

**NON-EXCLUSIVE LICENSE AGREEMENT TO  
PARTICIPATE IN THE SAN AIRPORT INNOVATION  
LAB**

THIS NON-EXCLUSIVE LICENSE AGREEMENT (this "License") is granted this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by the San Diego County Regional Airport Authority, a local governmental entity of regional government, ("Authority") to \_\_\_\_\_, authorized to do business in the State of California ("Licensee").

**WITNESSETH**

WHEREAS, the San Diego Unified Port District ("District") is the trustee of certain tidelands owned by the State of California, including San Diego International Airport), located in the City of San Diego, California; and

WHEREAS, the San Diego County Regional Airport Authority Act ("Act") established Authority with the exclusive power and authority to oversee the establishment, operation and coordination of airport facilities within the County of San Diego, as well as to study, plan and implement any improvements, expansions, or enhancements at existing or future airports within its control; and

WHEREAS, pursuant to the Act, District and Authority entered into a ground lease ("Master Lease") dated December 17, 2002, bearing Authority's Document No. AA-0008, whereby District leased to Authority the Airport and other real property related thereto; and

WHEREAS, Authority Code §8.41 makes it unlawful for any person or entity to engage in a business or commercial activity on the Airport without the appropriate grant, franchise, certificate, or permit issued by the Authority; and

WHEREAS, the Authority has a SAN Airport Innovation Lab ("Lab") at the Airport for purposes including collaborating with firms or individuals to develop innovation products, services, systems and/or processes related to Airport operations. The objective of these collaborations is to bring together business and technical expertise, sources of funds, airport knowledge, and access to airport facilities to test solutions, aimed at resolving challenges, streamlining operations, improving the environment, enhancing revenue and improving the travel experience at the Airport; and

WHEREAS, the Authority published a request to provide solutions, as further described in "Exhibit B" entitled "Opportunity Statement", attached hereto and incorporated by reference herein, for companies to be a part of the Lab. Through the competitive selection process, Licensee was selected to enter the Lab to further test its solution and participate in the Lab; and

WHEREAS, the Authority and Licensee desire to enter into an agreement that would allow Licensee to develop, promote, and possibly test Licensee's solution, as described in "Exhibit C" entitled "Licensee Solution" and attached hereto and incorporated by reference herein, to the Opportunity Statement as further described in "Exhibit B – Opportunity Statement". To advance this goal, the parties express the willingness to enter into this License for the purpose of commencing the Lab program as further described in "Exhibit A" entitled "Rights and Responsibilities", attached hereto and incorporated by reference herein; and

WHEREAS, Licensee has indicated a willingness and has demonstrated an ability to operate in accordance with the rules, regulations and standards established by Authority if granted a License authorizing it to participate in the Lab; and

WHEREAS, it is in the best interest of the Authority and to the operation of the Airport to grant this License Agreement to Licensee upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, Authority, for the consideration hereinafter set forth, hereby grants to Licensee, the non-exclusive right to participate in the Lab at the Airport as designated by the Authority's President/CEO and upon the terms and conditions and for the purpose and uses hereinafter set forth:

1. **DEFINITIONS.** The following words, terms and phrases wherever used in this License shall have the following meanings:
  - A. **Act:** means the San Diego County Regional Airport Authority Act (Cal. Publ. Util. Code §170000 et seq.).
  - B. **AOA:** means Air Operations Area, a Security Controlled Area that consists of those portions of the Airport designed and constructed for the landing and takeoff, taxiing, handling, servicing, loading and unloading, and other operations of aircraft, as now exist or hereafter may be developed, extended or improved from time to time.
  - C. **Airport:** means the San Diego International Airport.
  - D. **Authority:** means the San Diego County Regional Airport Authority, a local governmental entity of regional government established by the Act, acting through its President/CEO for purposes related to this License.
  - E. **Business Records:** means all books of account, ledgers, records, financial statements and supporting documentation relating to, associated with, or supporting income derived from the Solution, which has been proposed, developed, derived, promoted and/or tested as part of the Lab, whether operated by Licensee or any successor, assign or related entity and the Monthly Gross Income derived therefrom.
  - F. **Commercial Airline:** means a federally certificated air carrier, air charter, commuter, or air taxi engaged in the conduct of scheduled or nonscheduled commercial air transportation of passengers and property at the Airport.
  - G. **Concessionaire:** means a company who is under a Concession Lease at the Airport for the purpose of performing a service for or selling retail goods and food and beverages to passengers.
  - H. **FAA:** means the United States Department of Transportation, Federal Aviation Administration, created and established under the Federal Aviation Act of 1958, as codified in the United States Code, Title 49, or its successor(s) in function, if any.
  - I. **Lab:** means the Authority's SAN Airport Innovation Lab Program at the Airport.
  - J. **License:** means this Non-Exclusive License Agreement, including all its exhibits and

