

# FOOD, BEVERAGE, RETAIL AND VENDING CONCESSION AGREEMENT

This non-exclusive Concession Agreement (“Agreement”) is between the Central West Virginia Regional Airport Authority (“Authority”) owner and operator of Yeager Airport (“CRW”), and \_\_\_\_\_, (“\_\_\_\_\_” or “Concessionaire”) authorized to do business in the of West Virginia, as of March 29, 2019 (“Effective Date”).

In consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree for themselves and their successors and assigns as follows:

## SECTION 1 DEFINITIONS

The following terms, as used in this Agreement, shall have the meanings as ascribed to them hereunder.

- A. Airport: shall mean Yeager Airport located in the City of Charleston, County of Kanawha, and State of West Virginia.
- B. Consent or Approval of Authority and of the Airport Director: where this Agreement calls for the consent or approval of the Authority, the same shall be in the form of a resolution approved by the Authority as provided by law; where the consent or approval of the Airport Director is required, the same shall be evidenced by a written document signed by the Airport Director or authorized designee and shall not be unreasonably withheld or delayed.
- C. Concession Service Area (CSA): shall mean those portions of the Terminal leased to Concessionaire for food, beverage, retail and vending operations hereunder, as further described in this Agreement and attached **Exhibit A**.
- D. CSA Improvements: shall mean, collectively, all improvements constructed on and within the CSA by Concessionaire, including such items as decorations, partitions, wiring, lighting, plumbing fixtures, piping, finished ceilings, ventilation duct work, grills, floor and wall coverings, heaters, cabinets, sinks, counters, and other related improvements.
- E. Terminal: shall mean the main passenger terminal building at the Airport located at 100 Airport Road, Charleston, West Virginia 25311.

## SECTION 2 EXHIBITS

The following exhibits are attached to this Agreement and are incorporated by reference herein:

- Exhibit A**      Concession Service Area (CSA)
- Exhibit B**      [*Reserved*]
- Exhibit C**      Concessionaire provided equipment within CSA
- Exhibit D**      Menu, Products, and Pricing
- Exhibit E**      Copy of Proposal

## SECTION 3 CONCESSION

The Authority does hereby grant to the Concessionaire and Concessionaire hereby accepts from the Authority the nonexclusive right to operate a food, beverage, retail and vending concession at the Airport for the purpose of offering food, snacks, beverage, books, magazines, newspapers, souvenirs and other goods

and related products and services to the traveling public under the covenants, conditions and provisions and in the places set forth in this Agreement.

**SECTION 4  
TERM**

- A. Base Term. The Base Term of this Agreement shall commence on the Effective Date and shall remain in effect for seven (7) years from that date, unless terminated earlier as provided for herein.
  
- B. Option Term. The parties reserve the right to exercise one (1) additional two (2) years Option Term extension, provided that the parties mutually agree to exercise the Option Term no less than one hundred eighty (180) days prior to the end of the Base Term. The Option Term shall be under the same terms and conditions as set forth herein unless agreed to by both parties. If the Option term is not exercised within the timeframe identified, the Agreement will expire at the end of the Base Term.
  
- C. Holding Over. In the event that the Base Term expires and the Option Term is not exercised or a new agreement has not been executed by the end of the Option Term, then at the sole discretion and upon written consent of the Airport Director, this Agreement shall continue in effect on a month-to-month basis under the terms and conditions set forth in this Agreement subject to the adjustment of concession fees to be negotiated between the parties, but in no event will the adjustment result in concession fees less than those immediately prior to the holding over period. The consent of the Airport Director to continue operating on a month-to-month basis may be terminated upon thirty (30) days' written notice to Concessionaire.

**SECTION 5  
NONEXCLUSIVITY**

This concession shall not be construed to be an exclusive concession, and the Authority shall have the right to negotiate and execute substantially similar arrangements with any other individual, firm, or corporation for engaging in similar activities at the Airport. The Authority shall not, however, during the term of this Agreement, grant to any other individual, firm or corporation, a similar concession upon terms or conditions materially more favorable than those herein granted Concessionaire.

**SECTION 6  
CONCESSION SERVICE AREA**

Concessionaire is hereby granted use of the Concession Service Area, consisting of approximately 6,800 square feet within the Terminal, such space to be used solely for the purposes set forth in Section 3 herein. The areas to be used by Concessionaire are shown on attached **Exhibit A**, and are allocated generally as follows:

Lobby Restaurant/Bar/Kitchen (Currently pre-security adjacent the security checkpoint)	4,490
Passenger level News/Gifts and Café (Post-security location across from security checkpoint)	2,310
Vending	TBD
<b>TOTAL:</b>	<b>6,800+</b>

There is an opportunity for additional storage and support space to be leased on a per square foot basis in the terminal basement and other areas.

The square footage of each area stated herein are approximate and may be modified. The terms and conditions under which additional space may be made available to Concessionaire shall be negotiated by the parties hereto, if additional space is available and requested by Concessionaire.

## **SECTION 7 RIGHTS OF INGRESS AND EGRESS**

Subject to any applicable rules, regulations, or Authority policies governing the use of the Airport and Terminal, Authority grants to Concessionaire the non-exclusive right to use, in common with others, the areas designated by Authority to be public or to be used in common, including, but not limited to, the walkways, streets, roadways, waiting rooms, hallways, restrooms and other passenger conveniences at the Airport and the Terminal, herein after referred to as “Public Areas”, for Concessionaire’s employees, patrons, guests and invitees for the use for which the Public Areas were designed. Concessionaire’s right under this section includes the right of ingress to and egress from the CSA for Concessionaire and its employees, patrons, guests, invitees, suppliers of materials and services, along with equipment, and other property related to Concessionaire’s business within the Terminal at the Airport under this Agreement. The rights of ingress and egress granted by this section may be exercised without charge, provided that Authority may charge Concessionaire for employee, patron, guest, and supplier parking privileges.

