

Non-Exclusive Space-Use License Agreement

Between the City of Los Angeles

And

Alclear, LLC dba CLEAR

For the Operation of an

Expedited Traveler Service at

Los Angeles International Airport

**NON-EXCLUSIVE SPACE-USE LICENSE AGREEMENT  
BETWEEN THE CITY OF LOS ANGELES AND  
ALCLEAR, LLC d.b.a. CLEAR  
FOR EXPEDITED TRAVELER SERVICES  
AT  
THE LOS ANGELES INTERNATIONAL AIRPORT**

THIS NON-EXCLUSIVE SPACE-USE LICENSE AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2020 at Los Angeles, California, by and between the **City of Los Angeles**, a municipal corporation (“**City**”) acting by order of and through its Board of Airport Commissioners (the “**Board**”) of the Department of Airports (hereinafter referred to as “**Department**” or “**LAWA**”), and ALCLEAR, LLC d.b.a. **CLEAR** a Delaware limited liability company, registered to do business in the state of California (“**Licensee**”).

**RECITALS**

WHEREAS, City is the owner and operator of Los Angeles International Airport (hereinafter referred to as “**LAX**”); and

WHEREAS, the Airports are managed by the Department for the benefit of the air traveling public and others using the Airports; and

WHEREAS, LAWA desires that Licensee provide expedited traveler services as a supplement to the TSA’s Pre-Check Program, in terminals at LAX, which service will assist in expediting security screening for passengers who are pre-registered for the service; and

WHEREAS, Licensee has represented that it has the experience, ability, and resources to provide these services on a continuing basis under the terms and conditions set forth herein.

NOW, THEREFORE, City and Licensee hereby agree as follows:

**Section 0.1      BASIC INFORMATION AND SUMMARY OF PRINCIPAL TERMS.**

This Section provides some basic information and summary of the principal terms of this Agreement, as provided in the table below.

<u>Licensee Info:</u>	Ken Cornick President & Chief Financial Officer 65 E. 55 <sup>th</sup> Street 17 <sup>th</sup> Floor New York, NY 10022
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<u>Registered Agent :</u>	Corporation Service Company which will do business in California as: CSC-Lawyers Incorporating Service (C1592199) 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3505
<u>Effective Date:</u>	_____, 2020
<u>Term Commencement Date:</u>	April 1, 2020
<u>Term:</u>	5 years, Commencing on April 1, 2020
<u>Rent Commencement Date:</u>	April 1, 2020
<u>Monthly License Fee to City:</u>	<p>Licensee will pay to LAWA the greater of a Minimum Annual Guarantee (MAG) or Percentage of Gross Revenues.</p> <p>The MAG will consist of: From Rent Commencement Date through the end of the 5 year term, a total of \$2,700,000, paid in 12 equal monthly installments.</p> <p>The Percentage of Gross Revenues will consist of: Percentage Fee shall be equal to twelve and a half percent (12.5%) of Gross Revenues from catchment area.</p>
<u>Catchment Area</u>	100 miles in any direction from LAX, excluding San Diego County
<u>Assigned Areas</u>	6 pods per terminal, See Exhibit A-2
<u>Fees Remittance Address:</u>	City of Los Angeles – LAWA P.O. Box 54078 Los Angeles, CA 90054-0078
<u>Faithful Performance Guaranty Remittance Address:</u>	Los Angeles World Airport 6053 West Century Blvd., Suite 500 Los Angeles, CA 90045 Attn: Accounting/Revenue FPG Administrator
<u>Hours of Operation:</u>	Mutually agreed upon by Alclear and LAWA

<u>Storage Space &amp; Office Space Addendum</u>	See Exhibit B-1 and B-2
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**Section 0.2 DEFINITIONS.** The following words and phrases when used in this Agreement, or any amendment hereto, shall have the meanings given to them in this Paragraph:

BOARD:	The Board of Airport Commissioners of the City of Los Angeles.
CITY COUNCIL	The City Council of the City of Los Angeles.
DEPARTMENT:	The Department of Airport of the City of Los Angeles.
CHIEF EXECUTIVE OFFICER:	The Chief Executive Officer (CEO) of the Department or her/his designee.
LICENSED AREA:	All Assigned Areas in Airport with Licensee's biometric verification lanes and/or enrollment integration stations, approved by the CEO for expedited traveler services. The Licensed Area includes the actual footprint occupied by the verification lanes and enrollment integration stations.
CATCHMENT AREA:	The area that is one hundred (100) miles in any direction from the boundaries of the Los Angeles International Airport excluding San Diego County.

**Section 1.0 TERM.**

1.1 Term. The term of the Agreement shall commence on \_\_\_\_\_, 2020 ("**Commencement Date**") and shall expire five (5) years thereafter ("**Expiration Date**"), unless terminated earlier under the provisions of this Agreement.

**Section 2.0 RIGHTS AND OBLIGATIONS OF LICENSEE.**

2.1 Rights Granted to Licensee. City hereby grants to Licensee, subject to all of the terms, covenants and conditions of this Agreement, the non-exclusive right to install, operate and maintain dedicated biometric verification lanes for **expedited passenger screening and enrollment services and customer service stations for travelers to sign-up for or inquire about the Registered Traveler Services ("Expedited Traveler License")** for the City in specified locations as described in Section 3.1 in the passenger terminals at the Airport.

2.2 Expedited Traveler Services. Licensee shall furnish, install, operate, and keep and maintain in good and working condition, biometric enrollment and verification stations and Licensee lanes at airport security checkpoints (collectively "**Expedited Traveler Biometric Verification Lanes and/or Stations**"), and any and all fixtures, equipment and hardware required for the efficient and effective operation of the Verification Stations, as specified in

Exhibit A-1 and this Agreement including but not limited to, new power conduits and cables to and from the Verification Stations, to the electrical outlets, and make all connections to the nearest electrical room at Airport, which meets or exceeds the minimum specifications set forth in Exhibit A-1 as located at the Assigned Areas (as defined under Section 3.0 herein). Electrical outlets shall be installed by Licensee at locations where an electrical outlet is not currently available.

2.2.1 Booth, podium, stations, barricades, computer, register, biometric identification verification equipment, and all other related equipment (“**Verification Station Equipment**”) that are installed within the Assigned Areas for use by the general public to 1) walk through screening after registration confirmation, 2) to make inquiries regarding expedited traveler services, 3) to sign-up and remit payment to register for expedited traveler services, or 4) other permitted type of transaction or information retrieval by way of registration and use of the Expedited Traveler Services. Any changes in the amount or types of equipment shall require the prior written approval of the CEO.

2.2.2 Exhibit A-1 “Biometric Verification Station Fixtures and Equipment”, A-2 “Assigned Areas”, and A-3, “Equipment Installation Phasing Schedule”, may be amended from time to time during the term of this Agreement at the discretion of the CEO, without further approval from the Board.

2.3 Expedited Traveler Services Rates and Charges. Licensee shall provide LAWA with a list of all charges, including but not limited to enrollment fees, membership fees, taxes, any government taxes that are passed through to the customer, within thirty (30) days from the execution of this Agreement by Licensee; and shall provide LAWA with written notice of any increase in charges not less than thirty (30) days prior to the proposed implementation date for such proposed increases.

2.4 Equipment Quality. Licensee shall provide high quality service to the City and the traveling public at the Airport for the Expedited Traveler License. All items Licensee installs or uses to provide services pursuant to this Agreement must be provided by reliable sources and meet any Transportation Security Administration standards. All equipment, materials, parts, cable, software, and hardware furnished shall be new and unused, shall be current models, and except as specifically authorized, in writing, by the CEO, shall be of first quality with the latest upgrades, and shall conform in all respects to all Laws in effect and as may be amended from time to time. If and when such items are replaced, the replacement equipment shall also be new and unused and shall be current models. Failure on the part of Licensee to promptly correct, modify or rectify any deficiencies, within ten (10) days, upon written notice from the CEO shall be cause for termination of this Agreement by the City.

2.5 Degradation of Service. Notice of any actual material degradation in Licensee’s level of service shall be conveyed to Licensee in writing by the CEO. Licensee shall upgrade any and all equipment and specifications, to the CEO’s satisfaction, within ten (10) days of the date on the written notification. Questions or complaints regarding the quality of services and/or charges, whether raised by patrons or on LAWA’s own initiative or otherwise, may be submitted

to Licensee for response by Licensee within twenty-four (24) hours of receipt of said questions or complaints. At the request of the CEO, Licensee shall meet with the CEO to review any complaints or concerns and shall correct any deficiencies as expeditiously as possible, but not more than ten (10) days from the date of LAWA's request, unless otherwise approved in writing by the CEO. LAWA's determination shall be conclusive.

2.6 Identified Uses Only. Licensee agrees to provide only those expedited traveler services identified in this Agreement. Should a conflict arise between Licensee and other operators at the Airport regarding the scope of service privileges, CEO in her or his sole discretion shall resolve the conflict. Licensee agrees to abide by the CEO's decision, which will be final and binding.

2.7 Hours of Operation. Expedited Traveler Service operational hours will be mutually agreed upon and approved, in writing, by the Licensee and LAWA's CEO.

2.8 Licenses. Licensee shall, at its own expense, identify, obtain, and maintain in force any and all licenses and permits required for the operation of all aspects of the services to be provided by Licensee pursuant to this Agreement.

2.9 Description of Cash and Record Handling, and Requirements. If Licensee will handle cash, Licensee shall prepare a written description of its cash handling and receipts recording systems and equipment which shall, within thirty (30) days of execution of this Agreement, be submitted to CEO for approval. When approved by CEO, such systems and equipment, including any revisions thereto approved by CEO shall be utilized by Licensee in its operations hereunder. Licensee will maintain adequate employee fidelity bonds to cover all its employees who handle money.

2.10 Inventory. Prior to the commencement of operations, and annually thereafter, Licensee shall furnish to the CEO a written inventory of all Biometric Verification Lanes and Stations it has placed in each of the Assigned Areas.

2.11 Liquidated Damages. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS ENTERED INTO FOR THE PURPOSE OF ENSURING THAT THE TRAVELLING PUBLIC HAS ACCESS TO EXPEDITED TRAVELER SERVICES ON A CONTINUOUS BASIS, AND THAT DAMAGES RESULTING FROM INTERRUPTION OF SUCH SERVICE WOULD BE DIFFICULT TO DETERMINE AND QUANTIFY. LICENSEE AGREES THAT IF, DURING INSPECTIONS BY CITY, THE FAILURES BY LICENSEE LISTED BELOW ARE FOUND TO EXIST, CITY WILL SUFFER DAMAGES. LICENSEE FURTHER AGREES THAT (A) IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES WHICH CITY WOULD SUFFER; (B) THE RESPECTIVE AMOUNTS SET FORTH OPPOSITE EACH FAILURE SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO CITY FOR SUCH FAILURE; (C) THE PAYMENT OF SUCH AMOUNTS TO CITY AS LIQUIDATED DAMAGES CONSTITUTES A REASONABLE APPROXIMATION OF THE DAMAGES WHICH WOULD BE SUFFERED BY CITY; AND (D) PAYMENT OF SUCH AMOUNTS TO CITY AS

LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT INSTEAD IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY PURSUANT TO SECTION 1671 OF THE CALIFORNIA CIVIL CODE. THE DAMAGES PAYABLE PURSUANT TO THIS SECTION, AS ADDITIONAL FEES, ARE IN ADDITION TO THE LICENSE FEES PAYABLE PURSUANT TO SECTION 4.0.

FAILURES

LIQUIDATED DAMAGES

Biometric Identification Verification Lanes and Stations not in service.	\$200.00 per day per piece of equipment.
LAWA not notified of change in charges.	\$1,000 per occurrence.
Failure to install equipment within agreed upon schedule (See <u>Section 5.8</u> ).	\$100.00 per day.
Incorrect signage	\$50.00 per location per occurrence.
Failure to install signage required by Laws, Rules or Regulations or tariff or as directed by LAWA pursuant to <u>Sections 11.1 or 11.2</u> , or failure to remove unapproved signage or advertising displays within twenty-four (24) hours of receiving written notice or request pursuant to <u>Section 11.3</u>	\$1,000 per day for each day of failure to comply.

BY THEIR INITIALS BELOW, CITY AND LICENSEE INDICATE THEIR ACCEPTANCE OF THIS LIQUIDATED DAMAGES PROVISION.

\_\_\_\_\_  
City

\_\_\_\_\_  
Licensee

2.11.1 Determination of Non-Compliance. The CEO's reasonable and documented determination regarding the existence of the failures listed above in Section 2.11 shall be binding on Licensee. Licensee may contest any liquidated damages imposed by delivery of notice to the CEO, within ten (10) days of receipt of liquidated damages determination whose sole decision on the matter shall be final. City's failure to impose liquidated damages for any particular occurrence of a failure set forth above shall not constitute a continuing waiver or a waiver of any subsequent failures.

2.12 Reimbursement for Fees Incurred by LAWA Due to CLEAR Non-compliance. If City has paid any sum or has incurred any obligations or expense which is incurred by City due to Licensee's failure, neglect or refusal of Licensee to perform or fulfill any of the conditions, covenants, and restrictions contained in the Agreement, or as a result of an act or omission of



Licensee contrary to said conditions, covenants, and restrictions, Licensee shall pay the sum(s) so paid or the expense(s) so incurred (including all interest, costs, damages and penalties, which shall be added to any installment of the fees and charges due hereunder), plus an Administrative Fee of fifteen percent (15%) of the fee or charge incurred.

### **Section 3.0 ASSIGNED AREAS.**

3.1 Location of Assigned Areas. “Assigned Areas” means the public areas of the Airport which are designated in this Agreement and in Exhibit A-2, which is attached hereto and incorporated by reference, as the places where Licensee may install the equipment and provide the services described in this Agreement.

3.2 Acceptance of Assigned Areas “As Is”. Licensee represents that it has inspected and examined the Assigned Areas and accepts the Assigned Areas in its “AS IS, WHERE IS” condition, and “WITH ALL FAULTS” and without any improvements or alterations to be made or constructed by City, unless otherwise specified under this Agreement.

3.3 Addition, Reduction and Removal, and/or Relocation of Assigned Areas Expedited Traveler Biometric Verification Lanes and/or Stations. Licensee understands, acknowledges and agrees that at any time during the Term hereof, CEO may require, subject to his/her authority, at Licensee’s expense, for security reasons, to meet the needs of LAWA or to accommodate remodeling projects, or for any other reason: (1) the reduction and removal of Expedited Traveler Biometric Verification Lanes and/or Stations at the Assigned Areas; (2) the reduction of Assigned Areas, (3) the relocation of a portion or all of the Assigned Areas for the Expedited Traveler Biometric Verification Lanes and/or Stations; (4) an increase in the number of locations in the Assigned Areas or Expedited Traveler Biometric Verification Lanes and/or Stations at any designated location, if mutually agreed to by Licensee; or (5) the installation of Expedited Traveler Biometric Verification Lanes and/or Stations in locations other than those originally determined on the Commencement Date of this Agreement. Any and all such additions, reductions and removals and relocations will be at the sole expense of Licensee. LAWA will attempt to provide as much notice as possible for the reduction and removal or relocation of Assigned Areas or Expedited Traveler Biometric Identification Verification Lanes and/or Stations. Temporary disruptions of Licensee’s operations resulting from such additions, reduction and removal and/or relocation shall not entitle Licensee to a temporary location elsewhere. Licensee acknowledges that the number of Expedited Traveler Biometric Verification Lanes and/or Stations in operation may change from the amount on the Commencement Date due to the terms of this Section.

3.3.1 Reconfigure or Surrender of Assigned Areas. In addition to the provisions under Section 3.3, Licensee understands, acknowledges and agrees that, at any time during the term hereof, the CEO may require, subject to his or her authority, Licensee to surrender use of any portion of the Assigned Areas.

3.3.2 Written Request and Consent Required. Licensee shall not add, reduce, remove, relocate any Expedited Traveler Biometric Identification Verification Lanes



and/or Stations without (a) a prior written request to the CEO, specifying the location of the Expedited Traveler Biometric Identification Verification Lanes and/or Stations that will be added, reduced, removed or relocated or disconnected and, if applicable, the new location of the Expedited Traveler Biometric Identification Verification Lanes and/or Stations, as well as the dates that the specific Expedited Traveler Biometric Identification Verification Lanes and/or Stations will be added, reduced, removed or relocated or disconnected, and (b) the prior written approval of the CEO, subject to his or her authority.