attachments.

- K. **Licensee:** means COMPANY NAME, and all its employees, agents, contractors, and subcontractors.
- L. **Monthly Gross Income:** means any and all consideration of any kind billed, invoiced, derived or received by Licensee, before deductions for expenses, arising out of or related to the Solution, including but not limited to, for direct and indirect sales or license of Solution in and to airports, airlines, malls, convention centers, amusement parks, resorts, universities, municipalities, or any person or entity in the United States or worldwide for the Term of this Agreement. "Monthly Gross Income" shall include gross income billed, invoiced, derived, or received by Licensee subcontractors, concessionaires, licensees, successors, assigns, agents or any other party operating on behalf of Licensee. The calculation for Monthly Gross Income shall be the amount prior to any deduction of bad debts or uncollected billings.

Monthly Gross Income excludes the following:

1. **Tax.** Any applicable taxes payable by Licensee to any governmental agency as a direct result of providing Solution, provided that the amount of such taxes is accurately depicted on the Business Records.
  2. **Pass-Through Payments.** Any amounts paid in its entirety by Licensee to a third party, of which said third party currently operates under a concession agreement with the Authority and pays a concession fee to the Authority for said amount.
  3. **No Double Counting.** Amounts billed or invoiced shall not be double counted when they are actually received by the Authority.
  4. [Add applicable exclusions for other airports].
- M. **Other Tenant:** means a person or entity who is engaged in a business or commercial activity on the Airport who has the appropriate grant, franchise, certificate, license or permit issued by the Authority, except for the Licensee, a Concessionaire or Commercial Airline.
- N. **Parties:** means the Authority and Licensee collectively.
- O. **President/CEO:** means the President/Chief Executive Officer of the Authority or the President/CEO's duly authorized representative.
- P. **Security Controlled Areas:** means those areas of the Airport to which access is restricted to individuals possessing a valid Airport security identification badge or individuals under escort by a person possessing a valid Airport security identification badge.
- Q. **Solution:** means the innovation, products, services, systems and/or processes developed, in part or in whole, by participation in the Lab Program.

“Solution” shall include any derivatives, including but not limited to, improvements, versions, transfers, enhancements, functionalities, spin-offs, or future developments of the innovation, products, services, systems and/or processes developed, in part or in whole, by Licensee’s participation in the Lab.

R. **TSA:** means the United States Department of Homeland Security, Transportation Security Administration, and its successor(s) in function, if any.

## 2. **TERM.**

A. **Duration.** The term of this License shall commence on \_\_\_\_\_ and end on \_\_\_\_\_, unless sooner terminated as herein provided.

B. **Holdover.**

1. **With Consent.** This License shall terminate without further notice at expiration of the term as stated above. If Licensee continues to use the Lab or occupy space or operates at the Airport beyond the termination of this License, it may do so only on a holdover basis and with the prior, written consent of the Authority. The holdover shall be on a monthly basis and terminable on fifteen (15) days’ notice which may be given at any time by either party. During any holdover period, Licensee shall comply with all provisions of this License.

2. **Without Consent.** In the event Licensee continues to use the Lab, occupy space or operates at the Airport without the Authority’s prior, written consent, the Licensee shall pay \$5,000 per day during the entire period Licensee uses the Lab, occupies space or operates at the Airport in the absence of the Authority’s written consent as provided in Section (1) above. Additionally, Licensee shall be in violation of Authority Code §8.41 during any holdover period during which Licensee uses the Lab, or occupies space or operates at the Airport without the prior, written consent of the Authority.