## **SECTION 8 CONCESSION PAYMENT AND STATEMENTS**

In consideration of the rights and privileges conferred by this Agreement, Concessionaire agrees to pay Authority the following amounts:

A. Concession Fees and Minimum Annual Guarantee (“MAG”):

The following concession fees shall be payable to the Authority on Gross Revenues resulting from the retail or catering components of the concession:

1. Liquor- sixteen percent (16%)
2. Food, non-alcoholic beverages and vending- twelve percent (12%)
3. Retail- fifteen percent (15%)

The term “Gross Revenues” as used herein shall mean the revenues or sales price of all food, beverages and other merchandise and items sold or dispensed by the Concessionaire on the Airport and the charges made for all services performed by the Concessionaire, excluding returns where Concessionaire refunds the sale price to the customer and employee discounted sales as identified below, including revenues for service or goods delivered outside the terminal but on the Airport, but excluding state and local sales taxes collected by Concessionaire from its customers. Concessionaire will offer an employee discount program of ten percent (10%) or greater, and the discount on those sales will be excluded from Gross Sales for purposes of determining the concession fees due the Authority. All reports of Gross Sales are subject to audit by the Authority. The Authority reserves the right to audit all financial records related to the reporting of concession fees and the annual MAG as provided in this Agreement.

There shall be a Minimum Annual Guarantee (MAG) established which will be the minimum amount the Concessionaire shall pay the Authority on an annual basis. The MAG for the first year shall be seventy-five thousand dollars (\$75,000). The MAG for each succeeding year shall be the greater of the previous year’s MAG escalated at three percent (3%), or ninety percent (90%) of the previous year’s Concession Fee payments to the Authority, whichever is greater. *In no event will the MAG in a succeeding year during the*

*term of the Agreement be set to an amount less than the first year MAG.* In the event the calculated monthly payment does not equal one twelfth (1/12th) of the MAG, there will be a reconciliation at the end of the calendar year. Any reconciliation amount owed the Authority shall be made within thirty (30) days following the date of Authority's invoice to the Concessionaire.

The Concession Fee or monthly Minimum Annual Guarantee amount, whichever is greater, shall be due and payable to Authority on a monthly basis. Concessionaire shall furnish a statement of Gross Revenues in a form acceptable to the Airport Director on or before the tenth (10th) day of each month following the month to which such Gross Revenues relate. Payment shall be due and payable within five (5) calendar days thereafter. A reconciliation will be completed following the end of each calendar year detailing the annual amount due under the MAG and the monthly payments made. If the annual amount paid is greater than the final calculated amount due, a credit will be issued by the Authority within thirty (30) days of the completion of the reconciliation.

**B. Monthly Statements:**

Concessionaire shall provide to the Airport Director, by the tenth (10<sup>th</sup>) day of each month, a statement containing the following information with respect to Concessionaire's operations at the Airport for the immediately preceding month:

1. Gross Receipts for all food and beverage sales except alcoholic beverages
2. Gross Receipts for alcoholic beverage sales
3. Gross Receipts for all retail sales
4. Gross Receipts for all catering alcoholic sales
5. Gross Receipts for all food and non-alcoholic catering sales
6. Gross Receipts for all vending sales

**C. Late Payment or Statement:**

If Concessionaire is delinquent for thirty (30) days or longer in paying any amounts owed to the Authority under this Agreement, Concessionaire shall pay to the Authority a late payment charge assessed on the delinquent amount at the Authority's then-prevailing rate on delinquent accounts (the rate at the date of execution of the Agreement is one and one-half percent (1½%) per month). The late payment charge shall accrue from the date the delinquent amount was due until paid.

The remedies provided by this section are in addition to all other remedies the Authority may have for a breach of this Agreement by Concessionaire, and nothing in this section shall be deemed to be a waiver by the Authority or prevent the Authority from asserting any other remedy.

**SECTION 7  
OTHER PAYMENTS AND FEES**

A. Fee for Electrical Consumption. Concessionaire agrees to pay for its monthly electrical consumptions as indicated by separate meter or calculation should meter not indicate.

B. Fee for Restaurant and Liquor License. Concessionaire agrees to pay for all fees associated with obtaining a restaurant license and airport liquor license in its name from the City of Charleston and the State of West Virginia. Concessionaire shall be responsible for complying with all insurance requirements associated with the liquor license including, but not limited to, liquor liability insurance. Concessionaire shall name the Authority as an additional insured on any and all insurance requirements associated with the liquor license including, but not limited to, liquor liability insurance. Concessionaire shall assume all liability for any actions, loss, damage, injury, and the cost and expense of whatsoever kind or nature (including, but not limited to, attorneys' fees, disbursements, court costs, expert fees, and other costs) resulting from, arising out of, associated with, in conjunction with, and/or incident to the

license, any serving of alcohol, and/or the sale of alcohol covered by the license. To the extent permitted by law, Concessionaire shall further indemnify, defend, save, and hold harmless the Authority from any action, claim, injury, injury to persons, damage, and/or damage to property resulting from, arising out of, in conjunction with, associated with, and/or incident to the license, any serving of alcohol, and/or the sale of alcohol covered by the license.

- C. Fee for Employee Background Checks and Security Badges. Concessionaire agrees to pay for all costs of required fingerprint based criminal history record checks and other Airport badging related expenses conducted on Concessionaire's agents and employees.
- D. Fee for Failure to Maintain. In the event that Concessionaire fails to keep the CSA in a neat, clean, orderly and sanitary condition as is required by this Agreement and the Airport Director has issued a written notice of such deficiency and provided a reasonable cure period as determined solely by the Airport Director, Authority may itself clean or cause to be cleaned those portions of the CSA not so kept, and Concessionaire agrees to reimburse Authority for the direct and indirect costs incurred by Authority for the performance of said work plus a fifteen percent (15%) administrative fee, due and payable upon the receipt of the invoice.
- E. Fee for Repair and Replacement. Concessionaire shall promptly repair or replace any property of the Authority lost, destroyed or damaged by its operations hereunder. If Concessionaire fails to promptly repair or replace such property following written notice by the Airport Director of such deficiency and a reasonable cure period as determined solely by the Airport Director, Authority may repair or replace it and Concessionaire agrees to reimburse for the direct and indirect costs incurred by Authority for such repair or replacement plus a fifteen (15%) percent administrative fee, due and payable upon the receipt of the invoice.
- F. Fee for Unpaid Licenses, Fees, Taxes, and Assessments. Concessionaire hereby agrees to pay all licenses, fees, taxes and assessments of any kind whatsoever which arise because of, or in the course of any operations covered by this Agreement during the term hereof. Should Concessionaire fail to pay such amounts following written notice of such deficiency and a reasonable cure period as determined solely by the Airport Director, the Authority may pay the same on behalf of Concessionaire, and Concessionaire agrees to reimburse Authority for said amounts paid plus a fifteen percent (15%) administrative fee due and payable upon the receipt of the invoice.
- G. Fee for Telephone, Internet and Computer. Concessionaire shall be responsible for providing and installing all telephone, internet and computer systems necessary for its operation at its sole expense along with any monthly service fees.