3.4 Ingress and Egress. Throughout the Term of this Agreement, subject to any applicable ASP Amendment or TSA regulations, Licensee, its agents, servants, and employees, shall have ground ingress and egress to and from the Assigned Areas. Such access shall be subject to reasonable airfield access control and permitting requirements as may be established by LAWA and temporary blockage or redirection due to Airport's construction or Airport's operational necessity. Subject to compliance with City's Rules and Regulations and security requirements, Licensee is hereby granted the rights of ingress and egress to and from the Assigned Areas, and Licensee shall have the non-exclusive right, in common with others authorized by City, of ingress and egress through all Common Areas (as defined in this Section); *provided, however*, the CEO may, in its sole discretion, and without liability to Licensee, change the size or location of the Common Areas, including, without limitation, by converting Common Areas to leaseable or other areas, leaseable areas to Common Areas, removing all access rights to Common Areas or closing Common Areas. CEO may, in CEO's sole discretion, establish and enforce Rules and Regulations (as defined in Section 25) concerning the Common Areas, temporarily close portions of the Common Areas for security, maintenance or other purposes, and make changes to the Common Areas including, without limitation, changes in the location of security points, driveways, entrances, exits, parking spaces and the direction and flow of pedestrian and vehicular traffic. For purposes of this Agreement, the term "**Common Areas**" means all areas and facilities located within the Airport and outside the Assigned Areas, that are designated by the CEO from time to time as common use areas for the general use and convenience of Licensees, tenants and other occupants at the Airport, airline passengers, and other visitors to the Airport, such as lobbies, corridors, sidewalks, elevators, escalators, moving sidewalks, parking areas, and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways.

3.5 Storage and Office Space. The CEO may (but shall have no obligation to) make Storage and Office space available to Licensee at the Airport from time to time. In the event the CEO makes such Storage and Office space available to Licensee and Licensee desires to lease such storage and office space, City and Licensee shall enter a Storage and Office space addendum in the form of Exhibit B-1 or B-2 attached hereto, as such form may be modified from time to time by CEO. Licensee shall pay to City with respect to such storage and office space an annual amount equal to the then current Terminals Buildings Rate adopted by the Board. The rent for the storage and office space shall be calculated for each calendar month in an amount equal to the Terminals Buildings Rate for the month multiplied by the square footage of the storage and office space. The rent for the storage and office space is subject to annual adjustment by the Board, and the Licensee shall pay such rent based on the then Board-approved rates.

3.6 Changing Conditions. Licensee is hereby advised that the Airport undergoes continual new construction and reconstruction, while accommodating heavy passenger traffic in a fast moving environment. Licensee, therefore, acknowledges to take such elements into account when considering the nature of the business atmosphere it is entering. Flexibility and adaptability to changing daily conditions is essential.

#### **Section 4.0 LICENSE FEES, CHARGES AND ACCOUNTABILITY**

4.1 Monthly License Fees. As consideration for City's granting the license rights described in this Agreement, Licensee shall pay to City on a monthly basis for each month ("Monthly License Fee") during the Term of this Agreement either the greater of:

- A Minimum Annual Guarantee ("MAG") as follows:  
From the Rent Commencement Date through five (5) years thereafter, , a total of **Two Million, Seven Hundred Thousand Dollars** (\$2,700,000) paid in twelve(12) equal monthly installments by Licensee, pursuant to the Agreement herein; and,
- A Percentage of Gross Revenues ("**Percentage Fee**") equal to twelve and a half percent (12.5%) of the Gross Revenues (as defined below) per month.

4.1.1 The Monthly License Fee and all Additional Fees payable by Licensee hereunder are sometimes collectively referred to as "**Fees**." "**Additional Fees**" shall mean all sums, fees, charges, payments and other amounts due hereunder from Licensee other than Monthly License Fee.

4.1.2 Licensee shall provide a monthly accounting of all Licensee activity to the Department in an electronic database format acceptable to the CEO, indicating a summary of total revenues in each category and for all subcontractors; and, a breakdown by category and location of the gross sales, as specified in Section 4.3.2.4.

4.1.3 Licensee shall also furnish to City within ninety (90) days after the end of each year during the Term, an annual accounting of all business transactions conducted by Licensee at Airport pursuant to this Agreement, prepared at the close of Licensee's contract year in a form and with such detail as CEO may request, together with such other financial and statistical reports, including a statement of Gross Revenues and License fees and charges paid to City by Licensee, as CEO may reasonably require. Such annual accounting shall be prepared in accordance with generally accepted accounting principles, shall be certified by an independent Certified Public Accountant, and shall be approved and certified as being correct by an officer of the Licensee.

4.2 Gross Revenues Defined. "**Gross Revenues**" means all monies paid to Licensee, whether for cash, credit or otherwise, from CLEAR members who enroll in Licensee's biometrics-

based Registered Traveler program, for which the enrollee provides an address within the Catchment Area, regardless of when, where or how, the membership is sold, less any applicable customer/membership refunds. A "sale" shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time sales charges are assessed on a membership account by Licensee.

Gross Receipts shall not include (i) any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes and/or government-mandated user fees now or hereafter imposed by law upon the sale of merchandise and products or services to the extent paid by Licensee to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to CLEAR and such charges are merely an accommodation to customers; (iv) discounts given by CLEAR on sales of memberships; (v) cash or credit refunds, but only to the extent that the amounts refunded or credited were originally included in Gross Receipts; (vi) the sale or transfer in bulk of the inventory of Licensee to a purchaser of all or substantially all of Licensee's assets in a transaction not in the ordinary course of Licensee's business; (vii) credit card company fees or charges, and (viii) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in the definition of Gross Receipts, receipts from all other insurance proceeds received by Licensee as a result of a loss or casualty at the Airport.

4.2.1 Collections. Licensee shall be responsible for collections and shall assume all financial responsibility for dishonored credit cards and loss of uncollected funds. Amounts attributable to dishonored credit cards and uncollected funds shall not reduce Gross Revenues for the purpose of calculating the Percentage Fee described in Section 4.1.

#### 4.3 Method and Time of Payment.

4.3.1 Licensee's obligation to pay Monthly License Fee, based on the Percentage Fee, or Fees shall commence on Commencement Date.

4.3.2 The procedure for the payment of fees and charges, and the submittal of required reports shall be as follows:

4.3.2.1 Payment of MAG or Percentage Fee. One-Twelfth (1/12) of the MAG and Percentage Fee shall be paid by the 20<sup>th</sup> day of every month, subject to a year-end calculation and reconciliation. If the twentieth (20<sup>th</sup>) day of the month falls on a weekend day or a holiday, the payment shall be made on the next business day. MAG payment in each contract year shall cease upon the total combined payment of each year's MAG amount via MAG payments and Percentage Fee payments.

4.3.2.3 Pro Rata Payment. If the Commencement Date or Expiration Date or earlier termination of this Agreement falls on any date other than the first or last day of any calendar month, the applicable fees and charges for said month shall be payable by Licensee to City pro rata in the same proportion that the number of days the Agreement is in effect for that month bears to the total number of days in that month.

4.3.2.4 Monthly Statement. Licensee shall submit to City a written statement, in an electronic database format acceptable to the CEO, of the monthly accounting and itemization for the preceding calendar month showing the Gross Revenues received at each **Expedited Traveler Biometric Identification Verification Lane and/or Station's** location operated under this Agreement ("**Monthly Statement**"). Each station shall be reported as a separate location. This monthly accounting report shall be in such manner and detail and upon such forms as are prescribed by CEO. The CEO may amend the forms to be used during the term of this Agreement. If the Commencement Date of this Agreement falls on a date other than the first day of a month, the Gross Revenues from the partial month shall be added to, and the partial month shall be included in, the Monthly Statement for the first full calendar month in the Term. The Monthly Statement shall be certified by Licensee or Licensee's duly authorized officer or agent to be true and accurate. Each Monthly Statement shall be due on the same date and at the same address as the License Fee payment for that month is due.

4.3.2.5 Year-end Audit. Licensee shall also furnish to City within ninety (90) days after the end of each Agreement Year during the Term, in an electronic database format acceptable to the CEO, an annual accounting of all business transactions conducted by Licensee at LAX pursuant to this Agreement which includes but is not limited to: the total number of transactions at each station within each terminal, the total number of new enrollments at each station within each terminal. The audit shall be prepared at the close of Licensee's contract year in a form and with such detail as CEO may request, together with such other financial and statistical reports, including a statement of Gross Revenues and monthly License fees and other Fees paid to City by Licensee, as the CEO may reasonably require. Such annual accounting shall be prepared in accordance with generally accepted accounting principles, shall be certified by an independent Certified Public Accountant, and shall be approved and certified as being correct by an officer of the Licensee. For purposes of this Agreement, "**Agreement Year**" is defined to mean one year from the Commencement Date and each year thereafter.

4.3.2.5.1 Annual Adjustment/Reconciliation. No later than sixty (60) days after the end of each Agreement Year, a reconciliation report will be prepared either by the City or Licensee showing an overpayment or deficit. If there is a difference, Licensee will be credited

or billed within thirty (30) calendar days from the date of the reconciliation report.

4.3.2.6 Remittance and Submittal Address. All Monthly License Fees, Additional Fees and Fees, along with a hard copy of the Monthly Report, shall be sent to the following remittance address:

City of Los Angeles – LAWA  
P.O. Box 54078  
Los Angeles, CA 90054-0078

and shall be submitted by e-mail to the following address:  
[Concessionsreporting@lawa.org](mailto:Concessionsreporting@lawa.org). Hard copies and electronic submittals shall also be sent to the same addresses. City may designate an alternate address at any time upon giving Licensee a thirty (30) day advance, written notice.

4.3.3 Delinquency. Without waiving any other right of action available to City in the event of monetary default hereunder, in the event that Licensee, after being notified as such by the CEO, is delinquent for a period of ten (10) days or more in payment of any Fee or other fees and charges due City pursuant to this Agreement, except as to Liquidated Damages set forth in Section 2.11, Licensee shall pay to LAWA, as Additional Fee, interest thereon at the maximum rate allowed by law from the date such Fee or other fees and charges was due and payable until paid in full. Chronic delinquency shall constitute a default as provided under Section 16.1.13 of this Agreement.

4.4 Books and Records. Licensee shall maintain in said office its permanent books and records, whether electronically maintained or otherwise (herein “**Books and Records**”), including but not limited to balance sheets, income statements, general ledgers, subsidiary ledgers, trial balances, sales journals, invoices, chart of accounts and all other supporting documents wherein are kept all entries and information necessary to perform an audit of (i) fees, and other charges paid and payable to City, (ii) all financial information relating to the Gross Revenues and all other transactions of Licensee at the Airport, and (iii) any other matters relating to the performance of Licensee’s obligations under this Agreement. City may, in the CEO’s sole discretion and with reasonable notice to Licensee, require Licensee to provide access to all Books and Records and other information necessary in connection with any audit by City under this Agreement. City’s right to access such records and information shall survive six (6) years beyond the expiration or earlier termination of this Agreement. Unless otherwise authorized by the CEO in writing, Licensee shall retain all Books and Records and any other information necessary to perform any audit as described in this Agreement during the entire term of this Agreement and for a minimum of six (6) years thereafter.

4.4.1 Examination of Records. City’s accountants or representatives may examine the Books and Records of Licensee for the purpose of conducting an audit. Licensee shall produce these records for inspection and copying at the Assigned Areas or,



at CEO's option, City's offices within ten (10) days of CEO's request. In the event Licensee does not make available to City the pertinent books and records at the Airport within the aforesaid ten (10) days as set forth in this Section, Licensee agrees to pay for all travel costs, housing, meals, and other related expenses associated with the audit of said books, reports, accounts, and records by City at Licensee's place of records at any time during its ordinary business hours. If Licensee's Books and Records have been generated from computerized data, Licensee agrees to provide City with extracts of the data files in a computer readable format or other suitable alternative computer data exchange formats. City shall have the right to interview such employees and representatives of Licensee City deems necessary to conduct and support the audit.

4.4.2 Audit; Deficiencies. If it is determined by City as a result of an audit that there has been a deficiency in the payment of any Fees (a "**Deficiency**"), then such Deficiency shall immediately become due and payable upon thirty (30) days written demand by City. In connection with any audit conducted by City, deficiencies ascertained by applying percentages of error obtained from such testing and sampling to the entire period of reporting under examination will be binding upon Licensee. If Licensee believes that any audit performed on behalf of City has disclosed an isolated error and wishes to increase the sample size of the audit or perform a detail audit, Licensee shall pay City for any additional audit procedures. In the event any deficiencies in the amount of two percent (2%) or greater of any item being audited with respect to the Fees payable to City hereunder is ascertained by City, Licensee agrees to pay City for the cost of the audit and the Deficiency, as provided under Section 4.4.

4.4.3 Confidentiality. The execution of a confidentiality agreement shall not be a prerequisite to the conduct of any audit by City hereunder. However, to the maximum extent permitted under applicable laws, all information gained by City from such examinations shall be confidential and shall not be disclosed other than as may be required by court order, other legal process or pursuant to the provisions of the California Public Records Act; provided, however, the foregoing shall not prevent the use of such information in connection with any litigation between the City and Licensee; provided, further, to the extent commercially reasonable under the then-existing circumstances, City shall use commercially reasonable efforts to give written notice to Licensee in advance of such disclosure to afford Licensee the opportunity to attempt to secure available protective measures to safeguard such information.

## **Section 5.0 IMPROVEMENTS.**

5.1 Improvements. Licensee shall install all new Expedited Traveler Biometric Identification Verification Lane and/or Station Equipment, (including but not limited to, any and all related equipment, fixtures and improvements as specified in this Agreement (collectively "**Improvements**") in the Assigned Areas, as accepted and approved by the CEO through the concept approval process. In addition, Licensee shall install new power conduits, cables, antennas, electrical outlets where an electrical outlet is not currently available and any other related equipment associated with the Expedited Traveler Biometric Identification Verification Lane and/or Station (collectively "**Electrical Hardware**"), with the exception provided under

Section 2.2, as accepted and approved by the CEO through the concept approval process. Licensee shall solely bear the cost of the Improvements and Electrical Hardware. All installation work shall be performed by appropriately licensed persons.

5.1.1 Licensee warrants that all goods and materials furnished in connection with the Improvements and Electrical Hardware will be new and of good quality and that all workmanship will be of good quality, free from faults and defects.

5.2 Plans and Specifications. Licensee shall, at its own cost and expense, employ competent licensed craftsmen who will prepare detailed plans, specifications and cost estimates for all License Improvements and Electrical Hardware, graphical designs and equipment to be installed in the Assigned Areas.

5.3 Plan Approval. Prior to any work commencing, Licensee shall submit a concept request form in order to initiate a concept review in accordance with LAWA's Tenant Improvement Approval Process ([http://www.lawa.org/welcome\\_lawa.aspx?id=4162](http://www.lawa.org/welcome_lawa.aspx?id=4162)). Licensee shall comply with applicable portions of LAWA's Design and Construction Handbook located at [www.lawa.org/laxdev/handbook.aspx](http://www.lawa.org/laxdev/handbook.aspx) (such handbook as may be revised from time to time by City) (herein, the "**Design and Construction Handbook**"). CEO may amend said submittal requirements and procedures during the course of this Agreement. CEO may reject any such submittal and require Licensee to resubmit plans, designs and specifications until they meet with approval.

5.4 Subcontract Approval. Licensee shall obtain written approval by the CEO before Licensee awards or lets any contract for the construction of any Improvements and Electrical Hardware, or enters into contracts for the purchase and installation of any fixtures and equipment in the Assigned Areas.

5.5 Installation. Upon issuance of a Notice to Proceed by CEO, Licensee shall forthwith commence and complete the work approved by LAWA. No substantial change, addition or alteration shall be made in the scope of the work so approved without first obtaining CEO's written approval. No structural or other improvements, decor or equipment, other than as contemplated herein, shall be made in or upon the Assigned Areas without the written consent of CEO. Licensee acknowledges that the Airport presents a complicated and congested operating environment, and Licensee agrees to conduct and manage all of its activities at the Airport in a highly professional manner and with minimum disruption of Airport operations.

