive exceptional reports would receive small rewards in recognition of their hard work.

- Implement a customer intercept survey during which passengers and Airport employees will be surveyed semi-annually to better understand their trip characteristics, demographics, buying habits and concession preferences at the Terminals. Specific questions will be developed to enhance customer experience and product mix for existing concession locations. This information will be used to evaluate the current program, inform concession tenants of areas for improvement and target new business opportunities for future development.

- Contractor will implement a customer hot line to allow customers to call toll free, 24 hours a day, 365 days a year and speak to a live operator or to leave a voicemail message to let Contractor know how they were served at the Airport and suggest ways to improve concessions. Contractor will pass on the hot line comments to the tenants and within 48 hours of receiving a complaint, suggestion or request, the appropriate tenant or management personnel will contact the customer to respond to his/her call. Customers will also have the opportunity to complete comment cards at each concession location, which will be tabulated with the hot line calls. Monthly reports will be provided to the Port Authority as well as to concession tenants.
• Conduct daily "walk-throughs"-- to ensure that concession tenants are complying with Airport rules and regulations, such as operating hours, signage restrictions, uniform and name-tag use, and merchandising standards. Noted violations must be discussed with tenant managers immediately and followed up in writing with a set cure period. Contractor will be responsible for following up with the tenant to ensure that the infraction has been corrected appropriately and in a timely manner.

As part of its routine walk-throughs, Contractor staff will monitor employee appearance and follow up on tenant employee appearance issues with store management as necessary. All tenant employees must be appropriately attired and easy for customers to identify.

Conduct monthly operational reviews, to ensure that tenants comply with the performance standards set out in their respective leases.

Conduct pricing surveys, to ensure compliance with the Port Authority's street pricing standards and to promote competition within the concession environment. Contractor will develop and implement a semi-annual survey program, which compares on-airport concession prices with "Street Prices" in the greater NY/NJ metropolitan area. Tenants must be notified if pricing is inconsistent and they will be required to alter their prices to comply with lease provisions.

Contractor will organize periodic workshops and bring in outside customer experience consultants to assist tenant managers and employees in developing better customer experience habits. Similar workshops focusing on marketing, merchandising, loss prevention and employee retention will also be conducted as needed.

10. Tenant Support
Provide a range of support activities to tenants, including visual merchandising and marketing assistance, counseling on loss prevention, and joint efforts for staff recruiting and retention.

Coordinate concession-related job fairs and work with city-based agencies to assist with placements.

11. Airline Relations
Attend monthly briefing sessions with airlines, and act as a liaison between tenants and airlines, for instance sharing scheduling information and assisting in tenant arrangements for food vouchers for delayed passengers.

12. Transition Plan
Transfer and auditing of accounting and lease administration systems to new software system.
• Hiring of full-time, on-site staff.
• Office set-up and equipment purchasing/leasing.
• Development of office procedures handbook, tenant manual, customer experience programs, and operational program review.
• Individual tenant meetings
• Goal-setting meetings with the Port Authority

LOADING DOCK RESPONSIBILITIES

The loading dock and storage facilities support the stores and restaurants in Terminals B at Newark Liberty International Airport (EWR). The loading dock operator is to ensure the efficient delivery and storage services to these tenants and to maintain a highly secure area in which to receive the goods and store them. In addition, the operator is to maintain the premises and equipment in a clean, safe and orderly manner.

• Document deliveries via a digital photo system, inspect and log incoming goods. Label & store product in facility
• Contacts the tenants for immediate pick up of goods or moves the goods into assigned storage sites.
• Tenants are responsible for bringing goods from storage level to the concourse level where the shops/stores are located.
• Cold storage (Freezers/refrigerators) and dry storage (caged areas) and maintains security in the area via state-of the-art security system video cameras that record visits from tenants to their respective locked areas.
• Maintain detailed records of deliveries and pick-ups from each tenant
• Handle inbound and outbound UPS and Fed Ex Packages and other overnight mail services.
• Maintain and service all equipment
• Provide a Quality Service Survey to all concessionaires
• Clean, maintain work area & loading dock areas of Terminal B as detailed below:

The Loading Dock Operator shall also:

• Maintain the coolers and freezers in good working condition.
• Clean loading dock surfaces at Terminal B on a daily basis.
• Clean inside fenced paved area of Terminal B on a daily basis.
• Remove snow from paved areas inside fence at Terminal B.
• Paint exterior walls adjacent to freight elevator at Terminal B as directed by the EWR Manager or their authorized represented.
CURRENT LOADING DOCK RECEIVING PROCEDURES

Hours of Operation:
3:00 AM to 3:00 PM (Monday through Saturday)
3:00 AM to 12:00 Noon (Sunday)

Receiving Hours:
3:00 AM to 12:00 NOON (Monday through Saturday)
3:00 AM to 12:00 NOON (Sunday)

*Receiving times are estimated based on the information currently at hand are subject to change.

NOTE: Inbound vendor orders greater than 100 cases are encouraged to schedule an appointment.

If a vendor arrives without an appointment or is more than half-hour late for a scheduled appointment, he/she will be received on a first come, first serve basis.

All fresh baked goods, bread, pastries, magazines, and newsstand items be on the dock by 5:00 AM.

The driver parks his truck in the designated parking area and reports to the receiving area at the front dock area. The driver gives the bill of lading and/or packing slip to the receiving teammate, signs the 'DRIVER'S LOG BOOK" and backs into an open dock as directed by the teammate. The driver is responsible for the chocking of his wheels.

The driver unloads the product into wire cages or onto pallets as the receiver verifies that the product matches the paperwork. The driver must separate the product according to storage type (dry, cooler, freezer, and security).

All goods will be checked for quality and quantity and obvious damage or quality defects (The loading dock operator is not responsible for concealed damage). Additionally, the loading dock operator will check general size/weight specs AS MARKED ON VENDOR BOXES/FLATS, ETC against the packing slip. All noted discrepancies will be recorded in the "remarks" section of the vendor invoice and on the loading dock's delivery routing report.

The Loading Dock operator will refuse no product unless a safety or sanitation hazard exists or the loading dock has received specific instructions, in writing, by the store manager. All tenants need to have the ability to claim credit after the delivery. If the vendor has an item substitution, the loading dock will receive and record it in the "remarks" section of the delivery routing report.
The loading dock receiver signs the bill of lading and releases the driver. A loading dock teammate inputs the information in the computer, prints a delivery routing report and labels and places them in the customer delivery bin. The receiver retrieves the paperwork, places the delivery labels on the merchandise and returns the routing report to the customer delivery bin. The loading dock operator/Tenant receiver transfers freight from the loading dock facility directly to the tenant's storage space. Temperature and security sensitive merchandise will be immediately placed into the freezer, cooler, or secure space, refrigerated truck if the merchandise is to be transferred from terminal A to terminal B. Note: Tenant's will be notified of delivery and send representative to their storage area to place merchandise into secured area (Tenant's maintain keys to their storage area).