## **SECTION 8 UTILITIES BY AUTHORITY**

The Authority agrees to provide such heat, internet infrastructure, telephone infrastructure, water, sewage, and garbage disposal from the central collection point as are reasonably necessary for Concessionaire's operations at no additional cost to Concessionaire.

## **SECTION 9 LEASE OF CSA SPACE**

Authority shall lease to the Concessionaire the CSA space set forth in **Exhibit A**, including a kitchen/food preparation area, serving areas, bar, dining area, and merchandising area. The CSA space is provided on an "as is where is" condition without representations or warranties of any kind.

**SECTION 10  
CONCESSIONAIRES RESPONSIBILITY**

Concessionaire shall, at its sole risk and expense, provide equipment identified in **Exhibit C**. Concessionaire shall also be responsible for the purchase and installation of the following:

1. Any and all equipment needed for the operation of a food, beverage, retail and vending concession for the purpose of offering food, snacks, beverage, books, magazines, newspapers, souvenirs and other goods and related products and services to the traveling public
2. All dishes and utensils needed for its food, beverage and other related services within the CSA.
3. Menu boards over the main order counter and bar area inside the CSA and a wall mounted menu board inside the landside food order area.
4. Point of sale system for food/beverage and other related services.
5. Branded signage at the concourse entrance and at the landside food order area.

**SECTION 11  
SECURITY DEPOSIT**

To guarantee its performance of all of the conditions and obligations under this Agreement, Concessionaire agrees to secure a performance bond or letter of credit or provide a security deposit issued to the Authority in the amount of six (6) months of the first year MAG. If a bond or letter of credit, it must be secured from a surety which is acceptable to the Airport Director and guaranteeing performance by the Concessionaire of all of the terms and conditions of this Agreement and further guaranteeing all payments to be made hereunder. Said bond or letter of credit shall further include a requirement that the surety notify the Authority in writing at least thirty (30) days prior to the cancellation or termination of said performance bond or letter of credit. It is agreed that the amount of such bond or letter of credit may not be diminished below the required amount as set forth herein during the term of this Agreement. As an alternative and in lieu of a performance bond or letter of credit, Concessionaire may deposit with the Authority the required amount.

**SECTION 12  
CONSTRUCTION AND CSA IMPROVEMENTS**

- A. Approval of Airport Director. In the event that Concessionaire wishes to make any CSA Improvements within the CSA, Concessionaire shall submit a written request to the Airport Director together with design development or construction drawings showing all details of said CSA Improvement. No CSA Improvement shall be made in the CSA without the prior written approval of the Airport Director, which decision shall not be unreasonably delayed, and then only in conformance with the approved plans and this section.
- B. Regulations and Standards. All work performed on behalf of Concessionaire shall conform to all applicable regulations, building design standards, building codes and health standards, as well as the following requirements:
1. All construction shall meet the requirement of Type I (fire resistant) construction as set forth in the West Virginia State Building Code (current edition) and the building standards for the Airport.
  2. Complete contract drawings and specifications on all work, including alterations, additions or replacements, must be submitted for and receive approval of the Airport Director. Concessionaire will be responsible for delivering to the Authority at no cost "as built" drawings and an electronic version of same or any reasonable substitute as agreed to in writing by the Airport Director within sixty (60) days of completion of any CSA Improvement.

3. All work must be done by qualified and licensed contractors authorized to do business at the Airport in the time and manner approved by and coordinated with the Airport Director. Concessionaire shall comply with the indemnity and insurance and bond requirements below. Work must be performed such that it may not have a material impact on the operations of the Airport or negatively impact any tenants operating at the Airport as determined in the sole discretion of the Airport Director.
4. An authorized representative of Concessionaire shall be available at all reasonable times at the site to coordinate the work of the CSA Improvements.

C. Construction Bonds and Insurance.

1. Bonds. During the term of this Agreement when any CSA Improvements are constructed, installed or renovated, Concessionaire shall require the contractor and any subcontractor to furnish a payment bond, approved as to form and substance by the Authority's legal counsel, written by a company or companies authorized to write such bonds in the State of West Virginia and who are acceptable to the Airport Director. The amount of such bond(s) shall be not less than the cost of such construction, installation or renovation including all persons doing work or furnishing skills, tools, machinery, materials, insurance premiums, equipment or supplies incident to such construction, installation or renovation, such bond or bonds to be conditioned for payment of claims as required and in full compliance with West Virginia statutes. Further, during the term of this Agreement, for any construction, installation or renovation of CSA Improvements, and before the commencement of work thereon, Concessionaire shall furnish to Authority performance bonds, written by similarly qualified companies, covering all work to be performed thereunder guaranteeing the performance of all such work. In the alternative, if the value of labor and materials to be furnished for any such improvement shall not exceed Fifteen Thousand Dollars (\$15,000), Concessionaire may furnish to Authority written proof thereof and may, at its option, deposit a sum equal to the value of the labor and materials with an escrow agent approved by the Airport Director or may deposit said sum directly with Authority. Authority shall have the right, but not the obligation, to draw upon said sum to pay all bills unpaid by Concessionaire for said labor and materials supplied for said CSA Improvement. Upon completion of the CSA Improvement project and the furnishing by Concessionaire to Authority of lien waivers by all contractors, laborers and materialman involved in said CSA Improvement, Authority shall agree to the release of any funds remaining in escrow or held by it to Concessionaire.
2. Contractor's Public Liability and Property Insurance. Before commencing any CSA Improvement, work or equipment installation in the CSA, Concessionaire shall require all contractors and subcontractors to procure and maintain insurance during the term of such contracts, protecting the Authority and the Concessionaire as follows:
  - a. Workers' Compensation Insurance.
  - b. Contractor's Comprehensive Liability and Property Damage Insurance with limits no less than \$1,500,000 combined single limit per occurrence, including but not limited to, bodily injury and property damage, airport premises and products/completed operations liability, contractual liability, independent contractor's liability.
  - c. Contractor's Automobile Liability and Property Damage Insurance, including automobile and non-ownership and hired cars with limits no less than \$1,000,000 each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.

d. Owner's Protective Public Liability and Protective Property Damage Insurance.