5.6 Conformance. All Improvements and Electrical Hardware, structural or other improvements, facilities and interior design and decor constructed or installed by Licensee, whether installed in the Assigned Areas or elsewhere under this Agreement, including the plans and specifications therefor, shall in all respects conform to and comply with all Laws, including without limitation, the City Building Code and the applicable statutes, ordinances, building codes, rules and regulations of such other authorities as may have jurisdiction over the Assigned Areas or Licensee's operations therein. Licensee shall at its own cost and expense and prior to the start of construction obtain all permits and approvals required by law, including, but not



limited to those required by the City of Los Angeles Department of Building and Safety, the Los Angeles County Department of Health Services, and the Los Angeles Fire Department.

5.7 Furnishings. Licensee, at its sole cost and expense, shall furnish, install and maintain all necessary fixtures, facilities, and equipment required to operate the **Expedited Traveler License**, and shall supply all necessary equipment, fixtures and parts required to keep the same in good order and repair. Licensee shall also supply and install, at its sole cost and expense, any improvements, fixtures, equipment or facilities incidental to the Expedited Traveler License of Licensee or any alterations or relocations thereof, or additions thereto.

5.8 Completion Schedule. Licensee shall install the Improvements and Electrical Hardware and other improvements described in this Agreement in the Assigned Areas described in Exhibit A-3, and shall ensure that they are all operational and available for public use within the schedule provided in the concept approval process.

5.9 Workers' Compensation. Prior to commencement of any installation of Improvements and Electrical Hardware, Licensee (and any relevant Licensee Party) shall first submit to City a certificate of insurance evidencing the fact that Licensee maintains workers' compensation and employers liability coverage in the amounts and form required by the Workers' Compensation Act and insurance laws of the State of California. Such certificate shall include a Waiver of Subrogation naming and for the benefit of the City of Los Angeles and City Agents. Such certificate shall contain the applicable policy number and the inclusive date for same, shall bear an original signature of an authorized representative of the insurance carrier and shall also provide thereon that the insurance shall not be subject to cancellation except after notice by registered mail to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the date of cancellation.

5.10 Completion of Improvements and Electrical Hardware. Upon completion of the Improvements and Electrical Hardware, Licensee shall, within a reasonable time thereafter, furnish LAWA, at no charge:

5.10.1 A certificate, signed by a duly authorized officer or representative of Licensee, certifying that the Improvements and Electrical Hardware have been constructed in accordance with the approved plans and specifications and in strict compliance with all Laws;

5.10.2 Duplicate receipted invoices for all materials and installation costs incurred, which Licensee records as capital expenditures in the Assigned Areas; and,

5.10.3 Three (3) complete reproducible sets of "as-built" drawings, and two (2) complete sets in Computer Aided Design (hereinafter referred to as "CAD") format which complies with the LAWA CAD standards current at the time of submission. These drawings must include any applicable Permit numbers, the structural and other improvements installed by Licensee, and the location and details of installation of all equipment, utility lines, wiring conduits and related matters. Licensee shall keep said

drawings current by updating them in order to reflect any changes or modifications which may be made in or to the Assigned Areas.

5.11 Additional Improvements. After completion of the structural and other improvements and the installation of equipment, fixtures, facilities and interior design and decor, as above provided, Licensee shall not make any additional alterations to the ceilings, walls, floors or any other part of the Assigned Areas without first obtaining CEO's written consent and will require compliance with the applicable provisions of Section 5.0.

5.12 Utilities. Licensee shall provide for the installation, distribution and operation of any and all utilities required for the Expedited Traveler License, including any necessary installations outside of the Assigned Areas, except those performed by City or its contractors. All costs incurred by Licensee in the installation of its equipment/fixtures, electrical wiring, cables, electrical conduits and electrical outlets for the operation of the Expedited Traveler License shall be paid by Licensee.

5.12.1 Licensee hereby expressly waives any and all Claims against the City Agents for compensation for any and all loss or damage sustained by Licensee which may occur from time to time by reason of any defect, deficiency or impairment of the water supply, drainage or heating systems, gas mains, electrical supply, apparatus or wires furnished to the Assigned Areas, or from loss or damage resulting from water, tornado, earthquake, civil commotion, criminal or terrorist activity, or riot. Licensee hereby expressly releases and discharges the City Agents from any and all Claims arising from any of the aforesaid causes.

5.13 No Liens. Licensee shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Licensee at, on, or for use in the Assigned Areas or any portion thereof. Licensee shall keep the Assigned Areas, the terminal(s) and the Airport, and any interest therein, free and clear of all mechanics' liens and all other liens from any work undertaken by or on behalf of Licensee. Licensee shall give City written notice of any lien filed against the Assigned Areas, the Airport or any interest therein related to or arising from work performed by or for Licensee. Additionally, Licensee shall keep any City-owned Improvements, Electrical Hardware, or other City-owned improvements on the Assigned Areas free and clear of any liens or other encumbrances. By way of specification without limitation, Licensee shall keep the Assigned Areas free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Licensee and Licensee shall indemnify, defend, protect, and hold the Assigned Areas, the Airport, City and City Agents harmless against any liens and encumbrances and all Claims arising from any work performed by or on behalf of Licensee or any Licensee Party and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Licensee, City, the Airport, or the Assigned Areas. In the event that Licensee does not, within thirty (30) calendar days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a bond in form and amount satisfactory to CEO in its good faith business judgment, City shall have in addition to all other remedies provided herein and by law, the right, but not the obligation to cause, upon ten (10) business days prior written notice to Licensee, the same to be

released by such means as it shall deem proper, including payment in satisfaction of any Claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, attorneys' fees (including, without limitation, the imputed fees of City Attorneys), plus the Administrative Fee, shall be payable to City by Licensee as Additional Fee within fifteen (15) days after written demand therefore. Licensee shall give City not less than ten (10) days' prior written notice of the commencement of the Improvements or any subsequent improvements in the Assigned Areas, and City shall have the right to post notices of non-responsibility in or upon the Assigned Areas as provided by law. In addition, City shall have the right to require that Licensee pay City's attorneys' fees and disbursements (including, without limitation, the imputed fees of City Attorneys), court costs and other costs in defending any such action if City is named as a party to any such action, the lien encumbers any portion or interest in the Airport or if City elects to defend any such action or lien. Nothing in this Section shall be construed to place any obligations upon Licensee with respect to liens, loans, or mortgages placed upon the Assigned Areas by City, its Department of Airport, its Board, City officers, agents, or employees.

5.14 Telecommunications. Licensee shall not install any television, licensed or unlicensed wired or wireless communication equipment including any antenna, conduit, fiber, wires, radio, television equipment, or any other type of telecommunications equipment, inside or outside of the Airport' terminals, without the prior written approval of the CEO, and upon such terms and conditions as may be specified by the CEO in each and every instance.

5.14.1 Licensee is required to comply with LAWA telecommunication policies. Licensee shall be responsible for expenses incurred by LAWA for corrective action resulting from non-compliance with LAWA policies.

5.14.2 Telecommunication facilities and services established and used by the Licensee shall not interfere with LAWA telecommunication facilities and services. All such facilities and services shall comply with FCC licensing regulations, with City building codes, and with all other applicable municipal, state, and federal rules and regulations.

## **Section 6.0    MAINTENANCE.**

### **6.1    Licensee's Obligation.**

6.1.1 Repairs. Licensee agrees to maintain and make necessary repairs, structural or otherwise, to all of it Expedited Traveler Biometric Identification Verification Lanes and/or Stations, Improvements, Electrical Hardware, equipment, fixtures, and other improvements installed pursuant to this Agreement.

6.1.2 Quality of Repairs. All repairs done by Licensee or on its behalf shall be of first class quality in both materials and workmanship. All repairs shall be made in conformity with the applicable Laws prescribed from time to time by federal, state or

local agencies having jurisdiction over the work in Licensee's Assigned Areas. All work performed by Licensee must be inspected and approved by the CEO.

6.1.3 Janitorial Services. Licensee agrees to provide at its own expense such janitorial and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Assigned Areas, Expedited Traveler Biometric Identification Verification Lanes and/or Stations and Improvements or other improvements located therein. Licensee also agrees to keep and maintain the Assigned Areas in a clean, neat and sanitary condition, attractive in appearance, and to the reasonable satisfaction of the CEO.

6.2 City's Obligation. The City shall not be required to make repairs or improvements of any kind at Licensee's Assigned Areas, except as follows:

6.2.1 Structural repairs to the roof, floor and exterior walls and exterior windows of the terminal.

6.2.2 General maintenance and upkeep of Airport' Common Areas. The City agrees to keep and maintain in good condition all water, heating and air conditioning lines, sewer mains, supply mains and electrical power to the Assigned Areas. Licensee agrees to keep and maintain in good condition all service lines used exclusively by Licensee and located within the Assigned Areas. Licensee shall keep and maintain in good and working condition the biometric identification verification equipment, telecommunications circuits, antennas, power conduits, cables, circuit breakers, and related hardware, data lines, equipment, infrastructure and service connections installed in the Assigned Areas or elsewhere in the Airport by or on behalf of the Licensee.

6.2.3 Should the City make any repairs or improvements under the provisions herein contained, the City shall not be liable to Licensee for any damage caused by disrepair of any kind until the City has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Licensee. Further, the City shall not be liable to Licensee, or its employees, agents, servants, contractors or patrons for any damage to its or their merchandise, trade fixtures, equipment or personal property, including but not limited to, Expedited Traveler Biometric Identification Verification Lanes and/or Stations in the Assigned Areas caused by water leakage from the roof, water lines, sprinkler or heating and air conditioning equipment unless caused by the sole negligence of City, its employees or agents.

## **Section 7.0 PERSONNEL.**

7.1 Trained, Qualified and Competent Personnel. Licensee shall furnish full time and part time, well trained, qualified, and competent personnel necessary to operate the Expedited Traveler License ("Personnel"). All such Personnel shall provide a high level of customer service consistent with first class Expedited Traveler License operations and shall use skill and

diligence in the conduct of business. All such Personnel, while on or about the Assigned Areas, shall be clean, neat in appearance and shall be appropriately attired, with badges or other suitable means of identification clearly visible. It is Licensee's responsibility to keep its employees and the employees of its contractors and subcontractors fully aware of the latest airport safety and security directives.

7.2 Project Manager. Licensee shall designate an experienced Project Manager acceptable to the CEO. He/she shall be responsible for the implementation and management of the day-to-day operations of the services. This individual shall be the single point of contact between LAWA and Licensee and be involved in the fulfillment of the requirements outlined herein and elsewhere in this Agreement. The Project Manager must be capable of monitoring and maintaining an acceptable service level at LAWA. The initial Project Manager and any change(s) in the Project Manager must be approved in writing by the CEO.

7.2.1 The Project Manager shall serve as liaison with LAWA with sufficient authority and support staff and appropriate equipment, supplies and means to manage and perform the development, management, and other functions and obligations with respect to the Assigned Areas, including, without limitation, the obligation to administer any contracts to which Licensee is party, each with authority to resolve operational issues.

7.2.2 The Project Manager shall monitor the Expedited Traveler License to evaluate and enforce compliance with this Agreement, including but not limited to compliance with all Laws. A Project Management Office will be located within 50 miles of the Assigned Areas.

7.2.3 The Project Manager shall use reasonable efforts to remedy any problem or issue raised by Airport' patrons with respect to the operation of the Expedited Traveler License.

7.2.4 The Project Manager shall act as the project manager for its design and construction program, which may be coordinated with the project's construction manager.

7.2.5 The Project Manager or a designee will be required to attend all meetings called by LAWA that relate to the Expedited Traveler License with at least five (5) business days' notice (or less, in the case of an emergency situation).

7.3 Restrictions by Licensee. Licensee shall require its agents, servants, contractors, suppliers or employees to conduct themselves in a professional and courteous manner while conducting business at the Airport, including but not limited to, refraining from conducting business in a loud, noisy, boisterous, offensive or objectionable manner. Unless otherwise approved in writing by CEO, Licensee shall confine its business on the Airport to that of operating the Expedited Traveler License.



**Section 8.0 DELIVERIES AND CENTRAL INSPECTION DELIVERY CHECKPOINT.** Deliveries for construction and operation of the Expedited Traveler License must be made in conformance with LAWA's and the Transportation Security Administration's regulations, which may include limitations on time of day and location of routing. Licensee acknowledges that the CEO may at some point during the Term of this Agreement require Licensee to exclusively deliver products, merchandise, supplies and other materials through a mandatory central inspection delivery checkpoint (except for such items as may be exempted by the CEO from time to time). In the event that any such new delivery systems are implemented, Licensee shall be required to reimburse City for Licensee's share of the operating costs of such systems, as determined by the CEO.

**Section 9.0 CITY'S RIGHT OF ACCESS AND INSPECTION.**

9.1 Access. City, by and through its officers, employees, agents, representatives, and contractors, shall have the right at all times to construct, repair, alter, replace or install over, in, under or through the Assigned Areas new lines, pipes, mains, wires, conduits and equipment.

9.2 Inspection. City, by and through its officers, employees, agents, representatives, and contractors, shall have the right at all times to inspect the Assigned Areas or, upon notice of Licensee, to do any act or thing which City may be obligated or have the right to do under this Agreement, or otherwise, and no abatement of the License Fee shall be claimed by or allowed for Licensee by reason of the exercise of such rights. In the exercise of its rights under this Section, City, its officers, employees, agents, and contractors shall not unreasonably interfere with the conduct of Licensee's business on the Assigned Areas as herein authorized.

9.3 Right of CEO. CEO shall have the right to perform any and all things which Licensee is obligated to perform and has failed, after reasonable notice, to do, including: maintenance, repairs and replacements to the Assigned Areas. The cost of all labor and materials required to complete the work will be paid by Licensee to the City within ten (10) days following demand by the CEO for said payment.

**Section 10.0 ASSIGNMENTS, TRANSFERS, AND ENCUMBRANCES PROHIBITED.**

10.1 Transfer Prohibited. Licensee shall not, in any manner, directly or indirectly, by operation of law or otherwise, hypothecate, assign, transfer, or encumber this Agreement, the Assigned Areas, or any portion thereof or any interest therein, in whole or in part or any right or privilege appurtenant thereto, or allow any other person (the employees and invitees of Licensee excepted) to occupy or use the Assigned Areas, or any portion thereof ("**Transfer**"), without the prior written consent of Board, which may be granted, denied or conditioned in Board's sole discretion. Any written request for consent to a Transfer shall include proposed documentation evidencing such Transfer, name and address of the proposed transferee and the nature and character of the business of the proposed transferee and shall provide current and 3 years prior financial statements for the proposed transferee, which financial statements shall be audited to the extent available and shall in any event be prepared in accordance with generally accepted

accounting principles (collectively, a "**Transfer Request**"). This Agreement shall not, nor shall any interest therein, be assignable as to the interest of Licensee by operation of law without the prior written consent of Board.

10.2 Transfer. For purposes of this Agreement, the term "Transfer" shall include, but not be limited to, the following: (i) if Licensee is a joint venture, a limited liability company, or a partnership, the transfer of fifty percent (50%) or more of the interest or membership in the joint venture, the limited liability company, or the partnership; (ii) if Licensee is a corporation, any cumulative or aggregate sale, transfer, assignment, or hypothecation of fifty percent (50%) or more of the voting shares of Licensee; (iii) the dissolution by any means of Licensee; and, (iv) the involvement of Licensee or its assets in any transaction or series of transactions (by way of merger, sale of stock, sale of assets, acquisition, financing, refinancing, transfer, corporate restructure, leveraged buyout or otherwise) which results in or will result in either (a) the direct or indirect transfer of fifty percent (50%) or more on a cumulative basis of the ownership and/or controlling interests in Licensee or (b) a material reduction of Licensee's net worth as stated in the most current financial statements contained in the Licensee Bid. Any such transfer, assignment, mortgaging, pledging, or encumbering of Licensee without the written consent of Board is a violation of this Agreement and shall be voidable at City's option and shall confer no right, title, or interest in or to this Agreement upon the assignee, mortgagee, pledgee, encumbrancer, or other lien holder, successor, or purchaser.