Retail Merchants and Newsstands that will have product delivered to the loading dock operator from their off-site location must ensure that the totes, cases, garment bags; rolling racks, etc. are secured with a seal or lock and the store location is clearly identified. All returnable transport containers need to be stenciled with the tenant name so they can be returned to their proper location. All fragile merchandise should be marked accordingly.

The loading dock operator will note the condition of the seal/lock at the time of the delivery. Information needed on the master load sheet is the tenant name, number of cases or pallets. Upon completion, the master load sheet is returned to the supervisor's office. The supervisor files the original and makes copies for the foreman and driver.

All deliveries will be done using the two elevators in the Centralized Receiving and Delivery areas. The loading dock operator will follow rules and regulations established by the FAA and AIRPORT OPERATIONS regarding security inspections for vehicles and/or merchandise. The tenant will be responsible for the transfer and delivery of received goods from the tenant's storage space to the storefront.

Red Labeled Next Day and Overnight and Ground packages are handled as any other delivery, and will be delivered to the tenant's storage space. Many tenants already have an established account with UPS or other express mail services and use their services to PICK-UP packages. Each tenant that has an UPS account also has an UPS booklet.

When a tenant has a UPS package, they call the loading dock office and notify one of the receiving clerks. Packages must be ready for UPS pickup at the loading dock office by 3:00 PM.

** Times are estimated based on the information currently at hand and are subject to change.

Tenants who call regarding UPS pickup after 3:00 PM will have their packages picked up by the UPS driver the following day.
For tenants who do not have an account with UPS, but wish to utilize their services, a "ONE TIME PICK UP" CAN BE ARRANGED. The tenant must call UPS and give the necessary information. Subsequently, UPS will notify the tenant of the cost. The tenant will telephone the loading dock operator and give notification of the "ONE TIME PICK UP". The loading dock operator generates a return routing report and in the "remarks" section, prints "ONE TIME PICK UP" along with an UPS cost associated with the pickup. At the time the tenant drops off the package, the loading dock operator will have the tenant sign the return routing report indicating that the loading dock operator has received the package. The loading dock operator must have payment twenty-four (24) hours before the scheduled pickup (the loading dock's warehouse teammates will not accept cash). When the UPS driver arrives at the loading dock warehouse, the driver will have a pickup record (the record will contain all the information explained to UPS on the phone). The loading dock operator will retain a receipt from the driver and it will be forwarded to the tenants’ storage area for the tenant to pickup.

The loading dock operator will not pay for a CASH ON DELIVERY package delivered by UPS. It is the tenant's responsibility to make arrangements to ensure a money order is picked up by a loading dock teammate twenty-four (24) hours in advance of “UPS COD” package(s) delivery.

Returns could consist of:

1. Vendor Returns - freezer, cooler, dry goods back to the vendor
2. Dirty linen returns

Tenants must make all arrangements with their vendor prior to notifying the loading dock of any returns. It is the tenant's responsibility to have the vendor fax a copy of a return authorization specifying the item(s) approved for return to the loading dock before any arrangements can be made for a scheduled pickup. Once the tenant calls the loading dock operator to schedule a pick up, the clerk will print the returns document along with the necessary return labels and place in the "returns to be picked up" bin. The loading dock operator provides the tenant with a returns booklet. The booklet is an in-house document created to provide both the loading dock operator and the tenant with an audit trail for verification of receipt by the loading dock teammates. In addition to signing the loading dock returns routing report, the tenant must complete and sign the return booklet ticket and give the carbon copy to the loading dock teammate for proof of pickup. The returns are kept at the loading dock facility until the next delivery for when that vendor arrives, credits are issued to the tenant. Return reports are kept on site for ninety (90) days. No claims will be accepted after ninety (90) days.

Due to restrictions associated with receiving liquor/beer i.e. individuals requiring bonding; the loading dock operator will not receive alcohol.

The loading dock operator is not responsible for providing escort services.
AREA = 503,602 SQ. FT. OR 11.5 AC
AREA = 5,646 SQ. FT.
## STANDARD CONTRACT TERMS AND CONDITIONS

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STANDARD CONTRACT TERMS AND CONDITIONS

PART I  GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted, "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued by an authorized member of the Procurement Department.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and Holidays, included.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and Holidays.

Month - unless otherwise specified, shall mean a calendar month.

Holiday(s) – means any holiday which is observed at the Site, as further detailed in the section of these Standard Contract Terms and Conditions entitled “Holidays.”

Director - shall mean the Director of the Department which operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, or one of his/her authorized representatives for the purpose of this Contract.

Manager - shall mean the Manager of the Facility for the time, or his successor in duties for the purpose of this Contract, or his duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Authority’s Procurement Department. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

Minority Business Enterprise (MBE) - means a business entity which is at least fifty-one percent (51%) owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Minority Group" means any of the following racial or ethnic groups:

(a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

(c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Sub continent, or the Pacific Islands;

(d) Native American or Alaskan native persons having origins in any of the original peoples
of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- The principal place of business must be located in New York or New Jersey;
- The firm must have been in business for at least three years with activity;
- Average gross income limitations by industry as established by the Port Authority.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Woman-owned Business Enterprise (WBE) - shall mean a business enterprise which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

PART II   GENERAL PROVISIONS

1. Facility Rules and Regulations of The Port Authority
   a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.
   
   b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

2. Contractor Not An Agent
   
   This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be
deemed to be agents, servants, employees or “special employees” of the Port Authority.

3. Contractor's Warranties

The Contractor represents and warrants:

a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;

b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;

c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;

d. That no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;

e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the Site of the Work as they may eventually be found to exist and warrants and represents that it can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by the Port Authority as to the feasibility of performance of this Contract or any part thereof.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority to review thoroughly all documents forming this Contract prior to opening of Bids on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to the Port Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.
4. **Personal Non-Liability**

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

5. **Non-Discrimination Requirements**

The Contractor shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Contract.

A. Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.

B. Contractor agrees that these “Non-Discrimination Requirements” are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Contract in accordance with Section 14 of these Standard Terms and Conditions entitled “Default, Revocation, or Suspension of Contract.”