3. Insurance Requirements.

- a. Authority shall be named as additional insureds on each of the policies above except the Workers' Compensation policy.
- b. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by Authority.
- c. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent.
- d. Insurance, as above provided, shall be kept intact and in force throughout the term of the CSA Improvement. Such insurance shall be subject to the approval of the Authority's legal counsel and copies furnished to the Authority prior to the commencement of construction.

D. Subsequent Improvements. Any changes in, additions to or deletions from existing or later constructed CSA Improvement shall be subject to the prior written approval of the Airport Director, and the Airport Director may impose such conditions as it shall deem necessary to protect the Authority, and the integrity of all operations at the Terminal, including, but not limited to, bonding and insurance requirements.

**SECTION 13  
CONCESSIONAIRE'S OPERATING STANDARDS**

A. Service Standards:

1. Required Services. Concessionaire shall be required to sell food, snacks, beverages, books, magazines, newspapers, souvenirs and other goods and products in the CSA in the Terminal.
2. Greeting. Concessionaire shall greet all of its customers with warm, friendly, smiling, prompt, and courteous service. Telephones shall be answered promptly from a location that is not visible or audible to customers inside the CSA. Walk-in customers shall be given priority.
3. Food Service Menu. Concessionaire shall develop and maintain a food and beverage menu to meet the needs of both the traveling public and persons employed at the Terminal. Prices for items on the food service menu shall be comparable to those charged by other restaurants in the regional trade area. Concessionaire shall vary the food and beverage menu from time to time to meet changes in demand.
4. Food Quality and Display. Concessionaire shall provide good quality, fresh and well prepared and presented food. Prices will be displayed in such a manner as to be easily visible and understood by potential customers.
5. Merchandising. Concessionaire shall display attractive merchandising that entices customers to purchase retail products. Concessionaire shall develop and implement creative and effective merchandising means within the CSA; those means may include, without limitation, merchandise displays, full retail display cases, promotional displays (for which Airport Director approval must be obtained), and attractive packaging. All signage and

merchandising displays must be approved by the Airport Director which approval shall not be unreasonably withheld.

6. Marketing. Concessionaire shall develop, implement and maintain a marketing and promotion program that will effectively inform private and commercial aviation service providers and other Terminal tenants, persons employed at the Airport, and the general public of the food and beverage services offered at the Terminal by Concessionaire. Concessionaire shall provide daily food service specials or price incentives designed to encourage persons employed at the Terminal to utilize the concession.
7. Service. Concessionaire shall provide timely, attentive, and friendly service. Food and beverage orders and merchandise requests shall be taken promptly and in a friendly and courteous manner. Processing of payments for food service, beverages and retail products shall be prompt. Sales receipts shall be properly itemized, shall reflect a description of the goods and services purchased, the individual price for each item of goods and services purchased, totals and applicable taxes. All customers shall be thanked for their patronage.
8. Credit Cards. Concessionaire shall accept traveler's checks and at least two major credit cards for any purchase.
9. Hours of Service. Concessionaire shall provide all services required under this Agreement three hundred sixty-five (365) days a year with operating hours and staffing levels adequate for both the hourly and seasonal peaks in passenger traffic. The concession shall be open for service commencing one hour prior to the first scheduled departure and stay open consistently until fifteen minutes prior to the last scheduled departure. In the event of departure delays, the Concessionaire will use commercially reasonable efforts to keep the concession open until the flight departs factoring in the value of customer service and the cost required to keep the concession open.
10. Testing and Inspection by the Authority. The Authority may monitor, test, or inspect Concessionaire's services at any time through the use of a responsible shopping service or by other commercially reasonable means that do not unduly interfere with Concessionaire's business.
11. Security Requirements. Concessionaire shall abide by, and require its agents, contractors, and employees to abide by, and be subject to all rules and regulations which are now, or may from time to time, be promulgated by the Authority or the Airport Director concerning the management, operation, or use of the Airport, and specifically to abide by all provisions of the airport security plan on file in the office of the Airport Director. Concessionaire must comply with all security requirements of the Authority, Department of Homeland Security, the Federal Aviation Administration and any other governing agency. Concessionaire further agrees to provide airport identification badges as required by the Airport Director at its sole cost for all of its agents, contractors and employees serving at the Airport, and shall require said agents, contractors and employees to have such badges in their possession at all times while on the Airport.
12. Badging. Concessionaire shall display the required security identification and access badges at all times while working at the Airport.

13. Staple Items. Concessionaire agrees to display and sell items listed in **Exhibit D**, attached to and made part of this Agreement. This includes the menu, products and pricing for those items.

B. Employee Standards:

Concessionaire shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the service standards set forth above. Each employee shall: (1) be clean, neat, and attired in the approved uniform; (2) be free from offensive body odor; (3) be professional, courteous, and friendly to the public; (4) not wear excessive amounts of jewelry, perfume, or cologne; and (5) wear the employee's Airport identification at all times, showing the names of both the Concessionaire and the employee, within the guidelines of all local, state and federal laws. Concessionaire shall discipline and, if necessary, discharge any employee who fails to conform to the foregoing standards while working at the Airport.

C. Sanitation, Hygiene, and Cleanliness:

1. Concessionaire shall keep the CSA and proximately located surrounding public areas reasonably free of debris, trash or soiled cleaning supplies (e.g., rags and buckets) originating from Concessionaire's operations or customers. Concessionaire shall ensure that all equipment, walls, floors, counters, tables and other surfaces are cleaned and sanitized frequently, and that employee areas are cleaned daily. Concessionaire shall keep the CSA free of hazardous conditions, shall keep public areas around the CSA free of hazardous conditions originating from Concessionaire's operations, and shall notify the Authority promptly of other hazardous conditions in the Public Areas outside the CSA. Concessionaire shall monitor areas within and contiguous to the CSA to ensure that they are kept clean and orderly, and that trash is not allowed to accumulate. Concessionaire shall ensure that all its employees conform to the employee standards set forth above and to personal hygiene and health requirements established by Concessionaire's policy(ies) and by federal, state, or local laws, rules, regulations and/or ordinances.
2. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of Concessionaire's operations and shall provide for its timely removal to the central collection point designated by the Airport Director. Concessionaire shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Concessionaire shall keep all garbage and putrescible materials in durable, fly- and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors, or covers, and shall be kept covered when material is not being deposited in them. Concessionaire shall clean the containers as necessary to prevent odors. Concessionaire shall not allow boxes, cartons, barrels, or other similar items to remain within view of the public. Authority at its expense shall be responsible for handling and removal of trash and other refuse deposited by customers in public areas.