10.3 No Further Consent Implied. A consent to one Transfer shall not be deemed to be a consent to any other or subsequent Transfer, and consent to any Transfer shall in no way relieve Licensee of any liability under this Agreement. Any Transfer without City's consent shall be void, and shall, at the option of City, constitute a Default under this Agreement.

10.4 No Release. Notwithstanding any Transfer, Licensee and any Guarantor of Licensee's obligations under this Agreement shall at all times remain fully and primarily responsible and liable for the payment of the Fee and for compliance with all of Licensee's other obligations under this Agreement (regardless of whether City's approval has been obtained for any such Transfer).

10.5 Payment of City's Costs. In connection with any Transfer, Licensee shall pay to City as Additional Fee hereunder an administrative processing fee in the amount of **\$2,500.00**, plus all reasonable attorneys' fees and costs (including, without limitation, the fees and costs attributable to City's in-house City Attorneys) incurred by City in connection with City's review and processing of documents regarding any proposed Transfer.

10.6 Incorporation of Terms. Each Transfer pursuant to this Section shall be subject to all of the covenants, agreements, terms, provisions and conditions contained in this Agreement and each of the covenants, agreements, terms, provisions and conditions of this Agreement shall be automatically incorporated therein. If City shall consent to, or withhold its consent to, any proposed Transfer, Licensee shall indemnify, defend and hold harmless City and City Agents from and against and from any and all Claims that may be made against City or any City Agent



by the proposed transferee or by any brokers or other persons claiming a commission or similar fee in connection with the proposed Transfer.

10.7 Right to Collect Fee Directly. If this Agreement is transferred or assigned, whether or not in violation of the provisions of this Agreement, City may collect Fee from such transferee or assignee. If the Assigned Areas or any part thereof is used or occupied by anyone other than Licensee, whether or not in violation of this Agreement, City may, after a Default by Licensee, collect Fee from the occupant. In either event, City may apply the net amount collected to Fee, but no such assignment, occupancy or collection shall be deemed a waiver of any of the provisions of this Section 10, or the acceptance of the assignee, or occupant as Licensee, or a release of Licensee from the further performance by Licensee of Licensee's obligations under this Agreement. The consent by City to any Transfer pursuant to any provision of this Agreement shall not, except as otherwise provided herein, in any way be considered to relieve Licensee from obtaining the express consent of City to any other or further Transfer. References in this Agreement to use or occupancy of the Assigned Areas or any portion thereof by anyone other than Licensee shall not be construed as limited to sub-Licensees or subtenants and those claiming under or through sub-Licensees or subtenants but as including also licensees or others claiming under or through Licensee, immediately or remotely.

10.8 Reasonableness of Restrictions. Licensee acknowledges and agrees that the restrictions, conditions and limitations imposed by this Section 10 on Licensee's ability to Transfer this Agreement or any interest herein, the Assigned Areas or any part thereof, to Transfer any right or privilege appurtenant to the Assigned Areas, or to allow any other person to occupy or use the Assigned Areas or any portion thereof, are, for the purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time that this Agreement was entered into, and shall be deemed to be reasonable at the time that Licensee seeks to Transfer this Agreement or any interest herein, the Assigned Areas or any part thereof, to Transfer any right or privilege appurtenant to the Assigned Areas, or to allow any other person to occupy or use the Assigned Areas or any portion thereof. Licensee's sole remedy if City withholds its consent to any Transfer in violation of Licensee's rights under this Agreement shall be injunctive relief, and Licensee hereby expressly waives California Civil Code Section 1995.310, which permits all remedies provided by law for breach of contract, including, without limitation, the right to contract damages and the right to terminate this Agreement if City withholds consent to a Transfer in violation of Licensee's rights under this Agreement, and any similar or successor statute or law in effect or any amendment thereof during the Term.

10.9 Transfer Premium. If City approves any Transfer as herein provided, and such Transfer is limited to a sublease or a Transfer of an interest in this Agreement only, Licensee shall pay to City, as Additional Rent, one hundred percent (100%) of any monetary or other economic consideration received by Licensee as a result of the Transfer over and above the amount of Licensee's rental and other payments due City pursuant to this Agreement (or applicable share, if a sublease). In the case of any other Transfer, Licensee shall pay to City an amount equal to five percent (5%) of the Base Rent generated during the twelve (12) full calendar months preceding the month in which the Transfer is consummated. The agreement

evidencing such Transfer, as the case may be, after approval by City, shall not be amended without City's prior written consent, and, at City's option, shall contain a provision directing such transferee to pay the Fee and other sums due thereunder directly to City upon receiving written notice from City that Licensee is in default under this Agreement with respect to the payment of Fee. In the event that, notwithstanding the giving of such notice, Licensee collects any License Fee or other sums from such transferee, then Licensee shall hold such sums in trust for the benefit of City and shall immediately forward the same to City. City's collection of such License Fee and other sums shall not constitute an acceptance by City of attornment by such transferee.

10.10 Name Change Only. In the event of a name change of Licensee, in which there is no transfer, assignment, mortgaging, pledging, or encumbering of Licensee as provided in Sections 10.1 and 10.2, the Licensee must obtain the written consent of the CEO; and Licensee shall provide all related documents, as well as any other documents requested by CEO. Failure to obtain the consent of the CEO or provide the documents requested under this section may result in the City's inability to pay and delay in paying the newly named entity.

## **Section 11.0 SIGNS, PROMOTIONS AND DISPLAYS.**

11.1 Signage. In addition to signage required by law, tariff, and regulation, subject to the limitations set forth in Section 11 and the subsections thereof, Licensee is hereby granted the right to install and maintain appropriate signs in the Assigned Areas, provided that the design, installation and maintenance of such signs, shall have received the advance, written approval of the CEO prior to installation or modification. Licensee must install any LAWA-directed informational or instructional signage within thirty (30) days of CEO's written notice to Licensee to install such signage. Licensee shall not erect, construct or install any advertising displays or fixtures on or around the Assigned Areas or at any other location at the Airport for any reason at any time without the prior written consent of the CEO.

11.2 Prior Submission and Approval. No identification signs pertaining to Licensee's operations shall be installed or placed on or around the Assigned Areas or Airport until Licensee has submitted to LAWA drawings, sketches, design dimensions, and type and character of such identification signs proposed to be placed thereon or therein and has received written approval from the CEO. Any conditions with respect to the use of said signs stated by the CEO in the latter's written approval thereof shall be conditions of this Agreement as if fully set forth herein. Only signage that has been approved in advance, as provided in Sections 11.1 and 11.2, can be placed on or around the Assigned Areas.

11.3 Failure to Comply. In the event Licensee fails to comply with Sections 11.1 or 11.2, and refuses to remove any advertising displays within twenty-four (24) hours of receiving a written notice or request to do so from the CEO, City shall have the right to pursue any and all of the following remedies:

- (i) Commence termination of this Agreement pursuant to the terms of this Agreement;

(ii) Physically remove the non-complying display materials and require Licensee to pay, as Additional Fees, all costs of City-related thereto plus fifteen percent (15%) administrative and overhead charges;

(iii) Payment of liquidated damages, as Additional Fees, under Section 2.11 of this Agreement. The acceptance of any such Additional Fees by the City from Licensee shall not be viewed as a waiver of any breach of the terms of this Agreement.

## **Section 12.0 HAZARDOUS AND OTHER REGULATED SUBSTANCES.**

12.1 For the purposes of this Agreement, "hazardous substances" means:

12.1.1 Any substance the presence of which requires the investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action, policy or common law; or

12.1.2 Any substance which is or becomes defined as a hazardous waste, extremely hazardous waste, hazardous material, hazardous substance, hazardous chemical, toxic chemical, toxic substance, cancer causing substance, substance that causes reproductive harm, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); or

12.1.3 Any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, council, board, or instrumentality of the United States, the State of California, the City of Los Angeles, or any political subdivision of any of them; or

12.1.4 Any substance the presence of which on the Assigned Areas causes or threatens to cause a nuisance upon the Assigned Areas or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Assigned Areas; or

12.1.5 Any substance the presence of which on adjacent properties could constitute a trespass by Licensee; or

12.1.6 Any substance, without limitation, which contains gasoline, aviation fuel, jet fuel, diesel fuel or other petroleum hydrocarbons, lubricating oils, solvents, polychlorinated biphenols (PCBs) asbestos, urea formaldehyde or radon gases.

12.2 Except for conditions existing prior to the original occupancy of the Assigned Areas by Licensee or by Licensee's predecessors in interest, Licensee agrees to accept sole responsibility for full compliance with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws, and/or other orders of any governmental entity regarding the use, storage, handling, distribution, processing, and/or disposal of hazardous substances, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Assigned Areas, on the user of the land, or on the user of the improvements. Licensee agrees that any claims, damages, penalties, or fines asserted against or levied on City and/or the Licensee as a result of noncompliance with any of the provisions in this Section shall be the sole responsibility of the Licensee and that Licensee shall indemnify and hold City harmless from all such claims, damages, penalties, or fines. Further, City may, at its option, pay such claims, damages, penalties, or fines resulting from Licensee's non-compliance with any of the terms of this Section, and Licensee shall indemnify and reimburse City for any such payments.

12.3 Except for conditions existing prior to the original occupancy of the Assigned Areas by Licensee or Licensee's predecessors in interest, in the case of any hazardous substance spill, leak, discharge, release or improper storage on the Assigned Areas or contamination of the Assigned Areas by any person, Licensee agrees to make or cause to be made any necessary repairs or corrective actions as well as to clean up and remove any spill, leakage, discharge, release or contamination. In the case of any hazardous substance spill, leak, discharge, release or contamination by Licensee or its employees, servants, agents, contractors, or subcontractors on the Assigned Areas or as may be discharged or released in, on or under adjacent property which affects other property of City or its tenants, Licensee agrees to make or cause to be made any necessary corrective actions to clean up and remove any such spill, leakage, discharge, release or contamination. If Licensee fails to repair, clean up, properly dispose of, or take any other corrective actions as required herein, City may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, discharge, release or contamination. Any such repair, cleanup, or corrective actions taken by City shall be at Licensee's sole cost and expense and Licensee shall indemnify and pay for and/or reimburse City for any and all costs City incurs as a result of any repair, cleanup, or corrective action it takes plus an additional fifty percent (50%) administrative fee.

12.4 If Licensee installs or uses already installed underground storage tanks, above-ground storage tanks, pipelines, or other improvements on the Assigned Areas for the storage, distribution, use, treatment, or disposal of any hazardous substances, Licensee agrees, upon the expiration and/or termination of this Agreement, to remove and/or clean up, at the sole option of the CEO, the above-referred-to improvements. Said removal and/or cleanup shall be at the Licensee's sole cost and expense and shall be undertaken and completed in full compliance with the Laws, as well as with the reasonable directions of the CEO.

12.5 Licensee shall promptly supply City with complete and legible copies of all notices, reports, correspondence, and other documents sent by Licensee to or received by Licensee from any governmental entity regarding any hazardous substance. Such written materials include, without limitation, all documents relating to any threatened or actual



hazardous substance spill, leak, or discharge, or to any investigations into or clean up of any actual or threatened hazardous substance spill, leak, or discharge including all test results.

12.6 This Section and the obligations herein shall survive the expiration or earlier termination of this Agreement.

### **Section 13.0 FAITHFUL PERFORMANCE GUARANTEE.**

13.1 Within thirty (30) days after award of this Agreement, Licensee shall furnish to LAWA, at Licensee's sole cost and expense, and shall keep in full force and effect during the complete term of this Agreement and for thirty (30) days thereafter, a Faithful Performance Guarantee (hereinafter referred to as "FPG") in the continuing sum of not less than **Six Hundred Seventy-five Thousand Dollars** (\$675,000) or other security deposit for said amount acceptable to the CEO, guaranteeing full performance by Licensee of all of the terms, covenants and conditions herein, including, but not limited to, payment of the compensation specified herein.

13.2 Licensee shall furnish to LAWA and maintain throughout the term of this Agreement a FPG to secure the faithful performance by Licensee of all the terms, provisions, and covenants contained herein including, but not limited to, the payment of compensation as set forth herein. Such FPG shall be separate from any other Guarantee(s) required by LAWA.

13.3 Faithful Performance Guarantees of Five Thousand Dollars (\$5,000) or less shall be in the form of a Cashier's Check, Money Order, Certificate of Deposit or Irrevocable Letter of Credit. Faithful Performance Guarantees in excess of Five Thousand Dollars (\$5,000) shall be in the form of an Irrevocable Letter of Credit. Letters of Credit shall be self-renewing from year-to-year and subject to termination upon sixty (60) days written notice. All FPGs must be approved as to form by the City Attorney.

13.4 Licensee shall furnish such FPG in duplicate prior to Agreement commencement or within thirty (30) days following notice of adjustment of rental. If, for any reason, said FPG is not provided by Licensee and/or is not thereafter maintained in sufficient amount throughout the term hereof, City, subject to the notice requirements of this Agreement may terminate this Agreement at any time upon giving Licensee a thirty (30) day advance, written notice. Upon the expiration or earlier termination of this Agreement, and if Licensee has satisfied all of its obligations to City hereunder, City shall relinquish to Licensee said FPG following such expiration or earlier termination and satisfaction of all obligations to City. The FPG shall be submitted to:

Los Angeles World Airport  
6053 West Century Blvd., Suite 500  
Los Angeles, CA 90045  
Attn: Accounting/Revenue FPG Administrator

13.5 Upon failure of Licensee to keep such FPG in effect at any time during the term hereof, City may terminate this Agreement by giving Licensee a five (5) day written notice in advance of such termination.

13.6 If, at any time during the term of this Agreement, the surety on said FPG shall, in the opinion of the CEO, become unacceptable, said CEO shall have the right to require an additional and sufficient surety which Licensee shall furnish to the satisfaction of the CEO within thirty (30) days after written notice to do so.

**Section 14.0 PREVAILING WAGE.** Construction, demolition, alteration, installation, repair and maintenance work performed on City's property will require payment of prevailing wages, if applicable. Licensee is obligated to make the determination of whether the payment of prevailing wages is applicable. Licensee shall be bound by and comply with applicable provisions of the California Labor Code and federal, state, and local laws related to labor, including, but not limited to, assuming all obligations and responsibilities under the California Labor Code related to prevailing wages, apprenticeship and recordkeeping that requires compliance by the contracting or awarding agency or body (i.e., City) when work requires payment of prevailing wages under the applicable federal or California law. Licensee shall obtain the applicable wage determination for each craft, classification or worker, which are on file at the Office of Contract Compliance, Bureau of Contract Administration, in the City of Los Angeles, or may be obtained from the California Department of Industrial Relations. Licensee shall indemnify, defend and pay or reimburse City for any damages, penalties or fines (including, but not limited to, attorney's fees and costs of litigation) that City incurs, or pays, as a result of noncompliance of Licensee or its sub-Licensees, vendors, employees, contractors, representatives, agents with applicable prevailing wage and apprenticeship laws in connection with the work performed under this Agreement.

**Section 15.0 PERFORMANCE AND PRIVATE WORKS PAYMENT BONDS.**

15.1 Performance Bond. If applicable, after award of the Agreement, but before any work is performed under the Agreement in connection with any works of improvement constructed or installed by Licensee, Licensee shall furnish, at its sole cost and expense (except as otherwise expressly provided in this Agreement), a performance bond as prescribed by the City Attorney in the principal sum (i.e., 100%) of the amount of the construction proposed by Licensee, or alternative security deposit for said amount acceptable to CEO. A Performance Bond form is attached herein as Exhibit C. Following completion of the improvements, this amount will be returned to Licensee within ten (10) days.

15.2 Private Works Payment Bond. After award of the Agreement, but before any work is performed under the Agreement, if there are any works of improvement constructed or installed by Licensee, Licensee shall furnish, at its sole cost and expense (except as otherwise expressly provided in this Agreement), a payment bond as prescribed by the City Attorney in the principal sum (i.e., 100%) of the amount of the construction, alteration, repair or improvement work in excess of \$25,000 proposed by Licensee. A Private Works Payment Bond form is attached herein as Exhibit D.