C. Contractor agrees to cooperate fully with the Authority’s investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these “Non-Discrimination Requirements.”

6. **Rights and Remedies of the Port Authority**

The Port Authority shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.

b. The right to cancel this Contract as to any or all of the Work yet to be performed.

c. The right to specific performance, an injunction or any appropriate equitable remedy.

d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Port Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration; and no exercise by the Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such
other rights or remedies.

7. Rights and Remedies of the Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Port Authority, the Contractor expressly agrees that no default, act or omission of the Port Authority shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or abandon performance.

8. Submission To Jurisdiction

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

9. Harmony

a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

b. During the time that the Contractor is performing the Contract, other persons may be engaged in other...
operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

10. Claims of Third Persons

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

11. No Third Party Rights

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action."

12. Provisions of Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from the Port Authority, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall the Port Authority be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Default, Revocation or Suspension of Contract

a. If one or more of the following events shall occur:

   1. If fire or other cause shall destroy all or a substantial part of the Facility.
   2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest therein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

b. If one or more of the following events shall occur:

   1. The Contractor shall become insolvent, or shall take the benefit of any present or future
insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or

2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or

4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or

5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or

2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued
on or prior to the effective date of termination.

d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.

e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.

f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.

g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or
otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

i. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.

j. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.

k. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to the Port Authority for the Contractor's services under this Contract. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

The Port Authority shall not be precluded or estopped by any payment, final or otherwise, issued or made under this Contract, from showing at any time the true amount and character of the services performed, or from showing that any such payment is incorrect or was improperly issued or made; and the Port Authority shall not be precluded or estopped, notwithstanding any such payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with this Contract, and any moneys which may be paid to it or for its account in excess of those to which it is lawfully entitled.

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach
of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor (and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors’ employees) and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.

b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or
The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or
2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or
3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or
6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.

If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.

The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with,
or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.

h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

19. Assignments and Subcontracting

a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.

b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.

c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. Indemnification and Risks Assumed By The Contractor

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor’s agents, servants, officers, representatives and employees) arising out of or in any way connected to or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise out of or are in any way connected to the Contractor’s operations or to its performance of work under this Contract, or arise out of the acts, omissions or negligence of the Contractor, the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives or employees, third persons (including Contractor’s agents, servants, officers, representatives and employees), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise out of or are in any way connected to the Contractor’s operations or to its performance of work under this Contract, or arise out of acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and
all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions (negligent or not) of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.

b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.

c. The risk of claims, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

d. The risk of claims for injuries, damage or loss of any kind whether just or unjust of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) arising or alleged to arise out of or in connection with the Contractor’s operations or its performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

21. Approval of Methods

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for any injuries to persons or damage to property or environmental impairment arising out of its operations.

22. Safety and Cleanliness

a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.

b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.

c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all
facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility and to the Manager, Claims of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as the Port Authority may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of the Port Authority.

24. Trash Removal

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Facility Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of the Port Authority. No equipment or facilities of the Port Authority shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

25. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to the Port Authority and a receipt will be issued therefor.

26. Property of the Contractor

a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.

b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract the Port Authority may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to the Port Authority; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by the Port Authority as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to the Port Authority upon demand.

27. Modification of Contract

This Contract may not be changed except in writing signed by the Port Authority and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon the Port Authority unless expressed in writing in this Contract.

28. Invalid Clauses

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.
29. Approval of Materials, Supplies and Equipment

Only Port Authority approved materials, supplies, and equipment are to be used by the Contractor in performing the Work hereunder. Inclusion of chemical containing materials or supplies on the Port Authority Approved Products List – Environmental Protection Supplies constitutes approval. The list may be revised from time to time and at any time by the Port Authority and it shall be incumbent upon the Contractor to obtain the most current list from the Manager of the Facility.

At anytime during the Solicitation, pre-performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List – Environmental Protection Supplies, which product(s) shall be subject to review and approval by the Port Authority. Any alternate product so approved by the Port Authority may be used by the Contractor in performing the Services hereunder. Until such approval is given, only products on the Approved Products List – Environmental Protection Supplies may be used.

30. Intellectual Property

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as “Intellectual Property Rights”, in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of the Port Authority or its employees or agents, the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

The Contractor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Contractor’s or Port Authority’s use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor or the Port Authority, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Contractor and the Port Authority with said injunction, to the satisfaction of the Port Authority.

In addition, the Contractor shall promptly and fully inform the Director in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

31. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of the Port Authority, and the Port Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.
32. Designated Secure Areas

Services under the Contract may be required in designated secure areas, as the same may be designated by the Manager from time to time (“Secure Areas”). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor's personnel required to work therein. All personnel that require access to designated secure areas who are not under positive escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the Manager from time to time and at any time for access to Secure Areas and the escorting of personnel thereunder. Prior to the start of work, the Contractor shall request a description from the Manager of the Secure Areas which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Manager during the term of the Contract.

33. Notification of Security Requirements

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems, and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- **Execution of Port Authority Approved Non-Disclosure and Confidentiality Agreements**
  
  At the direction of the Port Authority, the Contractor shall be required to have its principals, staff and/or subcontractor(s) and their staff, execute Port Authority approved non-disclosure and confidentiality agreements.

- **Contractor/ Subcontractor identity checks and background screening**
  
  The Port Authority’s designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff’s name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification, to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

  The Contractor may be required to have its staff, and any subcontractor’s staff, material-men, visitors or others over whom the Contractor/ subcontractor has control, authorize the Port Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Port Authority. The Contractor and subcontractors may also be required to use an organization designated by the Port Authority to perform the background checks.

  In accordance with the Port Authority’s Information Security Handbook, background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

  1) Confidential Privileged Information
  2) Confidential Information related to a security project and/or task
  3) Secure Area of an Authority or PATH facility
  4) Mission critical system
The Contractor shall perform background checks through the Port Authority’s personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at http://www.secureworker.com, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

• **Issuance of Photo Identification Credential**

No person shall be permitted on or about the Port Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Port Authority. If the Port Authority requires facility-specific identification credentials for the Contractor and the subcontractor’s staff, the Port Authority will supply such identification at no cost to the Contractor or its subcontractors. Such facility-specific identification credential shall remain the property of the Port Authority and shall be returned to the Port Authority at the completion or upon request prior to completion of the individual’s assignment at the specific facility. It is the responsibility of the appropriate Contractor or subcontractors to immediately report to the Port Authority the loss of any staff member’s individual facility-specific identification credential. The Contractor or subcontractor will be billed for the cost of the replacement identification credential. Contractor’s and subcontractor’s staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Port Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, un laminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identifcation verification for all employees of the Contractor and subcontractor shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

• **Access control, inspection, and monitoring by security guards**

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subcontractor/subcontractor’s and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Contractor, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Contract, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

• **Compliance with the Port Authority Information Security Handbook**

The Contract may require access to Port Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October 15, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby
incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The Handbook can be obtained at: http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf.