D. Waste Reduction, Recycling, Reuse:

1. General. Concessionaire shall gather, sort, and transport all garbage, refuse, and recyclable materials daily to the central collection point designated by the Airport Director. Concessionaire shall place all garbage, refuse, and recyclable materials in the appropriate containers at the designated collection point. Concessionaire is encouraged to maximize its participation in a recycling program.

2. Garbage. Concessionaire shall take all reasonable measures to reduce the amount of waste it generates by requiring suppliers to remove nonessential overwraps, containers, and other packaging, and to use recyclable materials for essential packaging.
3. Recyclable Materials. Airport Director reserves the right to institute a recycling program in which Concessionaire shall participate. Recyclable materials collected by Concessionaire shall be stored separately from trash and refuse. Authority may provide containers for recycling: (1) corrugated cardboard, (2) magazines, (3) newspapers, (4) tin and steel cans, (5) glass that is clear, brown, or green, and (6) high grade office paper, including letterhead, typing paper, photocopy paper, and computer paper. Concessionaire shall ensure that the following materials are not deposited in Authority recycling containers: (1) hazardous materials, (2) cans or other containers used to store paint, oil, solvent, cleaning fluids, or other hazardous liquids; and (3) “non-clean” paper, including wax coated paper, paper that is soiled with food, paper with plastic covers or windows, and colored paper.

E. Deliveries:

1. Hours. All deliveries shall be scheduled during non-peak aircraft arrival and departure times. Airport Director may issue schedules of acceptable delivery times, which, upon reasonable notice to Concessionaire, Airport Director may adjust from time to time, and from which Concessionaire shall not deviate without Airport Director’s prior consent.
2. Zones. Airport Director may establish authorized vendor delivery zones which may, upon reasonable notice to Concessionaire, be changed from time to time because of Authority construction or operational requirements. Use of any such delivery zones by Concessionaire or Concessionaire’s suppliers shall be limited to 30 minutes at any one time; deliveries that will take longer than 30 minutes must be approved by the Airport Director. All vehicles using the delivery zones must be prominently marked on both sides with the company name or logo.
3. Transportation. Concessionaire shall ensure that inventory, merchandise, supplies, trash, refuse and recyclable materials being transported within the Terminal are handled with care in a manner that ensures that items do not spill or leak. Inventory, merchandise and supplies transported from the non-secured side of the Terminal to the secured side of the Terminal may be required to pass through x-ray inspection units. In transporting inventory, merchandise, supplies, trash, refuse and recyclable materials associated with Concessionaire’s operations within the Terminal, Concessionaire shall use only those delivery and receiving routes established by the Airport Director and shall use appropriate carts, vehicles, or other conveyances. If delivery and receiving routes are carpeted, delivery carts must be equipped with wheels suitable for operating on carpets without causing damage to them.

F. Product Pricing:

Concessionaire shall charge fair, reasonable and not unjustly discriminatory prices for all food, beverage and retail products. Prior to setting initial prices and/or adjusting published prices, Concessionaire agrees to consult with the Airport Director. In addition, Concessionaire will review proposed price changes on an annual basis for reasonableness, if requested by the Airport Director.

G. Non-Interference with Utilities:

Concessionaire shall do nothing, and shall permit nothing to be done, that may interfere with the drainage or sewerage systems, fire hydrants, heating and air conditioning systems, electrical systems, domestic hot water, domestic cold water, gas, fire suppression systems, fire alarm system, or plumbing at the Terminal or elsewhere at the Airport. Concessionaire's duty under this section includes, but is not limited to, preventing grease and oils from entering waste lines, drains, and sewers.

H. Record Handling:

1. Concessionaire will maintain, in accordance with generally accepted accounting principles for each year during which the Agreement is in effect, all records, documents and books of account recording all transactions of the business conducted by Concessionaire at the Airport, which records, documents and books of account shall be held accessible to the Authority and its representatives at any time upon reasonable demand by the Airport Director. All records must be maintained by Concessionaire for a minimum of six (6) years following the termination of the contract as called for herein.
2. Concessionaire will allow the examination and audit by the Authority and/or the state auditor or their representatives, of any records, documents or books of account of Concessionaire pertaining to their operations within the Terminal. Concessionaire must provide the records requested within five (5) days upon receipt of notice. If as a result of such inspection and upon audit, deficiency in payments made to the Authority hereunder of more than five percent (5%) is disclosed, the cost of audit shall be borne by the Concessionaire due and payable upon demand. Otherwise, the cost of inspection and audit shall be borne by the Authority.

I. Management:

The operation and maintenance of the CSA shall be under the constant, direct supervision of a trained, qualified, and experienced manager employed by Concessionaire. Concessionaire's manager shall be authorized to accept any notice required or allowed by this Agreement and shall have authority to make all decisions reasonably necessary in the day-to-day operation of the concession, including, without limitation, decisions regarding merchandise quality, merchandise price, and employee conduct. Concessionaire's manager or a designated supervisor with the authority to make decisions shall be available on-site during business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager. Concessionaire may employ more than one manager to satisfy the requirements of this section.

J. Restaurant License; Liquor License:

Concessionaire shall file the appropriate applications to obtain a restaurant license and the designated airport liquor license from the City of Charleston and/or the State of West Virginia for its operations at the Airport and shall diligently prosecute such applications until such licenses are issued. Concessionaire shall not serve prepared food or alcoholic beverages at the Airport until the necessary permits and/or licenses have been secured and the required liquor liability insurance coverage have been obtained.

**SECTION 14  
CASH HANDLING REQUIREMENTS**

- A. Equipment such as a point of sale system, or any other electronic or mechanical device used for recording customers' sales, shall have a serial totaling unit built in them with a continual sequence

recording of transaction of sales for proper sales accountability. The totalizer of such units may not be turned back but shall be continuous in adding to each transaction as made. All units, where the Authority shall determine visible monitoring is to be made of customers' transactions, shall be placed so that said monitoring can be made readily, and the windows thereof shall be properly illuminated so that transactions can be viewed by customers from a reasonable distance when such equipment is in use.