15.3 Compliance. Licensee shall comply with the provisions of California Civil Code Sections 8600 to 8614, as applicable, by filing the original contract and any modifications thereto in the office of the Los Angeles County Recorder, together with the bonds specified therein, and a conformed copy of such bonds, filed for record as aforesaid, shall be furnished by Licensee to City. Such payment and/or performance bonds shall be furnished no later than thirty (30) days prior to the commencement of such work. The payment and/or performance bonds shall be in substantially the same form as may be prescribed from time to time by the City Attorney, be issued by a surety company satisfactory to CEO, and authorized and licensed to transact business in the State of California and be for the full amount stated above with the Licensee, as obligee, and shall guarantee the full, faithful and satisfactory payment and performance by Licensee of its obligations to construct and install the aforementioned works of improvement, and shall guarantee the payment for all materials, provisions, supplies, and equipment used in, on, for, or about the performance of Licensee's works of improvement or labor done thereon of any kind, and shall protect City from any liability, losses, or damages arising therefrom.

#### **Section 16.0 DEFAULT, TERMINATION, AND WAIVER.**

16.1 Defaults. The occurrence of any one of the following events shall constitute a default on the part of Licensee ("**Default**"):

16.1.1 Abandonment; Vacation. The vacation or abandonment of any location of the Assigned Areas by Licensee for a period of five (5) consecutive days or any vacation or abandonment of any location of the Assigned Areas by Licensee which would cause any insurance policy to be invalidated or otherwise lapse in each of the foregoing cases irrespective of whether or not Licensee is then in monetary default under this Agreement. Licensee agrees to notice and service of notice as provided for in this Agreement and waives any right to any other or further notice or service of notice which Licensee may have under any statute or law now or hereafter in effect;

16.1.2 Failure to Pay Fees. Failure to pay any installment of the Monthly License Fee and/or Additional Fee or any other monies due and payable hereunder, said failure continuing for a period of three (3) days after the same is due;

16.1.3 Assignment for Creditors. A general assignment by Licensee or any guarantor or surety of Licensee's obligations hereunder (collectively, "**Guarantor**") for the benefit of creditors;

16.1.4 Filing of Bankruptcy Petition. The filing of a voluntary petition in bankruptcy by Licensee or any Guarantor, the filing by Licensee or any Guarantor of a voluntary petition for an arrangement, the filing by or against Licensee or any Guarantor of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of Licensee or any Guarantor, said involuntary petition remaining undischarged for a period of thirty (30) days;



16.1.5        Attachment. Receivership, attachment, or other judicial seizure of substantially all of Licensee 's assets at any Assigned Area, such attachment or other seizure remaining undismissed or undischarged for a period of thirty (30) days after the levy thereof;

16.1.6        Death; Dissolution. Death or disability of Licensee, or the failure by Licensee to maintain its legal existence, if Licensee is a corporation, partnership, limited liability company, trust or other legal entity;

16.1.7        Failure to Deliver Ancillary Documents. Failure of Licensee to execute and deliver to City documents and reports (including, without limitation, reports required under Sections 4.1.2, 4.1.3 and 4.6), financial statement or other document required under this Agreement within the time periods and in the manner provided hereunder (or if no time period is provided, within three (3) days after receipt of written notice from CEO of delinquency);

16.1.8        Incomplete Records. Licensee fails to maintain adequate books and records and accounts reflecting its business as required hereunder (including without limitation, books and records and information regarding Gross Revenues);

16.1.9        Transfers. An assignment or sublease, or attempted assignment or sublease, of this Agreement or any Unit by Licensee contrary to the provision of Section 10.0 without the required prior written consent hereunder;

16.1.10       Faithful Performance Guarantee. Failure of Licensee to provide and maintain the Faithful Performance Guarantee as required under this Agreement for a period of five (5) days after written notice;

16.1.11       Other Defaults. A default under any other agreement with City beyond any applicable notice and cure period under such agreement;

16.1.12       General Non-Monetary Breaches. Failure in the performance of any of Licensee 's covenants, agreements or obligations hereunder (except those failures specified as events of Default in Sections 16.1.1, 16.1.2, 16.1.4, 16.1.5, 16.1.7, 16.1.10, 16.1.13, 16.1.15 or 16.1.16 herein or any other subsections of this Section 16, which shall be governed by the notice and cure periods set forth in such other subsections), which failure continues for thirty (30) days after written notice thereof from CEO to Licensee, provided that, if Licensee has commenced such cure within ten (10) days after written notice, and has exercised reasonable diligence to cure such failure and such failure cannot be cured within such thirty (30) day period despite reasonable diligence, Licensee shall not be in default under this Section 16.1.12 so long as Licensee thereafter diligently and continuously prosecutes the cure without interruption to completion and actually completes such cure within sixty (60) days after the giving of the aforesaid written notice;

16.1.13 Chronic Delinquency. Chronic delinquency by Licensee in the payment of the Monthly License Fees, Additional Fees, or any other periodic payments required to be paid by Licensee under this Agreement. "**Chronic delinquency**" shall mean failure by Licensee to pay the Monthly License Fee, Additional Fee, or any other payments required to be paid by Licensee under this Agreement within five (5) days after the date due for any consecutive or nonconsecutive three (3) months during any period of twelve (12) months, failure by Licensee to perform its obligations under this Agreement for any three (3) consecutive or nonconsecutive incidents during any period of twelve (12) months as determined in the sole discretion of the CEO;

16.1.14 Termination of Insurance. Any insurance required to be maintained by Licensee pursuant to this Agreement shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Agreement;

16.1.15 Liens. Any failure by Licensee to discharge any lien or encumbrance placed on the Assigned Areas, the Airport or any part thereof in violation of this Agreement within thirty (30) days after the date such lien or encumbrance is filed or recorded against the Assigned Areas, the Airport or any part thereof;

16.1.16 Revocation of Licenses. An act occurs which results in the suspension or revocation of the rights, powers, licenses, permits and authorities necessary for the conduct and operation of the business authorized herein for a period of more than thirty (30) days;

16.1.17 Adverse Operation. Service ceases or deteriorates for any period which, in the opinion of CEO, materially and adversely affects the operation of service required to be performed by Licensee under this Agreement;

16.1.18 Hazardous Materials. Any failure by Licensee to immediately remove, abate or remedy any Hazardous Materials located in, on or about the Assigned Areas or the Airport in connection with any failure by Licensee to comply with Licensee's obligations under Section 12; and

16.1.19 False Representations. Any representation of Licensee herein, in the Licensee Bid or in any financial statement or other materials provided by Licensee or any guarantor of Licensee's obligations under this Agreement shall prove to be untrue or inaccurate in any material respect, or any such financial statements or other materials shall have omitted any material fact.

Licensee agrees that any notice given by City pursuant to this Section 16 shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, if applicable, and City shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

16.2 In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted by City with respect to any condition of default in any form or instance), City, then, or at any time thereafter, while such breach is continuing, shall have the right, at its election, to (a) terminate this Agreement and Licensee will quit and surrender the Assigned Areas to City upon delivery of at least five (5) days' written notice, or (b) City may enter upon and take possession of the Assigned Areas (or any part thereof), without demand or notice and repossess the same, expelling those claiming under Licensee, forcibly, if necessary, without prejudice to any remedy for arrearage of fees or preceding breach of covenant and without any liability to Licensee or those claiming under Licensee for such repossession. Notwithstanding such election by the City, Licensee shall remain liable under this Agreement.

16.3 City's repossession of the Assigned Areas shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of Fees or other charges remaining to be paid during the balance of the Term hereof, unless a written notice of such intention is given by the CEO to Licensee, or unless such termination is decreed by a court of competent jurisdiction. Notwithstanding any Reassigning (as defined in Section 16.4) without termination by City because of any default by Licensee, City may, at any time after such Reassigning, elect to terminate this Agreement for any such default.

16.4 Upon repossession, City shall in good faith attempt to enter into new License agreements for Expedited Traveler License services in the Assigned Areas or any part thereof for such period or periods (which may extend beyond the term of this Agreement) at such fee and upon such other terms and conditions as City may, in good faith, deem advisable ("**Reassigning**" or "**Reassigning the Assigned Areas**"). City shall, in no event, be liable and Licensee's liability shall not be affected or diminished in any way whatsoever if a Reassigning of the Assigned Areas does not occur, or in the event that there is a Reassigning, for failure to collect any fees or other sums due under such Reassigning.

16.5 In the event that City shall elect to enter into a Reassigning the Assigned Areas, then fees received by City from such Reassigning shall be applied: first, to the payment of any indebtedness other than fees due hereunder from Licensee to City; second, to the payment of any cost of such Reassigning; third, to the payment of fees due and unpaid hereunder; and the residue, if any, shall be held by City and applied in payment of future fees as the same may become due and payable hereunder. Should that portion of such fees received from such Reassigning during any month, which is applied to the payment of fees hereunder, be less than the fee payable during that month by Licensee hereunder, then Licensee shall pay such deficiency to City. Such deficiency shall be calculated and paid monthly. Licensee shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such Reassigning not covered by the fees received from such Reassigning of the Assigned Areas.

16.6 If City terminates this Agreement or takes possession of the Assigned Areas by reason of a condition of default, Licensee, and those holding under Licensee, shall, forthwith remove personal property from the Assigned Areas, as provided in Section 17. If Licensee or any such claimant shall fail to effect such removal forthwith, City may, at its option, exercise the rights set forth in this Section or may without liability to Licensee or those claiming under

Licensee, remove the same and may store the same for the account of Licensee or of the owner thereof at any place selected by City, or, at City's election, and upon giving fifteen (15) days written notice to Licensee of date, time and location of sale, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as City may in good faith deem advisable. If, in the judgment of City, the cost of removing and storing, or the cost of removing and selling any such personal property exceeds the value or probable sale price thereof, as the case may be, City shall have the right to dispose of such personal property in any manner City may deem advisable.

16.7 Licensee shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds shall remain after such reimbursement, City may deduct from such surplus any other sum due to City hereunder and shall pay over to Licensee any remaining balance of such surplus sale proceeds.

16.8 If City enters into and repossesses the Assigned Areas by reason of the default of Licensee in the performance of any of the terms, covenants or conditions herein contained, Licensee hereby covenants and agrees that Licensee will not claim the right to redeem or re-enter the Assigned Areas to restore its operations hereunder.

16.9 All rights and remedies of City herein created or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed advisable.

16.10 If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby Licensee shall be permitted to retain possession of its Assigned Areas, then such proceeding shall not constitute a waiver of any term, provision or agreement contained herein or of any subsequent breach thereof, except as otherwise mutually agreed to in a written document signed and acknowledged by both City and Licensee.

16.11 Any amount paid or expense or liability incurred by City for the account of Licensee may be deemed to be additional fees and the same may, at the option of City, be added to any fees then due or thereafter falling due hereunder.

16.12 Licensee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Licensee being dispossessed for any cause, or in the event of City's obtaining possession of the Assigned Areas by reason of the violation by Licensee of any of the covenants and conditions of this Agreement or otherwise. The rights given to City herein are in addition to any rights that may be given to City by any statute or otherwise.

16.13 A material breach of the terms of any other lease, license, permit, or contract held by Licensee with City shall constitute a material breach of the terms of this Agreement and shall



give City the right to terminate this Agreement for cause in accordance with the procedures set forth in this Agreement.

16.14 Should City waive any breach of any term, covenant, or condition herein contained, such waiver shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. The subsequent acceptance of Monthly License Fee, Additional Fees or other fees or charges hereunder by City shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant, or condition of this Agreement, regardless of City's knowledge of such preceding breach at the time of acceptance of such Monthly License Fee, Additional Fees or other fees or charges.

16.15 Cross Default. A material breach of the terms of any other lease, license, permit, or contract held by Licensee with City shall constitute a material breach of this Agreement and shall give City the right to terminate this Agreement for cause in accordance with the procedures set forth in this Section.

16.16 Termination by City or Licensee. Either party may terminate this Agreement, with or without cause, upon giving the other party thirty (30) days advanced written notice, or as provided elsewhere in this Agreement.

#### **Section 17.0 SURRENDER AND OWNERSHIP**

17.1 Surrender. Licensee agrees that by 11:59 pm on the Expiration Date, or on the sooner termination of this Agreement, Licensee shall surrender the Assigned Areas to City (a) in good condition and repair (damage by acts of God, fire, and normal wear and tear excepted), but with all walls repaired, any carpets cleaned, and all floors cleaned and waxed, and (b) free of any Hazardous Materials in accordance with Section 12. Normal wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Licensee or Licensee otherwise performing all of its obligations under this Agreement. On or before the expiration or sooner termination of this Agreement, (i) Licensee shall remove all of Licensee's personal property, including but not limited to its Expedited Traveler Biometric Identification Verification Lanes and/or Stations (in accordance with 16.6) installed in the Assigned Areas or elsewhere in the Airport by or on behalf of the Licensee (provided City may require that such removal shall be performed by a contractor designated by City), and Licensee's signage. Licensee shall repair any damage caused by such removal, and (ii) City may, by notice to Licensee given not later than ninety (90) days prior to the Expiration Date (except in the event of a termination of this Agreement prior to the scheduled Expiration Date, in which event no advance notice shall be required), require Licensee at Licensee's expense to repair any damage caused by such removal. Any of Licensee's personal property not so removed by Licensee as required herein shall be deemed abandoned and may be stored, removed, and disposed of by City at Licensee's expense, and Licensee waives all Claims (as defined in Section 23.1) against City for any damages resulting from City's retention and disposition of such property; *provided, however*, that Licensee shall remain liable to City for all costs incurred in storing and disposing of such abandoned property of Licensee.



17.1.1 If applicable and if, during the last month of this Agreement, Licensee has removed all or substantially all of its personal property from the Assigned Areas, City may enter said areas and alter, renovate or redecorate the same.

17.2 Ownership of Equipment.

17.2.1 Title to all Improvements and Electrical Hardware shall remain in Licensee during the Term of this Agreement.

17.2.2 Licensee shall present records of equipment installation costs to LAWA within thirty (30) days following completion of installation, for approval and confirmation by the LAWA within ninety (90) days of presentation. Records shall include type of equipment installed as well as unit cost.

17.2.3 Upon the Expiration Date or earlier termination of this Agreement, all Electrical Hardware installed by Licensee or on behalf of Licensee shall become the property of City, without compensation of any type to Licensee, and, if applicable, Licensee shall provide any and all documents required and necessary for such title to vest in the City upon termination.

17.3 Ownership of Work Product.

17.3.1 Licensee represents and warrants that performance of all obligations (including those performed by its subconsultants) under this Agreement does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information.

17.3.2 Licensee will defend at its expense and hold harmless in any infringement claim, demand, proceeding, suit or action (hereinafter collectively referred to as "Action") against the City Agents from and against any Claim relating to infringement or violation, actual or alleged, direct or contributory, intentional or otherwise, of any intellectual property rights, (hereinafter referred to as "Intellectual Property rights"): (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the Licensee or its subconsultants of any tier in performing the work under this Agreement; or (2) as a result of the City's actual or intended use of any deliverable furnished by Licensee under this Agreement. Licensee also shall indemnify the City Agents against all Claims arising as a consequence of any such Action.

17.3.3 In Licensee's defense of the City Agents, negotiation, compromise, and settlement of any such infringement action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

17.3.4 Rights and remedies available to the City hereinabove shall survive the expiration or other termination of this Agreement. Further, the rights and remedies are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City of Los Angeles.

17.3.5 Should Licensee have information that (1) any of its equipment or products infringe on any third party intellectual property rights (patents, copyrights, trademarks, trade secrets and other proprietary information), or (2) any of the licenses procured on behalf of the City under this Agreement are to expire, to be terminated or enjoined sooner than the term procured for, Licensee shall immediately notify City of such alleged, actual or potential infringement or license status. Upon City's request, Licensee shall, at Licensee's own expense:

- i) Procure for the City the right or license to continue using the intellectual property at issue; or
- ii) Replace the intellectual property at issue with a functionally equivalent, non-infringing product, if practicable.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the City or its lessees, or diminish the intended benefits and use of the Work Products by the City or its lessees under the specifications herein.