- Audits for Compliance with Security Requirements
  The Port Authority may conduct random or scheduled examinations of business practices under this section entitled “NOTIFICATION OF SECURITY REQUIREMENTS” and the Handbook in order to assess the extent of compliance with security requirements, Protected Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

34. Construction In Progress
  The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

35. Permit-Required Confined Space Work
  Prior to commencement of any work, the Contractor shall request and obtain from the Port Authority a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

  Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Manager to obtain an Authority Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish the Port Authority with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

36. Signs
  Except with the prior written approval of the Port Authority, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

37. Vending Machines, Food Preparation
  The Contractor shall not install, maintain or operate on the Facility, or on any other Port Authority property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by the Port Authority for such purpose.

38. Protected Information/Non-Publication
  a. As used herein, confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Authority's and/or PATH’s past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and/or PATH and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers,
access codes, passwords, and reports obtained and/or used during the performance of the Contractor’s Services under this Contract.

b. Protected Information shall mean and include collectively, as per The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018, and as may be further amended), Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director/General Manager in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor’s attention in connection with this Contract.

d. The Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the vendor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

39. Time is of the Essence

Time is of the essence in the Contractor’s performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

40. Holidays

The following Holidays will be observed at the Site:

- New Year's Day
- Martin Luther King Jr. Day
- Presidents Day
- Memorial Day
- Independence Day
- Christmas Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Day After Thanksgiving

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the Manager. If any such Holiday falls on a Sunday then the next day shall be considered...
the Holiday and/or if any such Holiday falls on a Saturday then the preceding day shall be considered the Holiday.

41. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled “Personnel Requirements” in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Manager, any employee so assigned is performing his/her functions unsatisfactorily, he/she shall be replaced by the Contractor for Work under this Contract within twenty-four (24) hours following the Contractor’s receipt of the Manager’s request for such replacement.

All Contractor’s employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

42. General Uniform Requirements for Contractor’s Personnel

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor’s identification badge with picture ID bearing the employee’s name. All uniforms, colors, types and styles shall be subject to the prior approval of the Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

43. Labor, Equipment and Materials Supplied by the Contractor

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

The Port Authority by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its agents, servants and employees and to do any act or thing which the Port Authority may be obligated or have the right to do under this Contract or otherwise.

All equipment, materials and supplies used in the performance of this Contract required hereunder shall be used in accordance with their manufacturer's instructions.

Materials and supplies to be provided by the Contractor hereunder shall comply with OSHA and all applicable regulations.

44. Contractor’s Vehicles – Parking - Licenses

At the discretion of the Manager, the Port Authority may permit the Contractor during the effective period of
this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to
time or at any time be designated by the Manager. The Contractor shall comply with such existing rules,
regulations and procedures as are now in force and such reasonable future rules, regulations and procedures
as may hereafter be adopted by the Port Authority for the safety and convenience of persons who park
automotive vehicles in any parking area at the Site or for the safety and proper persons who park automotive
vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the
Contractor shall also comply with any and all directions pertaining to such parking which may be given from
time to time and at any time by the Manager. Any vehicle used by the Contractor hereunder shall be marked
or placarded, identifying it as the Contractor’s vehicle.

45. Manager’s Authority

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and
requirements of the Manager and shall perform the Work hereunder to the satisfaction of the Manager at such
times and places, by such methods and in such manner and sequence as he/she may require, and the Contract
shall at all stages be subject to his/her inspection. The Manager shall determine the amount, quality,
acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra
Work. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the
Manager objects. Upon request, the Manager shall confirm in writing any oral order, direction, requirement
or determination.

The Manager shall have the authority to decide all questions in connection with the Services to be performed
hereunder. The exercise by the Manager of the powers and authorities vested in him/her by this section shall
be binding and final upon the Port Authority and the Contractor.

46. Price Preference

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from
Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by
the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding $1,000,000, for:

(a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises
(SBE); or

(b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York
or New Jersey Minority or Women Business Enterprises (MBE/WBE),
certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was
obtained in the space provided on the Signature Sheet attached hereto.

47. MBE/WBE Good Faith Participation

The Contractor shall use every good-faith effort to provide for participation by Port Authority Certified Minority
Business Enterprises (MBEs) and Port Authority Certified Women-owned Business Enterprises (WBEs) in all
purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment,
supplies and labor services. If this Contract contains participation goals, the Contractor shall use good faith
efforts to achieve the goals.

Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the
following:

A. Dividing the services and materials to be procured into smaller portions, where feasible.
B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing
opportunities to such MBE/WBEs as may be appropriate.
C. Soliciting services and materials from a Port Authority certified MBE/WBE. To access the Port
Authority’s Directory of MBE/WBE Port Authority certified firms go to
D. Ensuring that provision is made to provide progress payments to MBE/WBEs as defined in the
prompt payment provision below.
E. Observance of reasonable commercial standards of fair dealing in the respective trade or
business.

48. Code of Ethics for Port Authority Vendors
The Port Authority has adopted a Code of Ethics for Port Authority Vendors (the “Code”). The Code is hereby
made a part of this Agreement. The Code can be found at https://www.panynj.gov/business-
opportunities/become-vendor.html.

PART III CONTRACTOR’S INTEGRITY PROVISIONS

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment,
Suspension, Disqualification and Disclosure of Other Information
By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the
case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or
affiliate of the Bidder has not
a. been indicted or convicted in any jurisdiction;
b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any
contract with any governmental agency or been denied a government contract for failure to meet
standards related to the integrity of the Bidder;
c. received a less than satisfactory rating on a public or government contract;
d. had a contract terminated by any governmental agency for breach of contract or for any cause
based in whole or in part on an indictment or conviction;
e. ever used a name, trade name or abbreviated name, or an Employer Identification Number
different from those inserted in the Bid;
f. had any business or professional license suspended or revoked or, within the five years prior to
bid opening, had any sanction imposed in excess of fifty thousand dollars ($50,000) as a result of
any judicial or administrative proceeding with respect to any license held or with respect to any
violation of a federal, state or local environmental law, rule or regulation;
g. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud,
extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the
dollar amount of the sanctions or the date of their imposition; and
h. been, and is not currently, the subject of a criminal investigation by any federal, state or local
prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or
local prosecuting or investigative agency, including an inspector general of a governmental
agency or public authority.
2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;

c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;

d. this organization has not made any offers or agreements or taken any other action with respect to
   any Authority employee or former employee or immediate family member of either which would
   constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may
   be revised, (a copy of which is available upon request) nor does this organization have any
   knowledge of any act on the part of an Authority employee or former Authority employee relating
   either directly or indirectly to this organization which constitutes a breach of the ethical standards
   set forth in said Code;

e. no person or selling agency other than a bona fide employee or bona fide established commercial
   or selling agency maintained by the Bidder for the purpose of securing business, has been
   employed or retained by the Bidder to solicit or secure this Contract on the understanding that a
   commission, percentage, brokerage, contingent, or other fee would be paid to such person or
   selling agency; and

f. the Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

The foregoing certifications in this Part III, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:

* if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of 10%;
* if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with...
its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “2g”, if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Contract, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Procurement Department of the Authority). Such disclosure is to be updated as necessary. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsiveness or non-responsibility.

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding and continuing this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

Bidders are advised that the Authority has adopted a policy to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a Bidder is not eligible to bid on or be awarded public contracts because the Bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.
The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

4. Contractor Responsibility, Suspension of Work and Termination

During the term of this Contract, the Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Port Authority to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Port Authority, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Port Authority issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and an opportunity to be heard with appropriate Port Authority officials or staff, the Contract may be terminated by Port Authority at the Contractor's expense where the Contractor is determined by the Port Authority to be non-responsible. In such event, the Port Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Contractor associated with such termination.


At all times, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

6. Obligation to Report

In the event that the Contractor becomes aware of the occurrence of any conduct that is prohibited by the section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, or if the Contractor knows or should reasonably know that a principal, employee, or agent of the Contractor or of its subcontractor(s) has committed a violation of federal, New York or New Jersey law addressing or governing: antitrust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or
minority, woman, small or disadvantaged business enterprises, it shall report such information to the Port Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “http://www.panynj.gov/inspector-general” for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for a finding of non-responsibility. The Contractor shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

7. Conflict of Interest
During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Chief Procurement Officer in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Chief Procurement Officer, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Chief Procurement Officer may require the Contractor to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Procurement Officer and shall become a requirement, as though fully set forth in this Contract. In the event the Chief Procurement Officer shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Chief Procurement Officer to be no longer appropriate because of such preclusion, the Chief Procurement Officer shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, reserving the right, however, to have the Services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract, which results, directly or indirectly, from the Services provided by the Contractor hereunder. The Port Authority’s determination regarding any questions of conflict of interest shall be final.
8. **Integrity Monitor**
In the event that the Authority hires an Integrity Monitor in connection with the Work under this Contract, the Contractor and any subcontractors shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the Work performed pursuant to this Contract. Any failure to cooperate may result in the termination of this Contract. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

9. **Right to Audit**
Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, or its designee(s) each shall have the right to audit all of the records of the Contractor with respect to the Work and the Contract, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Contract. The Contractor shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

The Contractor agrees to pay for the cost of any audit or investigation conducted by the Authority, in which any criminal activity, ethics violations, or professional misconduct by the Contractor or any of its employees, or subcontractors or any of its employees, are discovered. The Contractor shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Contractor an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General).

10. **Definitions**
As used in this section, the following terms shall mean:

- **Affiliate** - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

- **Agency or Governmental Agency** - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

- **Investigation** - Any inquiries made by any federal, state or local criminal prosecuting and/or law enforcement agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, State, and local inquiries into tax returns.

- **Officer** - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles known.

- **Parent** - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.

- **Retaliatory Action** - Any adverse action taken by, or at the direction of, the Contractor, against any of its employees for reporting any information as set forth in the clause entitled “Obligation to Report,” above.
If the solicitation is a Request for Proposal:

- **Bid** - shall mean Proposal;
- **Bidder** - shall mean Proposer;
- **Bidding** - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

- **Bid** - shall mean bid;
- **Bidder** - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor;
- **Bidding** - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

- **Bid** - shall mean Proposal;
- **Bidder** - shall mean Proposer; except and until the Contract has been awarded, then it shall mean Contractor;
- **Bidding** - shall mean executing this Contract.
PUBLIC POLICY REQUIREMENTS

1. NON DISCRIMINATION

(a) Without limiting the generality of any of the provisions of this Agreement, the Contractor, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby agree that (i) no person on the grounds of race, creed, color, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Airport, (ii) that in the construction of any improvements on, over, or under the Airport and the furnishing of services thereon by it, no person on the grounds of race, creed, color national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (iii) that the Contractor shall use the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and any other present or future laws, rules, regulations, orders or directions of the United States of America with respect thereto which from time to time may be applicable to the Contractor’s operations thereat, whether by reason of agreement between the Port Authority and the United States Government or otherwise.

(b) The Contractor shall include the provisions of paragraph (a) of this Section in every agreement or concession it may make pursuant to which any person or persons, other than the Contractor, operates any facility at the Airport providing services to the public and shall also include therein a provision granting the Port Authority a right to take such action as the United States may direct to enforce such provisions.

(c) The Contractor’s noncompliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of the breach by the Contractor of any of the above non-discrimination provisions, the Port Authority may take any appropriate action to enforce compliance or by giving twenty-four (24) hours’ notice, may revoke this Agreement and the permission hereunder; or may pursue such other remedies as may be provided by law; and as to any or all of the foregoing, the Port Authority may take such action as the United States may direct.

(d) The Contractor shall indemnify and hold harmless the Port Authority from any claims and demands of third persons including the United States of America resulting from the Contractor’s noncompliance with any of the provisions of this Section and the Contractor shall reimburse the Port Authority for any loss or expense incurred by reason of such noncompliance.
(e) Nothing contained in this Section shall grant or shall be deemed to grant to the Contractor the right to transfer or assign this Agreement, to make any agreement or concession of the type mentioned in paragraph (b) hereof, or any right to perform any construction on the Airport.
2.  **AFFIRMATIVE ACTION**

2.1  **Affirmative Action**

In addition to and without limiting the provisions of Section 1 hereof, the Contractor assures that it shall undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it shall require that its covered suborganizations provide assurances to the Contractor that they similarly shall undertake affirmative action programs and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

The Contractor acknowledges that Federal rules and regulations in connection with the subject matter of this Section may be amended from time to time and, in connection therewith, the Port Authority may modify the terms and provisions of this Section so as to assure compliance with such Federal rules and regulations. The Contractor hereby acknowledges and agrees that it shall be bound by all modifications made by the Port Authority to the terms and provisions of this Section, as described in the preceding sentence, upon written notice from the Port Authority containing such modifications.