- B. All point of sale systems and devices used in recording sales to customers shall have a non-resettable grand total that accumulates each transaction entered into these devices. All transactions recorded on these devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance. No point of sale system or device in which cash sales are recorded and deposited may be opened without recording the date and time of said opening. Register or device drawers must be kept closed at all times except when sales are made, change is made, or routine audits are conducted. The point of sale system must have sufficient keys for proper breakdown of and segregation of transactions and meet all accepted standards of accounting systems and cash control.
- C. The point of sale system and other electronic or mechanical devices that total customers' transactions shall have a reading taken of the same at least once each twenty-four hours and recorded for accounting purposes. Adequate security protection is to be maintained so that unauthorized persons may not tamper with the totaling unit of such devices.
- D. All persons handling sales shall promptly record said sales (cash or credit) in cash registers and other electronic or mechanical devices and shall not delay or "gang" register or record such sales.

## **SECTION 15 MAINTENANCE AND REPAIRS WITHIN CSA**

A. Maintenance:

Concessionaire shall at all times and at its sole expense keep the CSA and all improvements in the CSA, including furnishings, fixtures, and equipment, in a safe, neat, clean and orderly condition and appearance, normal wear and tear excepted. Without limiting the generality of the foregoing, Concessionaire shall, at its sole cost and expense, be responsible for performing the following:

- Janitorial services, providing janitorial supplies, window washing, rubbish, and trash removal to the central collection point designated by the Airport Director.
- Replacement of light bulbs in the CSA.
- Cleaning of stoppages in sinks, plumbing fixtures and drain lines to the first "clean-out" outside the CSA.
- Cleaning and maintaining grease traps.
- Cleaning and replacement of filters in exhaust hoods.
- Cleaning and maintaining the fire suppression system and related components required over the cooking appliances (*e.g.*, grill, fryer), including required periodic inspections.
- Regularly scheduled maintenance of Authority-owned equipment and fixtures in conformity with manufacturer's recommendations. (If necessary to prevent voiding manufacturer's warranties, such maintenance shall be performed only by certified or authorized technicians.)
- Maintaining hand fire extinguishers in accordance with applicable safety codes.
- Supplying, stocking, servicing and maintaining Concessionaire-owned, -leased or -operated mobile food or beverage carts (including policing the area surrounding the same) at Airport Director approved locations within the Terminal.
- Cleaning floors and floor coverings in and around the CSA.

- Maintaining electrical loads within the designed capacity of the CSA's electrical system. (Prior to making any change in the electrical loading which may exceed such capacity, Concessionaire shall first obtain Airport Director's written consent).

Upon termination of this Agreement, Concessionaire shall deliver the CSA, and all improvements thereon, including all furnishings, fixtures and equipment, to the Authority in the same condition and repair as the same existed on the commencement date of this Agreement, reasonable wear and tear excepted. The Airport Director shall be the sole judge of the quality of maintenance.

**B. Repairs:**

The Authority shall keep the structural components of the CSA (including the walls and roof), the mechanical systems serving the CSA (*i.e.*, HVAC, plumbing, electrical and natural gas systems), and the Authority-owned equipment and fixtures in good repair, subject to Concessionaire's maintenance obligations set forth above. Authority shall not be required to make any repairs to the CSA, mechanical systems or Authority-owned equipment or fixtures or any other elements of the CSA unless and until Concessionaire has notified Authority in writing of the need for such repairs. Authority shall have a reasonable period of time following receipt of such notice to commence and complete said repairs. Notwithstanding the foregoing, Concessionaire shall repair all damage to the CSA and all improvements on the CSA, including furnishings, fixtures, and equipment, caused by the negligence or willful acts or omissions of Concessionaire, its employees, agents, servants, or licensees. All repairs to the CSA done by or on behalf of Concessionaire shall be of first-class quality in both materials and workmanship, shall be equal to or better than the original in materials and workmanship, and, except in emergencies requiring immediate response, shall have the prior written approval of the Airport Director. All repairs shall conform to the applicable rules and regulations and building codes prescribed from time to time by federal, state, or local authority having jurisdiction over the CSA. Airport Director shall be the sole judge of the quality of the repairs. Concessionaire expressly waives any and all claims for damages of any kind, including but not limited to loss of profits as a result of the interruption of Concessionaire's business, resulting from the need for repairs to the CSA, the mechanical systems or Authority-owned equipment or fixtures, whether such repairs are undertaken by the Authority or Concessionaire.

Concessionaire shall repaint or refinish, at its sole cost and expense, high traffic areas of the CSA subject to greater-than-normal wear on a schedule to be specified by Concessionaire, or as may be directed by the Airport Director if Concessionaire fails to specify a reasonable schedule. Concessionaire shall repair or replace Concessionaire's trade fixtures and equipment that become worn, chipped, dented, or gouged. All repainting and refinishing shall have the prior written approval of the Airport Director.

**C. Right to Enter:**

Authority shall have the right to enter the CSA at reasonable times during Concessionaire's regular business hours to inspect the CSA and to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Agreement. Authority shall have the right to enter the CSA to cure any material breach that remains uncured by Concessionaire after reasonable notice and opportunity to cure. Authority shall have the right to enter the CSA at any time to respond to any emergency.

Nothing in this section shall be construed to be a limitation or restriction on the exercise of the Authority's police power.

**SECTION 16**

## CONCESSIONAIRE'S COVENANTS

- A. Concessionaire shall comply with all laws, ordinances, rules, regulations, policies, and orders now in effect or hereinafter adopted of the United States, state, city, and Authority and any agency, department or governmental subdivision thereof, including but not limited to the Department of Homeland Security, the Occupational Safety and Health Administration (“OSHA”) and the Federal Aviation Administration relating to Concessionaire's activities at the Airport, including but not limited to the Airport certification manual, the Airport security plan and the Airport minimum standards, current copies of which are on file in the office of the Airport Director located at the Airport.
- B. Concessionaire for itself, its personal representatives, successors in interest, and assigns, and as a part of the consideration hereof, does hereby agree that it shall comply with all applicable requirements of Federal and state civil rights, unlawful discrimination, and rehabilitation statutes, rules and regulations now in effect or hereinafter adopted, including but not limited to Title 49, Code of Federal Regulations, Department of Transportation of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and with the Americans Disabilities Act.
- C. No advertising signs shall be used or displayed by Concessionaire other than those approved in writing by the Airport Director.