17.3.6 The provisions of Sections 17.3.1 through 17.3.7 shall survive expiration or termination of this Agreement.

**Section 18.0 CONTINUED OCCUPANCY OF THE ASSIGNED AREAS AFTER EXPIRATION DATE OR EARLIER TERMINATION.** Licensee has no right to continue to occupy or remain in possession of the Assigned Areas or any Storage Space after the expiration of the Term or the earlier termination of this Agreement. Such continued occupancy or possession shall constitute a Default, and shall be considered occupancy at sufferance. Without limiting the City's remedies under this Agreement, Licensee shall pay two hundred percent (200%) of the Monthly License Fee last due in this Agreement (including, without limitation, any Storage Rent, if any, payable pursuant to Exhibit B for any Storage Space), plus Additional Fees, and other fees and charges, and shall otherwise be on the terms and conditions specified in this Agreement, so far as applicable. During any such period, Licensee's Faithful Performance Guarantee (as defined in Section 13.0) shall continue in effect and Licensee shall be subject to every other provision, covenant and agreement contained herein. If the Assigned Areas are not surrendered at the expiration of the Term or earlier termination of this Agreement, and in accordance with the provisions of Sections 12.0 and 17.1, Licensee shall indemnify, defend and hold City and City Agents harmless from and against any and all Claims resulting from delay by Licensee in so surrendering the Assigned Areas including, without limitation, any Claims resulting from any claim against City or any City Agent made by any succeeding Licensee or prospective Licensee founded on or resulting from such delay and losses to City due to lost opportunities to lease or grant a License to any portion of the Assigned Areas to any such

Licensee, together with, in each case, actual attorneys' fees and costs. Nothing in this Section shall be construed as granting Licensee any right to continue to occupy the Assigned Areas following the expiration or termination of this Agreement. City may terminate such occupancy on delivery of five (5) days' notice. City may pursue all rights and remedies at law or in equity to recover possession of the Assigned Areas and to recover damages resulting from any continued occupancy by Licensee.

## **Section 19.0 DAMAGE OR DESTRUCTION TO ASSIGNED AREAS.**

### **19.1 Damage or Destruction to Assigned Areas.**

19.1.1 Insured Damage. If, during the term of this Agreement, any Improvements in or on the Assigned Areas are partially or totally destroyed from a risk covered by the insurance described in Section 23.2 herein, thereby rendering said Assigned Areas partially or totally inaccessible or unusable, Licensee must restore the Assigned Areas to substantially the same condition as they were immediately before destruction.

19.1.2 Uninsured Damage. If, during the term of this Agreement, Improvements in or on the Assigned Areas are partially or totally destroyed from a risk not covered by the fire and extended coverage insurance described in 23.2 herein, thereby rendering said Assigned Areas partially or totally inaccessible or unusable, such destruction shall not automatically terminate this Agreement. If, however, the cost of restoration exceeds ten percent (10%) of the full replacement value of improvements, as said value existed immediately before said destruction, Licensee may, at Licensee's option, terminate this Agreement by giving written notice to City within sixty (60) days from the date of discovery of such destruction. If Licensee elects to terminate as above provided, Licensee shall be obligated, unless otherwise directed by City, to demolish all damaged improvements and remove all debris from the Assigned Areas at Licensee's sole cost. If Licensee fails to exercise its right to terminate this Agreement, this Agreement shall continue in full force and effect for the remainder of the term specified herein and Licensee shall restore the Assigned Areas to substantially the same condition as they were in immediately before destruction at no additional cost to the City.

19.1.3 Destruction Due to Negligence. Notwithstanding the foregoing, if the said Assigned Areas, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of Licensee or any of the Licensee Parties, the Monthly License Fee shall not abate and City may, in its discretion, require Licensee to repair and reconstruct said Assigned Areas within twelve (12) months of the date of discovery of such damage and pay the cost therefore, or City may repair and reconstruct the same within twelve (12) months of the discovery of such damage and Licensee shall be responsible for reimbursing City for the cost and expenses incurred in such repair.

19.2 Limits of City's Obligations. In the application of the foregoing provisions, City's obligations shall be limited to repair or reconstruction of the Assigned Areas to the same extent and of equal quality as obtained by Licensee at the commencement of its operations hereunder.

Redecoration and replacement of all of Licensee's personal property, Expedited Traveler Biometric Identification Verification Lanes and/or Stations, Improvements, Electrical Hardware, furniture, equipment, trade fixtures, inventory, goods and supplies shall be the responsibility of Licensee and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

**Section 20.0 INDEPENDENT CONTRACTOR.** It is the express intention of the parties that Licensee is an independent contractor and not an employee, agent, joint venturer or partner of City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Licensee and City, or between Licensee and any official, agent, or employee of City. Both parties acknowledge that neither Licensee nor any of Licensee's employees, contractors, or agents are employees of City. Licensee hereby agrees to indemnify, defend, and hold City, the Board, CEO and their respective Board members, officers, directors, employees, agents, advisors, attorneys, and representative (collectively, "**City Agents**") harmless from and against any Claims of whatever nature that arise in connection with any such employment arrangements or labor agreements.

**Section 21.0 TAXES, LICENSES AND PERMITS.**

21.1 Licensee shall be responsible for payment of, and shall pay, all taxes, fees or license charges (of whatever character) that may be levied, assessed or charged upon Licensee or City in connection with Licensee's services provided pursuant to this Agreement, including without limitation, those related to or in connection with the Expedited Traveler License or Expedited Traveler Biometric Identification Verification Lanes and/or Stations in the Assigned Areas, or Licensee's Improvements, Electrical Hardware, other improvements, or other property thereon or Licensee's use thereof, including, but are not limited to, possessory interest taxes, personal property taxes and City business taxes. Licensee shall also pay all license or permit fees necessary or required by law or regulation in order to perform its obligations under this Agreement or use of the Assigned Areas, including any and all government health licenses and permits.

21.2 If a claim is made against City for any of the above charges, City shall promptly notify Licensee in writing; provided, however, that failure by City to give such notice shall not constitute a waiver of Licensee's obligation to pay such taxes, license and/or permit fees. Licensee shall promptly pay, as Additional Fees, the required amount plus all legally imposed interest, penalties and surcharges. If all or any part of such taxes and/or fees, penalties, or surcharges are refunded to City, City shall remit to Licensee such sum(s) to which Licensee is legally entitled.

**Section 22.0 BUSINESS TAX REGISTRATION.** Licensee represents that it has registered its business with the City Clerk of City and has obtained and presently holds from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of City's Municipal Code). Licensee shall maintain, or obtain as necessary, all such Certificates required



of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended during the term hereof.

**Section 23.0 LIABILITY.** Licensee shall comply with the indemnification and insurance provisions which follow.

23.1 Hold Harmless. In addition to the requirements of Section 23.2 (Insurance) below, to the fullest extent permitted by law, Licensee shall indemnify, defend, keep and hold City, City Agents and their successors and assigns harmless from and against any and all actions, causes of action, charges, claims, costs, damages, demands, expenses (including attorneys' fees, costs of court and expenses incurred), fines, judgments, liabilities, liens, losses, or penalties of every kind and nature whatsoever (collectively, "**Claims**") arising out of or in connection with (i) any injury or death to a person or damage to a person's property using the Expedited Traveler Biometric Identification Verification Lanes and/or Stations or caused by Electrical Hardware, Improvements or any other improvements installed, maintained or operated by Licensee, (ii) the entry upon, use or occupancy of the facilities or the Airport or the performance of this Agreement by Licensee or any of the Licensee Parties, (ii) any acts or omissions of Licensee or any of the Licensee Parties, and (iii) any default in the performance of Licensee's obligations under this Agreement. The foregoing defense and indemnification obligations of Licensee shall include, without limitation, all Claims claimed by anyone (including Licensee and the Licensee Parties) by reason of injury to, or death of, any person(s) (including Licensee and the Licensee Parties), all Claims for damage to, or destruction of, any property (including property of Licensee and the Licensee Parties) and all Claims for any and all other losses founded upon or alleged to arise out of, pertain to, or relate to Licensee's and/or the Licensee Parties' performance of this Agreement). The foregoing defense and indemnification obligations of Licensee shall apply to all Claims, whether or not contributed to by any act or omission of City or any City Agents; provided, however, that where such Claim arises from or relates to Licensee's performance of a "Construction Contract" as defined by California Civil Code section 2783, this paragraph shall not be construed to require Licensee to indemnify or hold City harmless to the extent such Claim is caused by City's sole negligence, willful misconduct or active negligence; and provided, further, that where such Claim arises from Licensee's design professional services as defined by California Civil Code section 2782.8, Licensee's indemnity obligations shall be limited to claims arising out of, pertaining to, or relating to Licensee's negligence, recklessness or willful misconduct in the performance of such services.

23.1.1 In addition, Licensee agrees to protect, defend, indemnify, keep and hold harmless City and City Agents from and against any and all Claims arising out of any threatened, alleged or actual claim that the end product provided to City by Licensee violates any patent, copyright, trade secret, proprietary right, moral right, privacy or similar right, or any other rights of any third party anywhere in the world. Licensee agrees to, and shall pay, all damages, settlements, expenses and costs (including, without limitation, costs of investigation, court costs and attorneys' fees), and all other costs and damages sustained or incurred by City arising out of, or relating to, the matters set forth above in this paragraph.



23.1.2 In Licensee's defense of City under this Section, negotiation, compromise and settlement of any Claim, City shall retain discretion in and control of the litigation, negotiation, compromise, settlement and appeals therefrom, as required by the Los Angeles City Charter (particularly Article II, Sections 271, 272 and 273 thereof).

23.1.3 The provisions of this Section 23.0 shall survive the expiration or termination of this Agreement.

23.2 Insurance. Licensee shall procure at its expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on Insurance, Exhibit E attached hereto and incorporated by reference herein, including, without limitation, all-risk casualty and property damage insurance to be maintained by Licensee, at Licensee's expense, covering all improvements located in or on the Assigned Areas which policy shall be in the name of Licensee and City with loss payable endorsement in a form approved by City. The specified insurance shall also, either by provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City and all of City Agents, their successors and assigns, as additional insureds, against the areas of risk described on Exhibit E with respect to acts or omissions of Licensee or any of the Licensee Parties in their respective operations, use, and occupancy of the Airport or other related functions performed by or on behalf of Licensee or any of the Licensee Parties in, on or about Airport.

23.2.1 Each specified insurance policy (other than Workers' Compensation and Employers' Liability and fire and extended coverages) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

23.2.2 All such insurance shall be primary and noncontributing with any other insurance held by City where liability arises out of or results from the acts or omissions of Licensee or any of the Licensee Parties. Such policies may provide for such reasonable deductibles and retentions as are acceptable to CEO based upon the nature of Licensee's operations and the type of insurance involved.

23.2.3 City shall have no liability for any premiums charged for such coverage(s). The inclusion of City and City Agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Licensee in Licensee's operations at Airport. In the event Licensee fails to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of Licensee, and Licensee agrees to promptly reimburse City for the cost thereof plus the Administrative Fee for administrative overhead. Payment shall be made within thirty (30) days of invoice date.

23.2.4 At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, Licensee shall, within fifteen (15) days of such cancellation of coverage, file with City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

23.2.5 Licensee shall provide proof of all specified insurance and related requirements to City either by production of the actual insurance policy(ies), by use of City's own endorsement form(s), by broker's letter acceptable to CEO in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to CEO. The documents evidencing all specified coverages shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in Sections 11.47 through 11.56 of the City of Los Angeles' Administrative Code prior to Licensee occupying the Assigned Areas. The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof. City reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

23.2.6 City and Licensee agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Agreement by CEO who may, thereafter, require Licensee, on thirty (30) days prior written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said CEO deems to be adequate.

23.2.7 Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations or directives from the State Department of Insurance or other regulatory board or agency. Licensee agrees, except where exempted, to provide City proof of said insurance by and through a surplus line broker licensed by the State of California.

23.2.8 To the fullest extent permitted by law and except for the gross negligence or intentional misconduct by City or the City Agents, Licensee, on behalf of Licensee and its insurers, hereby waives, releases and discharges City and all City Agents from all Claims arising out of damage to or destruction of the Assigned Areas, or to Licensee's improvements, fixtures, trade fixtures or other personal property located on or about the Assigned Areas, and any loss of use or business interruption, caused by any casualty, regardless of whether any such Claim results from the negligence or fault of City or any City Agent, and Licensee will look only to Licensee's insurance coverage (regardless of

whether Licensee maintains any such coverage) in the event of any such Claim. Any property insurance which Licensee maintains must permit or include a waiver of subrogation in favor of City and all City Agents.

23.2.9 City's establishment of minimum insurance requirements for Licensee in this Agreement is not a representation by City that such limits are sufficient and does not limit Licensee's liability under this Agreement in any manner.

#### **Section 24.0 COMPLIANCE WITH LAWS.**

24.1 Licensee shall, at Licensee's sole cost and expense, (and shall cause Licensee's sub-Licensees, vendors, employees, contractors, representatives, agents, permittees and invitees (individually, a "**Licensee Party**"; and collectively, "**Licensee Parties**") to) fully and faithfully observe and comply with (a) all municipal, state and federal laws, statutes, codes, rules, regulations, ordinances, requirements, and orders (collectively, "**Laws**"), now in force or which may hereafter be in force pertaining to the Assigned Areas or Licensee's use of the Assigned Areas, Licensee's services for the Expedited Traveler License, the terminal(s) or the Airport (including without limitation, (i) all safety, security and operations directives of City, including by CEO, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport or the use of facilities at the Airport; and (ii) any and all valid and applicable requirements of all duly-constituted public authorities (including, without limitation, the Department of Transportation, the Department of Homeland Security, the Federal Aviation Administration, and the Transportation Security Administration)); (b) all recorded covenants, conditions and restrictions affecting the Airport ("**Private Restrictions**") now in force or which may hereafter be in force; and (c) the Rules and Regulations. The judgment of any court of competent jurisdiction, or the admission of Licensee in any action or proceeding against Licensee, whether City be a party thereto or not, that Licensee has violated any Laws or Private Restrictions, shall be conclusive of that fact as between Licensee and City. In addition to the above Section 24.1, as used in this Agreement, "**Laws**" shall include all present and future federal, state and local statutes, ordinances and regulations and City ordinances applicable to Licensee, the Assigned Areas, the Expedited Traveler Biometric Identification Verification Lanes and/or Stations, the services provided by Licensee for the Expedited Traveler License or the Airport, including but not limited to requirements under Section 29.7.1 of this Agreement, the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., including, without limitation, to Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof (including, without limitation, all of the requirements of Title 24 of the California Code of Regulations) and, as the same may be in effect on the date of this Agreement and may be hereafter modified, amended or supplemented (collectively, the "**ADA**"), all acts and regulations relating in any way to food and drugs, worker's compensation, sales and use tax, credit card processing, social security, unemployment insurance, hours of labor, wages, working conditions, the Immigration Reform and Control Act of 1986, the City of Los



Angeles Administrative Code, and all Hazardous Materials Laws (as defined in Section 12).

24.2 Licensee agrees to pay or reimburse City as Additional Fee for any civil penalties or fines which may be assessed against City as a result of the violation by any Licensee Party of any Laws or Private Restrictions, which payment shall be made by Licensee within thirty (30) days from receipt of City's invoice for such amount and documentation showing that payment of such penalty or fine is Licensee's responsibility hereunder.

**Section 25.0 RULES AND REGULATIONS.** Licensee shall comply with the non-discriminatory rules, regulations and directives of the City and the Department of Airport, along with any modifications, amendments and supplements thereto, as are in effect from time to time, for the orderly and proper operation of the Airport, the terminals, the common areas and the Assigned Areas (collectively, the "**Rules and Regulations**"). City shall not be responsible to Licensee, any Licensee Party or any other third party for the failure of any other person to observe and abide by any of said Rules and Regulations.

**Section 26.0 SECURITY.**

26.1 Security Arrangements. LAWA shall provide, or cause to be provided, during the term hereof, all proper and appropriate public fire, police and security protection similar to that afforded to others at Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of Airport. Licensee is required to comply with LAWA security policies. Licensee shall be responsible for all expenses incurred by LAWA for corrective action resulting from Licensee's non-compliance with LAWA policies.

26.2. Security Inspection and Survey. Licensee shall make the Assigned Areas available to Airport Police Division for security survey and inspection.