2.2  **The Operator Services Contractor’s Ongoing Affirmative Action and Equal Opportunity Commitment**

(a) In addition to and without limiting any other term or provision of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination in connection with the operation, repair and maintenance of the Airport Facilities by the Contractor. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) In addition to and without limiting the foregoing, and without limiting the provisions of Section 1 hereof entitled "Non-Discrimination" and Schedule E, it is hereby agreed that the Contractor in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Airport, shall throughout the term of the letting hereunder commit itself to and use good
faith efforts to implement an extensive program of affirmative action, including specific affirmative action steps to be taken by the Contractor, to ensure maximum opportunities for employment and contracting by minorities and women, and by Minority Business Enterprises ("MBE") and Women-owned Business Enterprises ("WBE"). In meeting the said commitment, the Contractor agrees to submit to the Port Authority for its review and approval its said extensive affirmative action program, including the specific affirmative action steps to be taken by the Contractor to meet its aforesaid commitment, within sixty (60) days after the Commencement Date. The Contractor shall incorporate in its said affirmative action program such revisions and changes which the Port Authority initially or from time to time may reasonably require. The Contractor throughout the Term shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Contractor’s progress in implementing the said affirmative action program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time reasonably request, including but not limited to annual reports.

(c) Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(i) Dividing the work to be subcontracted into smaller portions where feasible.

(ii) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation as called for in paragraph (b) above, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.*

(iii) Making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review.

(iv) Utilizing the list of eligible MBEs and WBEs maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.

(v) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to insure that the Contractor shall meet its obligations hereunder.

(vi) Insuring that provisions are made to provide progress payments to MBEs and WBEs on a timely basis, preferably biweekly, and that retainage it paid to MBEs and WBEs when they have completed their work.
(vii) Submitting quarterly reports to the Port Authority Office of Business and Job Opportunity detailing its compliance with the provisions hereof.

(viii) Requiring each contractor to submit to the Contractor with each payment request evidence that all MBE and WBE contractors have been paid in accordance with their contract.

(d) The Contractor acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing commitments and that such commitments are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of the breach by the Contractor of any of the above provisions the Port Authority may take any appropriate action to enforce compliance; or in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate this Agreement and the letting hereunder with the same force and effect as a termination for default by the Contractor in the performance or observance of any other term or provision of this Agreement, or may pursue such other remedies as may be provided by law.

(e) In the implementation of this Section, the Port Authority may consider compliance by the Contractor with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(f) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

(g) Nothing in this Section shall grant or be deemed to grant the Contractor the right to make any agreement or award for concessions or consumer services at the Airport.

2.3 Continuing Application of Schedule E to Construction Work or Alteration Work at the Airport

The Contractor in connection with any construction work or any tenant alteration work (including but not limited to any work under each and every TAA) on the Airport, or any portion thereof, shall throughout the term of the letting hereunder commit itself to putting into effect prior to the commencement of any such construction work or tenant alteration work an affirmative action program and Minority Business Enterprises (MBE) program
and Women-owned Business Enterprise (WBE) program in accordance with the provisions of Schedule E.

2.4 **The Operator Services Contractor’s Local Business Enterprise Commitment**

The Contractor in connection with any construction work at the Airport, or any portion thereof, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program to utilize Local Business Enterprises in accordance with and as set forth in Schedule F.
3. **LABOR HARMONY**

(a) The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Airport which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Airport or the Airport or with the operations of the Contractor under this Agreement.

(b) The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Airport or against any operations of the Contractor under this Agreement, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Airport or the Airport or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

(c) During the time that the Contractor is performing the Agreement, other persons may be engaged in other operations on or about the Airport and the Airport including Facility operations, pedestrian, bus and vehicular traffic and other contractors performing at the Airport or the Airport, all of which shall remain uninterrupted.
(d) The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the Airport and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

I. As a matter of policy the Port Authority hereby requires the Contractor and the Contractor shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E. The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

The Contractor as well as each bidder, contractor and subcontractor of the Contractor and each subcontractor of a contractor at any tier of construction (herein collectively referred to as the "Contractor") must fully comply with the following conditions set forth herein as to each construction trade to be used on the construction work or any portion thereof (said conditions being herein called "Bid Conditions"). The Contractor hereby commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions. The Contractor shall likewise require the Contractor to commit itself to the said goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions by submitting a properly signed bid.

II. The Contractor and the Contractor shall each appoint an executive of its company to assume the responsibility for the implementation of the requirements, terms and conditions of the following Bid Conditions:

(a) The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

(1) Minority participation

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<th>Percentage</th>
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<tbody>
<tr>
<td>Minority, except laborers</td>
<td>30%</td>
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<tr>
<td>Minority, laborers</td>
<td>40%</td>
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</tbody>
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(2) Female participation

<table>
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<th>Percentage</th>
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<tr>
<td>Female, except laborers</td>
<td>6.9%</td>
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<tr>
<td>Female, laborers</td>
<td>6.9%</td>
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These goals are applicable to all the Work performed by the Contractor in and for the Airport Facilities.

The Contractor's specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make good faith efforts to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract. Compliance with the goals shall be measured against the total work hours performed.

(b) The Contractor shall provide written notification to the Contractor and the Contractor shall provide written notification to the Port Authority’s Aviation Department and Office of Business Diversity and Civil Rights within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(c) As used in these specifications:

(1) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941:

(2) "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(d) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the construction work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 those provisions which include the applicable goals for minority and female participation.
(e) The Contractor shall implement the specific affirmative action standards provided in subparagraphs (1) through (16) of Paragraph (h) hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the Airport Facilities. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(f) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations hereunder.

(g) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(h) The Contractor shall take specific affirmative actions to ensure equal employment opportunity ("EEO").

The evaluation of the Contractor's compliance with these provisions shall be based upon its good faith efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each phase of the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the Airport Facilities are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the Airport Facilities.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect
to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(4) Provide immediate written notification to the Contractor when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

(6) Disseminate the Contractor's EEO Policy by: (a) providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; (b) including it in any policy manual and collective bargaining agreement; (c) publicizing it in the Contractor's newspaper, annual report, etc.; (d) specific review of the policy with all management personnel and with all minority and female employees at least once a year; and (e) posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least every six months, the Contractor's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decision including specific review of these items with on-Airport supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at the Airport Facilities. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment
source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Premises and in areas of a Contractor's workforce.