### SECTION 17 INDEMNIFICATION

The Concessionaire shall indemnify, defend, save, and hold harmless the Authority, the Airport, and all of their board members, officials, agents, and employees, from and against, any claim, action, injury, injury to persons, damage, damage to property, losses, costs and expenses of whatsoever kind or nature (including, but not limited to, attorneys’ fees, disbursements, court costs, expert fees, and other costs) arising out of, resulting from, in conjunction with, associated with, and/or incident to (a) any act or omission of the Concessionaire and/or Concessionaire’s officials, agents, and/or employees, (b) any actions, operation, and/or management of the Agreement at the Airport, (c) the contract to operate, manage, and maintain a non-exclusive concession at the Airport, (d) and/or any negligence or willful misconduct of the Concessionaire and/or Concessionaire’s officials, agents, and/or employees. On ten (10) days’ written notice from the Authority, the Concessionaire shall appear and defend all claims and lawsuits against the Authority growing out of any such injury or damage. The provisions of this paragraph shall survive the expiration, termination or early cancellation of this Agreement.

### SECTION 18 INSURANCE

#### A. Insurance Requirements.

Concessionaire shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below.

- 1. Comprehensive General Liability with limits no less than one million five hundred thousand dollars (\$1,500,000) combined single limit per occurrence, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance, including but not limited to, bodily injury and property damage, airport premises and products/completed operations liability, contractual liability, and independent contractor’s liability.

2. Business Automobile Liability with limits no less than one million five hundred thousand dollars (\$1,500,000) each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.
  3. Fire Legal Liability with limits no less than \$25,000 each occurrence.
  4. Workers' Compensation Coverage in statutory amounts with "all states" endorsement including Employees Liability Insurance in limits of \$1,000,000 per employee.
  5. Liquor Liability Coverage in the amount of not less than \$1,500,000 per occurrence.
- B. Requirements for All Insurance. All insurance required in this Section shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of West Virginia and with companies or underwriters satisfactory to the Authority's legal counsel.
- C. Additional Insureds. Authority shall be named as additional insureds on each of the policies above except the Workers' Compensation policy.
- D. Insurance Primary. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by Authority.
- E. Insurance Certificate. Certificates showing that Concessionaire is carrying the above-described insurance in the specified amounts shall be furnished to Airport Director prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be filed with Airport Director during the term of this Agreement. Failure of Concessionaire to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve Concessionaire from any responsibility to carry the required types and amounts of insurance.
- F. Notice of Change or Cancellation. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least thirty (30) days' advanced notice being given to Authority. Failure to give such notice to Authority shall render any such change or changes in said policy or coverages ineffective as against Authority.
- G. ACORD Form. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent, as approved by the Authority's legal counsel.
- H. Disclaimer. Authority does not represent or guarantee that these types or limits of coverage are adequate to protect the Concessionaire's interests and liabilities. It shall be the obligation and responsibility of Concessionaire to insure, as it deems prudent, its own personal property, against damage. Authority does not have insurance coverage for Concessionaire's property and Authority expressly disclaims any and all liability for any and all losses, damage and/or claims to vehicles and/or personal possessions of Concessionaire.

## **SECTION 19 SURRENDER OF POSSESSION**

Upon the termination of this Agreement, Concessionaire's authority to use the CSA, rights, facilities and equipment herein granted shall cease and Concessionaire shall, upon expiration or termination, promptly and in good condition, normal wear and tear excepted, surrender the same to the Authority. In the event that

Concessionaire has in any way changed, altered or modified the CSA demised herein, if required by the Airport Director, Concessionaire covenants to return the same to the condition they were in at the time of the occupancy under this Agreement, normal wear and tear excepted, or, in the alternative, to pay the Authority for the cost of returning them to said condition. Upon termination, any improvements which have become part of the realty shall become the property of the Authority, and the same shall be immediately returned to the ownership and control of the Authority. Any improvements not part of the realty shall be removed therefrom within ten (10) days after the termination of this Agreement or the same shall be deemed to have been abandoned to the Authority and the right of the Concessionaire to possession thereof shall cease.

## **SECTION 20 AUTHORITY'S RIGHTS UPON DEFAULT**

- A. Rights Upon Default. If at any time Concessionaire shall be in default, as defined in this section, with regard to the requirements of this Agreement, it shall be lawful for the Authority, and the Authority may at any time thereafter:
1. Immediately, or at any time thereafter without further notice to Concessionaire, re-enter into or upon the CSA under this Agreement or any part thereof and take possession of the same fully and absolutely without such re-entry representing a forfeiture of the Concession Fee, fees, and charges to be paid and of the covenants, terms and conditions to be performed by Concessionaire for the full term of this Agreement, and in the event of such re-entry, the Authority may proceed with the collection of Concession Fee, fees, and charges to be paid under this Agreement or to recover properly measured damages.
  2. Authority may at its election terminate this Agreement upon written notice in the manner hereinafter provided and re-enter upon said CSA, and the Concessionaire covenants in case of such termination to indemnify the Authority against all loss of rentals, fees, and charges which the Authority has suffered or paid by reason of such termination, during the remainder of the term of this Agreement.
  3. The Authority shall further have all other rights and remedies at law or in equity including injunctive relief, or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings shall be deemed cumulative.
- B. Default Defined. "Default" shall be defined when any of the following circumstances exist:
1. If the Concessionaire has failed to pay the Concession Fee, or any other fees or taxes when due hereunder and such failure to pay shall continue for fifteen (15) days after written notice to Concessionaire in the manner hereinafter provided.
  2. Failure to provide and/or maintain the insurance coverages required herein.
  3. If the Concessionaire fails in the observance or performance of any of the other terms, covenants and conditions of this Agreement and such failure shall continue for fifteen (15) days after Authority has given Concessionaire written notice, or the Concessionaire shall have failed to commence the corrective action of such failure within fifteen (15) days after such notice and to diligently prosecute the same where the same cannot be completed within fifteen (15) days.
  4. If a petition to reorganize the Concessionaire or for its arrangement of its unsecured debts shall be filed.