26.3. Airport Identification. Licensee shall, and ensure that Licensee Parties shall, display proper Airport identification at all times during their work hours. Licensee shall, ensure that Licensee Parties shall, report to Airport management and/or Airport Police any persons present in restricted areas that are known by Licensee not to be authorized or known not to be displaying a proper Airport identification badge. In accordance with the Comprehensive Security Program, Licensee shall use reasonable efforts to refer all individuals found within restricted areas without proper identification to the Airport Police. Licensee shall ensure that Licensee Parties shall use reasonable efforts to immediately notify the Airport Security Coordinator each time a suspicious action related to Airport security is observed or an unresolved question arises concerning Airport security.

26.4. Control of Movement. Licensee agrees to control the movement of Licensee Parties and vehicles within its Assigned Areas, abiding by the personnel and

vehicle identification requirements outlined in the Comprehensive Airport Security Program (hereinafter referred to as "CASP").

26.5. Security Education and Training. Licensee shall, and ensure that Licensee Parties shall, be indoctrinated on specific security responsibilities and procedures, with emphasis on the badging and challenge requirements.

26.6. Corrective Action. Licensee is required to notify the Airport Security Coordinator immediately when significant modifications or changes are made to the Assigned Areas. If, at any time, Licensee is unable to comply with this Section, Licensee shall notify LAWA. LAWA will take immediate corrective actions to establish the required level of security.

26.7. Indemnification. Licensee shall indemnify and hold the City harmless with regard to any fine, fee or penalty arising from the violation of security provisions by Licensee contained herein as to the applicable Assigned Areas surveyed, or within the CASP, or about those areas defined, or anywhere on Airport with regard to any violation of those security provisions of the Airport Security Program committed by Licensee or Licensee Party. In addition, Licensee agrees to indemnify City for any such violation assessed to City by the Federal Aviation Administration ("FAA") and directly related to Licensee's negligence hereunder.

26.8. Periodic Evaluation. CEO will periodically evaluate the above procedures. Failure by Licensee to fully implement and maintain these procedures shall be the basis for CEO, upon ten (10) days' notice, to take immediate measures to restore security to an acceptable level, and to hold Licensee responsible for the reasonable cost of such measures until Licensee restores the required level of security under this Agreement.

26.9. Assignment of Security Obligations. Without the prior written consent of the CEO, exercised in his or her sole discretion, Licensee shall not, by operation of law or otherwise, in any manner, assign or transfer its obligations under Section 10.0, or any portion thereof, in whole or in part. Consent to one assignment shall not be deemed consent to any subsequent assignment.

26.10. Security Design Guidelines. Licensee shall provide complete security hardware compatible with the Assigned Areas' pre-established system, when openings between non-secure and secure sides are made. The openings will be subject to CEO's approval and FAA guidelines. Exits dispensing directly onto Air Operations Areas must be fitted with FAA-approved electronic security card key access monitoring and alarms. Exits dispensing into restricted areas may be fitted with LAWA system electronic security card key access monitoring and alarms, or other methods compatible with existing systems and Airport Police security requirements.

## **Section 27.0 NOTICE REQUIREMENTS.**



27.1 Notice to City. Written notices to City hereunder, shall be given by registered or certified mail, postage prepaid, return receipt requested, and addressed to City at the following address, or to such other address as City may designate by written notice to Licensee:

City of Los Angeles  
Department of Airport  
Commercial Development Group  
1 World Way 2<sup>nd</sup> Floor  
Los Angeles, California 90045  
Attention: Deputy CEO

With a copy to:

Los Angeles City Attorney  
1 World Way  
Post Office Box 92216  
Los Angeles, CA 90045

27.2 Notice to Licensee. Written notices to Licensee hereunder, shall be given by registered or certified mail, postage prepaid, return receipt requested, and addressed to Licensee at the following address:

Alclear, LLC  
65 E. 55<sup>th</sup> Street, 17<sup>th</sup> Floor  
New York, NY 10022  
Attention: Ken Cornick, President & Chief Financial Officer

or to such other address or email as Licensee may designate by written notice to City.

**Section 28.0 AGENT FOR SERVICE OF PROCESS.** The parties hereto expressly understand and agree that if Licensee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Licensee does designate its California registered agent as its agent for the purpose of service of process in any court action between it and City arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of California by also serving Licensee's registered agent. The parties hereto expressly agree, covenant, and stipulate that Licensee shall personally be served with such process out of this State by the registered mailing of such complaint and process to Licensee at the address set forth herein. Any such service out of this State shall constitute valid service upon Licensee as of the date of receipt thereof. The parties hereto further expressly agree that Licensee is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all obligations and protest thereto, any laws to the contrary notwithstanding.

**Section 29.0 GENERAL PROVISIONS.**

29.1 Airport License Disadvantaged Business Enterprise Program. Compliance with Department of Transportation (DOT). This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The Licensee 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 License agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23, and in connection with its performance under this Agreement or the management of the License. City strictly prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, leasing or any subleasing under this Agreement (the "**Non-Discrimination Policy**"). Additionally, City has established an Airport License Disadvantaged Business Enterprise program in accordance with regulations of the U.S. Department of Transportation, 49 Code of Federal Regulations Part 23 (the City's program and federal regulations are collectively referred to as the "**ACDBE Rules**"). Licensee shall comply with the Non-Discrimination Policy and the ACDBE Rules. Licensee shall cooperate with City in City's program of recruiting, training, providing technical assistance and holding workshops to ensure that contracting, subcontracting and purchasing opportunities available under this Agreement are accessible and available to all qualified businesses owners, including "Airport License Disadvantaged Business Enterprises" ("**ACDBEs**"), as defined in the ACDBE Rules. In order to provide a fair opportunity for ACDBE participation, Licensee shall make good faith efforts, within the meaning of the ACDBE Rules, to provide for a level of ACDBE participation in the License operations by Licensees contemplated by this Agreement equal to or greater than zero ( 0%).

29.1.1 Subsequent License Agreement or Contract Covered by 49 CFR Part 23. The Licensee agrees to include the following statement in any subsequent License agreement or contract covered by 49 CFR part 23 that it enters and cause those businesses to similarly include the statement in further agreements: "This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The Licensee 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 License agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23."

29.1.2 Substitutions. When applicable, should a substitution or an addition of an ACDBE become necessary, Licensee shall comply with all requirements of the ACDBE Rules. Failure to comply with the ACDBE Rules shall constitute a Default of this Agreement.

29.1.3 Monthly Report. When applicable, in order to assure compliance with the Non-Discrimination Policy and the ACDBE Rules, Licensee shall submit, in the format required by CEO, a monthly report to City, describing the Gross Revenues of each initial ACDBE (and each substitute ACDBE), in each case calculated in accordance with the requirements of this Agreement. Licensee shall submit in the format required by the CEO and such other information as may be requested by the CEO to ensure compliance

with the ACDBE Rules. If Licensee does not subcontract its services under this Agreement, this requirement shall not apply.

## 29.2 Alternative Fuel Vehicle Requirement Program (LAX Only).

29.2.1 Licensee shall comply with the provisions of the alternative fuel vehicle requirement program (the “**Alternative Fuel Vehicle Requirement Program**”). The rules, regulations, and requirements of the Alternative Fuel Vehicle Requirement Program are attached as Exhibit F and made a material term of this Agreement. Licensee shall complete and submit to City the vehicle information required on the reporting form accessible online at <https://sbo.lawa.org/altfuel> on a semi-annual basis. The reporting form may be amended from time to time by City.

29.2.2 Licensee acknowledges that compliance with the Alternative Fuel Vehicle Requirement Program does not relieve Licensee from complying with any and all applicable federal, state and local regulations.

## 29.3 Child Support Orders.

29.3.1 This Agreement is subject to Section 10.10, Article I, Chapter 1, Division 10 of the Los Angeles Administrative Code related to Child Support Assignment Orders, which is incorporated herein by this reference. A copy of Section 10.10 has been attached hereto for the convenience of the parties as Exhibit G. Pursuant to this Section, Licensee (and any sub-Licensee of Licensee providing services to City under this Agreement) shall (1) fully comply with all State and Federal employment reporting requirements for Licensee's or Licensee's sub-Licensee's employees applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of Licensee and applicable sub-Licensees are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (4) maintain such compliance throughout the term of this Agreement. Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, failure of Licensee or an applicable sub-Licensee to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Licensee or applicable sub-Licensees to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Contract subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Licensee by City (in lieu of any time for cure provided elsewhere in this Agreement).

## 29.4 Compliance with Los Angeles City Charter Section 470(c)(12).

29.4.1 Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or

candidates for elected City office if the contract is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Licensee is required to provide and update certain information to the City as specified by law. Any Licensee subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

“Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions.

As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract # \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to Licensee names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to Licensee within 5 business days. Failure to comply may result in termination of contract or any other available legal remedy, including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.”

29.4.2 Licensee, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

29.5 Contractor Responsibility Program. Licensee shall comply with the provisions of the Contractor Responsibility Program adopted by the Board. Executive Directives setting forth the rules, regulations, requirements and penalties of the Contractor Responsibility Program and the Pledge of Compliance Form is attached hereto as Exhibit H and incorporated herein by reference. The Contractor Responsibility Program Rules and Regulations are available at <http://www.lawa.org>.

29.6 Nondiscrimination and Equal Employment Practices/Affirmative Action Program.

29.6.1 Federal Non-Discrimination Provisions. Licensee assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Licensee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which



Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

29.6.2 Municipal Non-Discrimination Provisions In Use of Airport. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, physical handicap, marital status, domestic partner status, or medical condition in connection with this Agreement, the transfer, use, occupancy, tenure, or enjoyment of the Airport or any operations or activities conducted on the Airport. Nor shall Licensee or any person claiming under or through Licensee establish or contract any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of contractors, subcontractors, or vendees of the Airport. Any assignment or transfer, which may be permitted under this Agreement, shall also be subject to all non-discrimination clauses contained in this Section 29.6.2.

29.6.3 Municipal Non-Discrimination Provisions in Employment. During the term of this Agreement, Licensee agrees and obligates itself in the performance of this Agreement not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, physical handicap, marital status, domestic partner status, or medical condition. Licensee shall take affirmative action to insure that applicants for employment are treated, during the term of this Agreement, without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code, Sections 10.8, et seq., or any successor ordinances or law concerned with discrimination.

29.6.4 Municipal Equal Employment Practices. If the total payments made under this Agreement are One Thousand Dollars (\$1,000) or more, this provision shall apply. During the performance of this Agreement, Licensee agrees to comply with Section 10.8.3 of the Los Angeles Administrative Code ("**Equal Employment Practices**"), which is incorporated herein by this reference. A copy of Section 10.8.3 has been attached to this Agreement for the convenience of the parties as Exhibit I. By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Licensee to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Licensee. Upon a finding duly made that Licensee has failed to comply with the Equal Employment Practices provisions of this Agreement, this Agreement may be forthwith terminated, cancelled, or suspended.

29.6.5 Municipal Affirmative Action Program. If the total payments made under this Agreement are One Hundred Thousand Dollars (\$100,000) or more, this provision



shall apply. During the performance of this Agreement, Licensee agrees to comply with Section 10.8.4 of the Los Angeles Administrative Code ("**Affirmative Action Program**"), which is incorporated herein by this reference. A copy of Section 10.8.4 has been attached to this Agreement for the convenience of the parties as Exhibit J. By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of the Los Angeles Administrative Code, the failure of Licensee to comply with the Affirmative Action Program provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Licensee. Upon a finding duly made that Licensee has failed to comply with the Affirmative Action Program provisions of this Agreement, this Agreement may be forthwith terminated, cancelled, or suspended.

#### 29.7 Disabled Access.

29.7.1 Licensee shall be solely responsible for fully complying with any and all applicable present or future rules, regulations, restrictions, ordinances, statutes, Laws, or orders of any federal, state, or local governmental entity or court regarding disabilities and disabled access to the Expedited Traveler Biometric Identification Verification Lanes and/or Stations and Assigned Areas, including any services, programs, improvements or activities provided by Licensee or by Concessionaire's subcontractors; and which may include but are not limited to the Air Carrier Access Act; 2010 ADA Standards For Accessible Design; 28 Code of Federal Regulation Part 35; 28 Code of Federal Regulation Part 36; Sections 504 and 508 of the Rehabilitation Act of 1973 as amended and the State of California Code of Regulations Title 24, and including such rules, regulations, restrictions, ordinances, statutes, Laws, or orders of any federal, state, or local governmental entity or court related to volume control standards, height standards, shelve standards, and such other accessibility standards for the Expedited Traveler License. Further, Licensee agrees to cooperate fully with City in its efforts to comply with the ADA, including but not limited to, Title II of the Americans with Disabilities Act of 1990, as amended by the final rule published on September 15, 2010, and any amendments thereto, or successor statutes. The Licensee shall comply with 49 CFR 37. Special attention shall be given to: 49 CFR §37.5, §37.105; §37.161; §37.165; §37.167; § 37.171; §37.173; §37.207. In addition to federal requirements, Licensee shall also be required to comply with Title III of the Americans with Disabilities Act, as amended and any amendments thereto, or successor statutes, and the State of California disabilities laws. Among these, though not all inclusive are the Unruh Civil Rights Act, Civil Code §54; Civil Code § 54.1; Civil Code §51.5; and Government Code § 12948. Without limiting the generality of the foregoing, Licensee shall ensure the accessibility of any and all existing or future Expedited Traveler Biometric Identification Verification Lanes and/or Stations, including , equipment, and improvements installed, maintained or used by Licensee in connection with this Agreement, regardless of whether the obligation for such compliance is placed on the owner of the land, the owner of the buildings, structures, and facilities, or the owner of the telephones, equipment, and telephone enclosures.

29.7.2 Licensee shall be solely responsible for any and all Claims and damages caused by, and/or penalties levied as the result of, Licensee's or Licensee's subcontractors' noncompliance.

29.7.3 If Licensee should fail to comply with the provisions under Section 29.7.1, City shall have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Licensee will then be required to reimburse the City for actual cost, plus the Administrative Fee of fifteen percent (15%) (as Additional Fee), within thirty (30) days of written demand therefor.

29.8 Environmentally Favorable Operations. Licensee acknowledges for itself and any sub-Licensees that its operation of its activities under this Agreement will be subject to all Department of Airport' policies, guidelines and requirements regarding environmentally favorable construction, use and/or operations practices (hereinafter collectively referred to as "LAWA Policies") as such LAWA Policies may be promulgated, revised and amended from time-to-time.

29.9 Equal Benefits Ordinance. Unless otherwise exempt in accordance with the provisions of the Equal Benefits Ordinance ("EBO"), Licensee certifies and represents that Licensee will comply with the applicable provisions of EBO Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time. Licensee shall not, in any of its operations within the City of Los Angeles or in other locations owned by the City of Los Angeles, including the Airport, discriminate in the provision of Non-ERISA Benefits (as defined below) between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration. As used above, the term "**Non-ERISA Benefits**" shall mean any and all benefits payable through benefit arrangements generally available to Licensee's employees which are neither "employee welfare benefit plans" nor "employee pension plans", as those terms are defined in Sections 3(1) and 3(2) of ERISA. Non-ERISA Benefits shall include, but not be limited to, all benefits offered currently or in the future, by Licensee to its employees, the spouses of its employees or the domestic partners of its employees, that are not defined as "employee welfare benefit plans" or "employee pension benefit plans", and, which include any bereavement leave, family and medical leave, and travel discounts provided by Licensee to its employees, their spouses and the domestic partners of employees.

29.9.1 Licensee agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the term of a contract with the City of Los Angeles, Licensee will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-2625."

29.9.2 The failure of Licensee to comply with the EBO will be deemed to be a material breach of this Agreement by City. If Licensee fails to comply with the EBO, City may cancel or terminate this Agreement, in whole or in part, and all monies due or to become due under this Agreement may be retained by City. City may also pursue any and all other remedies at law or in equity for any breach. Failure to comply with the EBO may be used as evidence against Licensee in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance. If City determines that Licensee has set up or used its contracting entity for the purpose of evading the intent of the EBO, City may terminate this Agreement.

29.10 First Source Hiring Program (LAX Only). For all work performed at LAX, Licensee shall comply with all terms and conditions of the First Source Hiring Program ("FSHP"). A copy of the FSHP is attached hereto and incorporated by reference herein and made a material term of this Agreement as Exhibit K. Licensee shall be an "Airport Employer" under the First Source Hiring Program.