(11) Tests and other selecting requirements shall comply with 41 CFR Part 60-3.

(12) Conduct, at least every six months, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least every six months, of all supervisors' adherence to and performance under the Contractors' EEO policies and affirmative action obligations.

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) above; provided that the Contractor actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the
Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

(j) Goals for minorities and women have been established respectively. The Contractor, however, is required to provide equal opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is underutilized).

(k) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

(l) The Contractor shall not enter into any subcontract with any Person or firm debarred from Government contracts pursuant to Executive Order 11246.

(m) The Contractor shall carry out such sanctions and penalties for violation of this clause including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by the Contractor. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.

(n) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative actions steps, at least as extensive as those standards prescribed in paragraph (h) hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Contractor shall proceed accordingly.

(o) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanical apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work is performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(p) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
(q) Without limiting any other obligation, term or provision under this Agreement, the Contractor shall cooperate with all federal, state or local agencies established for the purpose of implementing affirmative action compliance programs and shall comply with all procedures and guidelines established or which may be established by the Port Authority.
PART II.  Minority Business Enterprises and Women-owned Business Enterprises

As a matter of policy the Port Authority requires the Contractor and the Contractor shall require that any Contractor utilized by the Contractor, to perform contract work ("the Work") on the Airport Facilities including without limitation construction work to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the Work pursuant to the provisions of Part II of this Schedule E. In the event that any portion of the Work is subcontracted, every good faith effort to meet the goals for meaningful participation by Minority Business Enterprises and Women-owned Business Enterprises shall be made and documented. To ensure meaningful participation of MBEs and WBEs in the Work, the Port Authority has set certain goals for Work conducted each year on the Airport Facilities to be conducted by firms owned or controlled by minorities or women. The goals for such Work are twenty percent (20%) MBE and ten percent (10%) WBE for each of Construction Work and Operations and Maintenance Work (in the case of Operations and Maintenance Work, the goals are applicable to the total Operations and Maintenance Work cost for each such year).

For the purposes hereof, the following defined terms have the meanings set forth below:

"Minority Business Enterprise" or "(MBE)" shall mean any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minority groups; and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens and such ownership is real, substantial and continuing.

"Women-owned Business Enterprise" or "(WBE)" shall mean any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women; and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens and such ownership is real, substantial and continuing.

"Minority" shall have the meaning set forth in paragraph II(c) of Part I of this Schedule (Affirmative Action-Equal Opportunity-Minority Business Enterprises-Women-owned Business Enterprises Requirements).

The Contractor shall use and document every good faith effort to comply with the plan submitted by or on behalf of the Contractor to comply with the participation goals set forth in this Part II (the "MBE/WBE Participation Plan"), and to permit its MBE/WBE subcontractors to perform. Participation percentages shall be monitored throughout the performance of the Work.

Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(a) Attendance at pre-bid meetings, if any, scheduled by the Authority;
(b) Utilizing the Port Authority’s Directory of certified MBE/WBEs available on-line at [http://www.panynj.gov/business-opportunities/sd-business-resources.html](http://www.panynj.gov/business-opportunities/sd-business-resources.html) diversity and/or proposing for certification other MBE/WBEs which appear to meet the Port Authority’s criteria for MBE/WBE certification and which are technically competent to perform the Work which the Contractor plans to subcontract;

(c) Active and affirmative solicitation of bids for subcontracts from MBE/WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

(d) Advertisement in general circulation media, trade association publications and minority-focused media for a reasonable period before commencement of the Work or the Operations and Maintenance Work, as the case may be;

(e) Dividing the work to be subcontracted into smaller portions or encouraging the formation of joint ventures, partnerships or similar arrangements among subcontractors in order to increase the likelihood of achieving the MBE/WBE goals;

(f) Providing a sufficient supply of drawings and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review;

(g) Utilizing the services of available minority and women’s community organizations; contractors’ groups; local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;

(h) Ensuring that progress payments are made in a timely fashion in accordance with the requirements of the relevant subcontract, preferably bi-weekly, and that retainage is paid to MBE/WBEs when they have completed their work;

(i) Where appropriate, not requiring bonds from and/or providing bonds and insurance for subcontractors;

(j) Requiring each contractor to submit to the Contractor with each payment request evidence that all MBE/WBE Contractors have been paid in accordance with their contract;

(k) Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Authority staff responsible for such participation; and
(I) Nominating subcontractors for participation in business assistance programs sponsored by the Port Authority or the Regional Alliance for Small Contractors such as the Loaned Executive Assistance Program (L.E.A.P.).

The MBE/WBE Participation Plan may be modified only with the written approval of the Port Authority’s Authorized Representative.

Certification of MBEs and WBEs hereunder shall be made by the Office of Diversity and Civil Rights of the Port Authority of New York and New Jersey (the "OBDCR"). If the Contractor wishes to utilize a firm not already certified by the OBDCR, the Contactor shall submit to the OBDCR a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the OBDCR. All such requests shall be in writing addressed to the Office of Diversity and Civil Rights, the Port Authority of New York and New Jersey, 2 Montgomery Street, 2nd Floor, Jersey City, NJ 07302 or such other address as the Port Authority may specify by notice to the Contractor. Certification shall be effective only if made in writing by the Director in charge of the OBDCR. The determination of the OBDCR shall be final and binding.

The Port Authority has compiled and made available on-line an MBE/WBE Directory which sets forth the firms that the Port Authority has determined to be (1) MBE/WBEs and (2) experienced in performing work in the trades and contract dollar ranges indicated in the Directory. The Directory can be accessed at [http://www.panynj.gov/business-opportunites/sd-business-resources.html](http://www.panynj.gov/business-opportunites/sd-business-resources.html). The Port Authority makes no representation as the financial responsibility of such firms or their ability to perform Work.

Only MBEs and WBEs certified by the OBDCR shall count toward the MBE and WBE goals.

Please note that only sixty percent (60%) of expenditures to MBE or WBE suppliers shall count towards meeting the MBE and WBE goals for the Work. However, expenditures to MBE or WBE manufacturers (i.e. suppliers that produce goods from raw materials or substantially alter them before resale) are counted dollar for dollar.

The Contractor shall ensure that all approved MBE/WBE subcontractors maintain a regular on site presence at the construction site for the portions of the Work they are subcontracted to perform and that they exercise financial and operational management and control of such portions of the Work.
SCHEDULE F

LOCAL BUSINESS ENTERPRISE & EMPLOYMENT OPPORTUNITY

As a matter of policy the Port Authority hereby requires the Contractor, and the Contractor shall require any Contractor utilized by the Contractor, to perform work on the premises, to comply with the provisions set forth hereinafter in this Schedule F.