5. If the Concessionaire shall be adjudicated bankrupt.
  6. If a receiver or trustee of the Concessionaire's property shall be appointed by any court.
  7. If the Concessionaire shall make a general assignment for the benefit of creditors.
  8. If all of the interest of the Concessionaire in its property shall be taken by garnishment, attachment, execution or other process of law.
  9. If the CSA shall be deserted or vacated.
- C. Attorneys' Fees and Costs. In the event Authority shall prevail in any action or suit or proceeding brought by Authority to collect fees or taxes due or to become due hereunder or any portion thereof, or to take possession of the CSA, or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement, Concessionaire agrees to pay Authority such sums as a court may adjudge reasonable as attorneys' fees and costs to be allowed in such action, suit or proceeding.
- D. Non-Waiver. No waiver or default by Authority of any of the terms, covenants or conditions hereof to be performed, kept and observed by Concessionaire shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire.

## **SECTION 21 CONCESSIONAIRE'S TERMINATION RIGHTS**

Concessionaire shall have the right upon written notice to the Authority to terminate this Agreement upon the happening of one or more of the following events, if said event or events are then continuing:

- A. The issuance by any court of competent jurisdiction of an injunction, order or decree: (1) preventing or restraining the use by Concessionaire of all or any substantial part of the CSA used and occupied by Concessionaire hereunder, or (2) preventing or restraining the use of all or a part of the Airport for normal airport purposes which may be used by Concessionaire and which is necessary for its operations on the Airport, or (3) preventing Concessionaire from its Concessions operation and which injunction, order or decree remains in force for a period of at least ninety (90) days.
- B. If all or a material part of the CSA used and occupied by Concessionaire hereunder is damaged or destroyed or all or a part of the Airport or Airport facilities which are necessary to the operation of Concessionaire's business are damaged or destroyed or the use thereof disrupted for causes beyond Concessionaire's control.
- C. If, by reason of any action of any governmental authority, Concessionaire is unable to conduct its business for a period of in excess of ninety (90) consecutive days in substantially the same manner or substantially to the same extent as prior to such action.
- D. Permanent abandonment of Airport for scheduled airline service.

## **SECTION 22 ASSIGNMENTS**

Concessionaire shall not assign or transfer this Agreement, in whole or in part, in any manner, nor any interest therein, nor permit the foregoing Agreement to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part, unless the written consent of Authority shall first be obtained in each and every case of subletting, assignment or transfer. It is expressly agreed by the parties that a change in ownership of the controlling share of stock in Concessionaire, if any, shall be deemed to be an assignment hereunder. It is expressly agreed by the Concessionaire that in the event permission be granted by the Authority as herein provided, the assignee shall be required to assume and agree to perform the covenants of this Agreement and that notwithstanding any such assignment, the Concessionaire shall be and remain liable for the payments of all Concession Fee, fees and charges and other payments due hereunder and the performance of all covenants and conditions for the full term of this Agreement.

**SECTION 23  
SUBORDINATION**

This Agreement shall be subordinate to the provisions of any existing or future Agreement between the Authority and the United States of America or the State of West Virginia relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or state funds for the development of the Airport, or to any security requirements of state or U.S. Government, including temporary security procedures or instructions.

**SECTION 24  
MODIFICATION**

Any of the terms of this Agreement may be changed upon the mutual consent of the Authority and the Concessionaire, but to be valid any such changes must be in writing, dated, and must be executed with the same formalities as this Agreement. In the event that any provision of this Agreement is determined to violate any local, state, or federal rule or regulation or is deemed to cause a violation of any rate covenants, the Agreement shall be modified upon consultation with Concessionaire to cause such violation to be compliant with such provision and an amendment will be executed on a timely basis to incorporate the required changes.

**SECTION 25  
NOTICES**

Any notice provided for in this Agreement or otherwise to the Authority shall be sufficient if sent by regular U.S. mail, postage prepaid, addressed to:

Central West Virginia Regional Airport Authority  
Airport Director  
Yeager Airport  
100 Airport Road, Suite 175  
Charleston, WV 25311

Any notice to the Concessionaire hereunder shall be to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 26**

## **APPLICABLE LAW**

This Agreement, together with all of its sections, terms and provision, is made in the State of West Virginia and shall be construed and interpreted according to the laws of the State of West Virginia. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in Kanawha, West Virginia. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of West Virginia. The parties to this Agreement waive any objections to the jurisdiction of these courts, whether based on convenience or otherwise.

### **SECTION 27 SEVERABILITY**

In the event any provision of this Agreement shall be deemed invalid or unenforceable, the remaining provisions shall continue in force and effect and shall be binding upon the parties to this Agreement.

### **SECTION 28 NONWAIVER OF LIABILITY**

Nothing in this Agreement constitutes a waiver by the Authority of any statutory or common law defenses, immunities, or limits on liability. The liability of the Authority shall be governed by the provisions of the West Virginia state law.

### **SECTION 29 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) COMPLIANCE**

- A. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Concessionaire is required to participate in the Authority's ACDBE program.
- B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by Title 49 CFR Part 23.
- C. The Concessionaire agrees to include the statement set forth in paragraph B in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
- D. The Authority has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:
  - 1. Breach of contract action, pursuant to the terms of this contract;
  - 2. Breach of contract action, pursuant to applicable state statutes
- E. The federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:
  - 1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
  - 2. Enforcement action pursuant to 49 CFR part 31; and
  - 3. Prosecution pursuant to 18 USC 1001.

- F. The Authority will comply with all regulations set forth in 49 CFR Part 23 and will monitor concessionaires at the Airport for compliance with the ACDBE program.
- G. The Authority will submit to the Federal Aviation Administration's, Regional Civil Rights Office, an annual ACDBE participation report showing the commitments and attainments. The Authority will take measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities.

**SECTION 30  
ENTIRE AGREEMENT**

The proposal of Concessionaire, which has been accepted and relied on by Authority, is included as **Exhibit E** and incorporated by reference. This Agreement, including **Exhibits A-E**, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto. There are no representations, warranties, or stipulations either oral or written not herein contained.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above shown.

**CENTRAL WEST VIRGINIA AIRPORT AUTHORITY**

By: \_\_\_\_\_

Its: Chairman

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**CONCESSION SERVICE AREA (CSA)**

SAMPLE

**EXHIBIT B**

**[RESERVED]**

SAMPLE

**EXHIBIT C**

**CONCESSIONAIRE PROVIDED EQUIPMENT WITHIN CSA**

SAMPLE

**EXHIBIT D**

**MENU, PRODUCTS, and PRICING (Staple Items)**

SAMPLE

**EXHIBIT E**

**COPY OF PROPOSAL (Accepted)**

SAMPLE