29.11 Living Wage Ordinance General Provisions.

29.11.1 This Agreement is subject to the Living Wage Ordinance (hereinafter referred to as "**LWO**") (Section 10.37, et seq., of the Los Angeles Administrative Code), which is incorporated herein by reference. A copy of Section 10.37 has been attached hereto for the convenience of the parties as Exhibit L. The LWO requires that, unless specific exemptions apply, any employees of service contractors who render services that involve an expenditure in excess of Twenty Five Thousand Dollars (\$25,000) and a contract term of at least three months are covered by the LWO if any of the following applies: (1) at least some of the services are rendered by employees whose work site is on property owned by City, (2) the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than Twelve Dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit ("**EITC**") and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Licensee shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by City. Whether or not subject to the LWO, Licensee shall not retaliate against any employee claiming non-compliance

with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Licensee agrees to comply with federal law prohibiting retaliation for union organizing.

29.11.1.1 Living Wage Coverage Determination. An initial determination has been made that this is a service contract under the LWO, and that it is not exempt from coverage by the LWO. Determinations as to whether this Agreement is a service contract covered by the LWO, or whether an employer or employee are exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined or other interpretations of the law are considered. In some circumstances, applications for exemption must be reviewed periodically. City shall notify Licensee in writing about any redetermination by City of coverage or exemption status. To the extent Licensee claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Licensee to prove such non-coverage or exemption.

29.11.1.2 Compliance; Termination Provisions and Other Remedies; Living Wage Policy. If Licensee is not initially exempt from the LWO, Licensee shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the execution date of this Agreement., If Licensee is initially exempt from the LWO, but later no longer qualifies for any exemption, Licensee shall, at such time as Licensee is no longer exempt, comply with the provisions of the LWO and execute any form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Licensee violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Agreement. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO. A copy of said provisions of the LWO has been attached for convenience of the parties as Exhibit L.

29.11.2 Service Contract Worker Retention Ordinance. This Agreement may be subject to the Service Contract Worker Retention Ordinance (hereinafter referred to as "SCWRO") (Section 10.36, et seq., of the Los Angeles Administrative Code), which is incorporated herein by reference. A copy of Section 10.36 has been attached for the convenience of the parties as Exhibit M. If applicable, Licensee must also comply with the SCWRO which requires that, unless specific exemptions apply, all employers under contracts that are primarily for the furnishing of services to or for the City of Los Angeles and that involve an expenditure or receipt in excess of Twenty Five Thousand Dollars (\$25,000) and a contract term of at least three (3) months, shall provide retention by a successor Licensee for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated Licensee or sub-Licensee, if any, as provided for in the SCWRO. Under the provisions

of Section 10.36.3(c) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available if City determines that the subject Licensee violated the provisions of the SCWRO.

29.12 Municipal Lobbying Ordinance. Licensee shall comply with the provisions of the City of Los Angeles Municipal Lobbying Ordinance, Municipal Code Section 48.01 et seq., as amended.

29.13 Visual Artists' Rights Act. Licensee shall not install, or cause to be installed, any work of art subject to the Visual Artists' Rights Act of 1990 (as amended), 17 U.S.C. 106A, et seq., or California Code Section 980, et seq., ("VARA") on or about the Assigned Areas without first obtaining a waiver, in writing, of all rights under VARA, satisfactory to CEO and approved as to form and legality by the City Attorney's Office, from the artist. Said waiver shall be in full compliance with VARA and shall name City as a party for which the waiver applies. Licensee is prohibited from installing, or causing to be installed, any piece of artwork covered under VARA on the Assigned Areas without the prior, written approval and waiver of CEO. Any work of art installed on the Assigned Areas without such prior approval and waiver shall be deemed a trespass, removable by City, by and through its CEO, upon three (3) days written notice, all costs, expenses, and liability therefore to be borne exclusively by Licensee. Licensee, in addition to other obligations to indemnify, defend and hold City and City Agents harmless, as more specifically set forth in this Agreement, shall indemnify, defend and hold City and City Agents harmless from all Claims resulting from Licensee's failure to obtain City's waiver of VARA and failure to comply with any portion of this provision. The rights afforded City under this provision shall not replace any other rights afforded City in this Agreement or otherwise, but shall be considered in addition to all its other rights.

29.14 DOT Title VI Assurances.

29.14.1 Compliance with Federal Regulations. If applicable, Licensee shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the DOT Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter "Federal Regulations"), which are herein incorporated by reference and made a part of this Agreement.

29.14.2 Non-discrimination. Licensee, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the grounds of age, sex, race, creed, color, handicap, or national origin in the selection and retention of sublessees or subcontractors, including procurement of materials and leases of equipment. Licensee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of Federal Regulations including employment practices when the Agreement covers a program set forth in Appendix B of the regulations.

29.14.3 Solicitations for Subcontractors, Including Procurement of Materials and Equipment. In all solicitations involving either competitive bidding or



negotiation by Licensee for services or work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by Licensee of Licensee's obligations under this Agreement and Federal Regulations relative to nondiscrimination on the grounds of age, sex, race, creed, color, handicap, or national origin.

29.14.4 Information and Reports. Licensee shall provide all information and reports required by Federal Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by City or the Federal Aviation Administration to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of a Licensee is in the exclusive possession of another who fails or refuses to furnish this information, Licensee shall so certify to City or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

29.14.5 Sanctions for Non-Compliance. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, City shall impose sanctions as it or the FAA may determine to be appropriate, including, but not limited to, the right to immediately terminate this Agreement and to re-enter and repossess the Assigned Area and any improvements thereon, and hold same as if this Agreement had never been made or issued.

29.14.6 Equal Employment Opportunity. In the performance of services under this Agreement, Licensee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, handicap, or national origin. Licensee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, age, handicap, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or other forms of compensation; and, selection for training, including apprenticeship. Licensee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. Licensee shall, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, sex, age, handicap, or national origin. Licensee shall incorporate the foregoing requirements of this paragraph in all subleases and subcontracts for services covered by this Agreement.

29.14.7 Incorporation of Provisions. Licensee shall include the provisions of Sections 29.6 through 29.15 in every subcontract, including procurement of materials and leases of equipment, unless exempted by Federal Regulations or directives issued pursuant thereto. Licensee shall take such action, with respect to any subcontract or procurement, as City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Licensee

becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such directions, Licensee may request City to enter into such litigation to protect the interest of City, and, in addition, Licensee may request the United States to enter into such litigation to protect the interests of the United States.

29.15 Anti-Lobbying Certifications. Licensee certifies, to the best of its knowledge and belief, that:

29.15.1 No Federally appropriated funds have been paid or will be paid by, or on behalf of, Licensee to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, in making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

29.15.2 If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Contract, grant, loan, or cooperative agreement, Licensee shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

29.15.3 Licensee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

29.16 Board Order AO-5077 Exemption. With respect to the provision of products and services pursuant to this License Agreement, Licensee and its respective vendors are expressly exempt from the Board-imposed license fee described in Board Order AO-5077 ("Board Order") and related Staff Report, and any subsequent Board action substituting, replacing or modifying the Board Order, which license fee may, in the absence of such exemption, be assessed on the gross revenues derived from the provision of products and services pursuant to this Agreement."

## **Section 30.0 OTHER PROVISIONS.**

30.1 City Approval. Following the execution and delivery of this Agreement, whenever this Agreement calls for a matter to be approved or disapproved by or on behalf of City, then the written approval, disapproval, or consent of the CEO within the legal authority of the CEO, subject to the approval of the Office of the City Attorney as to form, shall constitute the approval, disapproval, or consent of City; provided, however, if the approval or consent by City is in excess of the CEO's legal authority, then such matter shall be approved by the Board. Except as otherwise expressly set forth in this Agreement, with respect to any matter that is

subject to the approval or consent of the CEO or the Board, such approval or consent may be given or withheld in the CEO's or the Board's sole and absolute discretion. Any approvals or consents required from or given by City under this Agreement shall be approvals of the City of Los Angeles Department of Airport acting as the owner and operator of the Airport, and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the rights or prerogatives of the City of Los Angeles as a government, including the right to grant or deny any permits required for construction or maintenance of the Assigned Areas and the right to enact, amend or repeal laws and ordinances, including, without limitation, those relating to zoning, land use, and building and safety. No approval or consent on behalf of City will be deemed binding upon City unless approved in writing as to form by the City Attorney, where such approval is required.

30.2 Airport Operations. Licensee acknowledges that the operational requirements of the Airport as an airport facility, including without limitation security requirements, are of paramount importance. Licensee acknowledges and agrees that Licensee must conduct its business in a manner that does not conflict with the operational requirements of the Airport as an airport facility and that fully accommodates those requirements. Without limiting other waivers herein, Licensee waives all Claims against City and City Agents arising out of or connected to the operation of the Airport as an airport facility.

30.3 Subordination of Agreement. This Agreement shall be subordinate to the provisions of any existing or future agreement between City and the United States of America, its boards, agencies or commissions, or between City and the State of California, relative to the operations or maintenance of 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 said Airport. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

30.4 Laws of California; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California and venue shall lie in the appropriate U.S. Federal Court or California Superior Court located in Los Angeles County, California

30.5 Agreement Binding Upon Successors. Subject to the provisions of Section 10, this Agreement shall be binding upon and shall inure to the benefit of the successors, heirs and assigns of the parties hereto.

30.6 Ordinances and Los Angeles Administrative and Municipal Codes ("Codes") and Programs Language Governs. Exhibits to ordinances, Codes and programs (e.g., Alternative Fuel program, First Source Hiring program) are provided as a convenience to the parties only. In the event of a discrepancy between the exhibits and the applicable language in the ordinance, Codes or programs, the language of the ordinance, Codes or programs, and any amendments thereto, shall govern.

30.7 Amendments to Ordinances , Codes and Programs. The obligation to comply with any ordinances, Codes and programs shall extend to any amendments which may be made to those ordinances, Codes and programs during the term of this Agreement.

30.8 Conditions and Covenants. Each covenant herein is a condition, and each condition herein is as well a covenant by the parties bound thereby, unless waived in writing by the parties hereto.

30.9 Gender and Plural Usage. The use of any gender herein shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

30.10 Void Provision. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect.

30.11 Construction and Interpretation. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Licensee.

30.12 Section Headings. The section headings appearing herein are for the convenience of City and Licensee, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

30.13 Waiver of Claims. Licensee hereby waives any Claim against City and City Agents for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same, or any part hereof, from being carried out.

30.14 Waiver.

Every provision herein imposing an obligation upon Licensee is material inducement and consideration for the execution of this Agreement by City. No waiver by City of any breach of any provision of this Agreement shall be deemed for any purpose to be a waiver of any breach of any other provision hereof nor of any continuing or subsequent breach of the same provision.

30.15 Incorporation of Exhibits and Attachments. All exhibits and attachments referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

30.16 Right to Develop Airport. The parties hereto further acknowledge and agree that City reserves the right to further develop or improve the Airport' terminals and all landing areas and taxiways at Airport as it may see fit, regardless of the desires or views of Licensee and without interference or hindrance. Licensee is hereby advised that LAX undergoes continual



new construction and reconstruction, while accommodating heavy passenger traffic in a fast moving environment. Licensee, therefore, acknowledges to take such elements into account when considering the nature of the business atmosphere it is entering. Flexibility and adaptability to changing daily conditions is essential. Such conditions include the permanence or lack of permanence of Expedited Traveler Biometric Identification Verification Lanes and/or Stations and other service locations, passenger/customer levels, revenue fluctuations, and construction changes.

30.17 Licensee's Consent to City's Right to Amend. In the event that the FAA or its successors require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Licensee agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required. Any expenses resulting from such amendments, modifications, revisions, supplements or deletions, shall be borne solely by Licensee without reimbursement by City.

30.18 Force Majeure. Neither City nor Licensee shall be deemed in violation of this Agreement for events of force majeure. For purposes of this Agreement, the term "**Force Majeure**" shall mean, in relation to the conditions that may cause a party to be temporarily, partially or wholly prevented from performing its obligations to the other party under this Agreement and not for any other purpose or for any benefit of any third party: any event beyond the reasonable control of the party claiming it, including, but not limited to, embargoes, shortages of material, acts of God, acts of public enemy (such as war, (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage), acts of a governmental authority (such as the United States Department Of Transportation, the United States Federal Aviation Administration, the United States Transportation Security Administration, the United States Environmental Protection Agency and defense authorities), fires, floods, earthquakes, hurricanes, tornadoes and other extreme weather conditions; provided, however, that strikes, boycotts, lockouts, labor disputes, labor disruptions, work stoppages or slowdowns shall not be considered an event of Force Majeure. The term Force Majeure includes delays caused by governmental agencies in the processing of applicable building and safety permits but only to the extent that such processing time actually exceeds the normal and reasonable processing time period for such governmental agency permit; provided, however, that any delays caused by Licensee in the processing of such permits (such as 's failure to submit complete applications for such permits) shall not be considered a basis for a claim of Force Majeure by Licensee. Any lack of funds shall not be deemed to be a cause beyond the control of a party. If Licensee shall claim a delay due to Force Majeure, Licensee must notify City in writing within five (5) business days of the first occurrence of any claimed event of Force Majeure. Such notice must specify in reasonable detail the cause or basis for claiming Force Majeure and the anticipated delay in Licensee's performance to the extent such anticipated delay is known to Licensee at the time such notice to City is required. If Licensee fails to provide such notice within said five (5) business day period, then no Force Majeure delay shall be deemed to have occurred. Delays due to events of Force Majeure shall only be recognized to the extent that such event actually delays the performance by such party and cannot otherwise be mitigated using commercially reasonable efforts.



30.19 Days. Unless otherwise specified, "days" shall mean calendar days.

30.20 Authority to Execute. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein. Further, if Licensee is an entity, Licensee warrants that it is duly organized, validly existing and in good standing under the laws of the state of its organization, and is qualified to do business in the state in which the License in this Agreement is located, and the persons executing this Agreement on behalf of Licensee have the full right and authority to execute this Agreement on behalf of Licensee and to bind Licensee without the consent or approval of any other person or entity. Licensee has full power, capacity, authority and legal right to execute and deliver this Agreement and to perform all of its obligations hereunder. This Agreement is a legal, valid and binding obligation of Licensee, enforceable in accordance with its terms.

30.21 No General Assignment, etc. Licensee warrants that it has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally within the last 5 years prior to the date of this Agreement or any re-certification.

30.22 Understanding of Agreement. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

30.23 Documents of Agreement. This Agreement between the parties shall consist of this Agreement.

30.24 Non-liability of Agents and Employees. No member, officer, agent, Commissioner, or employee of City shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

30.25 Deprivation of Licensee's Rights. City shall not be liable to Licensee for any diminution or deprivation of Licensee's rights under this Agreement which may result from Licensee's obligation to comply with any and all Laws, nor shall Licensee be entitled to terminate the whole or any portion of the Agreement by reason thereof.

30.26 No Exclusivity. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act [49 U.S.C. 40103 (e) and 40107(a)(4) (Public Law 103-272; 108 STAT. 1102)]

[illegible]

IN WITNESS WHEREOF, City has caused this License Agreement for Expedited Traveler Services to be executed on its behalf by CEO, and Licensee has caused the same to be executed by its duly authorized officers as of the day and year first hereinabove written.

Approved as to form:

CITY OF LOS ANGELES

MICHAEL N. FEUER,  
City Attorney

Date: March 6, 2020

Date: \_\_\_\_\_

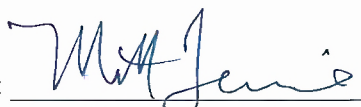
By:   
Deputy Assistant City Attorney


By: \_\_\_\_\_  
CEO  
City of Los Angeles,  
Department of Airport

By: \_\_\_\_\_  
Chief Financial Officer  
Deputy Executive Director

**Alclear, LLC d.b.a. CLEAR**  
A Delaware corporation,  
registered to do business in California

**Alclear, LLC d.b.a. Clear**  
A Delaware corporation,  
registered to do business in California

By:   
Signature  
Matt Levine  
Print Name  
General Counsel  
Print Title

By:   
Signature  
President Kenneth Cornick  
Print Name  
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