PART I.  Local Business Enterprise

The Contractor and each Contractor shall use every good faith effort to maximize the participation of Local Business Enterprises (LBEs) in the Contract Work ("the work") on the premises, including without limitation the construction work. By accessing the link below you can obtain information on Air Services Development Office (ASDO) LBE Programs, LBE Vendor Profiles, access ASDO’s on-line vendor retrieval system (BASIS) and information about any meetings on LBEs scheduled by the Authority. The Port Authority has not checked the references, capabilities or financial background of the firms listed in the directory, but is making such information available solely for the purpose of advising the Contractor and its Contractors of LBEs who may be interested in providing services and/or materials to the Contractor and its Contractors.

- http://www.asdoonline.com

Good faith efforts to include LBEs in the work shall include at least the following:

A. Dividing the work to be subcontracted and services and materials to be procured into small portions, where feasible.

B. Soliciting bids on portions of the work to be subcontracted and services and materials to be procured from firms listed with ASDO and such other LBEs as the Contractor deems appropriate.

It is specifically understood and agreed that the requirements set forth herein for the participation of LBEs shall not alter, limit, diminish, or modify any of the obligations under this Agreement including, without limitation, the obligation to comply with the Affirmative Action-Equal Opportunity and Minority and Women-owned Business Enterprises provisions set forth in Schedule E hereof.

Local Business Enterprise shall mean a business entity located within the County of Queens for LaGuardia and John F. Kennedy International Airports, Counties of Essex, Hudson and Union for Newark Liberty International Airport and for New York Stewart International Airport, Counties within a 25-mile radius.

PART II.  Local Employment Opportunity

The Port Authority is committed to making employment opportunities available to local residents and expects that the Contractor and its Contractors shall work with the Council for Airport
Opportunity (CAO) to utilize the labor talent available from local communities surrounding the airport. Information regarding Council for Airport Opportunity programs can be accessed at the following website:

- [http://www.caonynj.com](http://www.caonynj.com)

A local resident is defined as residing within the County of Queens for LaGuardia and John F. Kennedy International Airports and as residing within the Counties of Essex, Hudson and Union for Newark Liberty International Airport and for New York Stewart International Airport, Counties within a 25-mile radius.
SCHEDULE G

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

In accordance with regulations of the US Department of Transportation 49 CFR Part 23, the Port Authority has implemented an Airport Concession Disadvantaged Business Enterprise (ACDBE) program under which qualified firms may have the opportunity to operate an airport business. An airport concession is a for-profit business enterprise, located on an airport, which is subject to the Code of Federal Regulations 49 Part 23, subpart F, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner or Contractor of an Airport, if other than the sponsor. The Port Authority has established an ACDBE participation goal, as measured by the total estimated annual gross receipts for the overall concession program. The goal is seventeen percent (17%) or such other goal as may be set by the Port Authority from time to time and posted on the Port Authority’s website: www.panynj.gov/supplierdiversity.

The overall ACDBE goal is a key element of the Port Authority’s concession program and the Contractor shall take all necessary and reasonable steps to comply with the requirements of the Port Authority’s ACDBE program. The Contractor commits to making good faith efforts to achieve the ACDBE goal. Pursuant to 49 CFR 23.25 (f), ACDBE participation must be, to the greatest extent practicable, in the form of direct ownership, management and operation of the concession or the ownership, management and operation of specific concession locations through subleases. The Port Authority shall also consider participation through (a) joint ventures in which ACDBEs control a distinct portion of the joint venture business and/or (b) purchase of goods and services from ACDBEs. In connection with the aforesaid good faith efforts, as to those matters contracted out by the Contractor in its performance of this Agreement, the Contractor shall use, to the maximum extent feasible and consistent with the Contractor’s exercise of good business judgment including without limit the consideration of cost competitiveness, a good faith effort to meet the Port Authority’s goals. Information regarding specific good faith steps can be found in the Port Authority’s ACDBE Program located on its above-referenced website. In addition, the Contractor shall keep such records as shall enable the Port Authority to comply with its obligations under 49 CFR Part 23 regarding efforts to offer opportunities to ACDBEs.

Qualification as an ACDBE

To qualify as an ACDBE, the firm must meet the definition set forth below and be certified by the New York State or New Jersey State Uniform Certification Program (UCP). The New York State UCP directory is available on-line at http://nysucp.newnycontracts.com and the New Jersey State UCP at http://njucp.dbesystem.com

An ACDBE must be a small business concern whose average annual receipts for the preceding three (3) fiscal years does not exceed the amount defined in 49 CFR Part 23.33 as the same shall be modified pursuant to periodic federal update. It must be (a) at least fifty-one percent (51%)
owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it. Further, the ACDBE must meet the personal net worth standard established pursuant to 49 CFR Part 23.35 as the same shall also be modified subject to periodic federal update. The ACDBE may, if other qualifications are met, be a franchisee of a franchisor.

The Port Authority makes a rebuttable presumption that individuals in the following groups who are citizens of the United States or lawful permanent residents are "socially and economically disadvantaged":

a. Women;

b. Black Americans which includes persons having origins in any of the Black racial groups of Africa;

c. Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

d. Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

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

f. Asian-Indian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal and Sri Lanka; and

g. Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. Section 637(a)).

Other individuals may be found to be socially and economically disadvantaged on a case-by-case basis. For example, a disabled Vietnam veteran, an Appalachian white male, or another person may claim to be disadvantaged. If such individual requests that his or her firm be certified as ACDBE, the Port Authority, as a certifying partner in the New York State and New Jersey State UCPs shall determine whether the individual is socially or economically disadvantaged under the criteria established by the federal government. These owners must demonstrate that their disadvantaged status arose from individual circumstances, rather than by virtue of membership in a group.
Certification of ACDBEs hereunder shall be made by the New York State or New Jersey State UCP. If the Contractor wishes to utilize a firm not listed in the UCP directories but which the Contractor believes should be certified as an ACDBE, that firm shall submit to the Port Authority a written request for a determination that the firm is eligible for certification. This shall be done by completing and forwarding such forms as may be required under 49 CFR Part 23. All such requests shall be in writing, addressed to the Director, Office of Business Diversity and Civil Rights, The Port Authority of New York and New Jersey, 2 Montgomery Street, 2nd Floor, Jersey City, NJ 07302 or such other address as the Port Authority may designate from time to time. Contact certhelp@panynj.gov for inquiries or assistance.

For the Port Authority

Initialed:

For the Contractor