## 3. **USES OF THE AIRPORT.**

A. **Use of Airport.** Subject to the terms, conditions and restrictions of this License, Licensee shall have the non-exclusive right to access and enter Security Controlled and Non-Security Controlled Areas of the Airport only when participating in the Lab pursuant to this License. Access to any Security Controlled Area, including the AOA, by Licensee shall be subject to the conditions and restrictions in the following subsection. To obtain the badges necessary for accessing the Lab and the Security Controlled Areas, Licensees shall provide information, as required to obtain the badges, on anyone who will be accessing the Lab or Security Controlled Areas of the Airport.

B. **Access to Security Controlled Areas.** Access to the Airport’s Security Controlled Areas will be permitted only at the sole discretion of the Authority. Licensee’s access to Security Controlled Areas shall be subject to the Authority’s rules, regulations, and restrictions. Licensee shall arrange for access to Security Controlled Areas with the Authority’s Badging Office prior to entry into any Security Controlled Area. In accessing the AOA by vehicle, Licensee shall use only vehicles specifically authorized by the Authority to be used on the AOA and shall enter only through gates designated by the Authority. Licensee shall be solely responsible for obtaining the clearances, badges, and permits required for entry into Security

Controlled Areas. Licensee may not access any Security Controlled Area by sponsorship or under escort of any Airline, FBO or other third party.

- C. **Administrative. Storage and Parking Spaces at the Airport.** Licensee acknowledges that space at the Airport is severely constrained and that this License does not provide any right to use Airport facilities or spaces for support of Licensee's administrative, storage or vehicle parking, except for in the designated areas (offices in the Lab and the parking spaces provided for the duration of the License). Licensee shall be responsible for arranging, at its sole expense, for spaces needed to support its participation in the Lab at the Airport. If Airport space is unavailable for lease directly from the Authority, Licensee will be required to sublease space or facilities from an Airline, FBO or other tenant having a real estate agreement with Authority. If Licensee subleases space at the Airport, the sublease will be subject to the prior, written approval of the Authority and be subordinate to the terms of this License.

#### 4. **AUTHORIZED SERVICES.**

A. **Services.**

1. **Description of Solution.** "Exhibit C – Licensee Solution" is a description of the Solution authorized for development by Licensee as a part of the Lab.

B. **Conditions, Limitations and Restrictions.** Licensee's use of the Airport shall be subject to the following terms, conditions, limitations, covenants and restrictions:

1. **Operation of Aircraft.** None of the activities which Licensee is authorized to perform under this License shall involve the operation of an aircraft by Licensee unless the operation is conducted pursuant to a separate air carrier operating agreement between Licensee and the Authority.
2. **Protection of Personnel and Property.** Licensee agrees that it will not permit any act of omission or commission or any type of condition to exist on the Airport which would in any way create a hazard to persons or property or would serve to jeopardize or invalidate any policies of insurance or increase the premium rate(s) charged for any insurance covering Airport property, operations, or the premises or operations of any tenant of Authority.
3. **Non-interference with Airport Operations.** Licensee agrees that its participation in the Lab shall not interfere with or impede the operations of Authority, other authorized users and tenants of the Airport, or the general public. In particular, Licensee shall not use the Airport in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard to aircraft. In the event this covenant is breached, Authority reserves the right to cause the abatement of such interference at the expense of Licensee, to immediately terminate this License, or to place such restrictions on Licensee's use of the Airport as Authority deems necessary in the public interest.

- C. **Handling and Storing Hazardous Articles and Materials.** Only Airlines, air freight forwarders and airport tenants with Airport leases or permits authorizing them to conduct the receiving, storing or transporting of hazardous articles or materials shall

be allowed to engage in such activities. Where permitted, the receiving, storing and handling of all such articles or materials will be the sole responsibility of these respective companies and shall comply with current applicable airline handling directives, company manuals, and other applicable laws and regulations. Licensee shall not store or dispose of hazardous materials **on** the Airport or cause, permit or allow any officer, agent, employee, contractor, permittee or invitee of Licensee to store or dispose of hazardous materials on the Airport. Licensee shall be solely and fully responsible for notifying the appropriate public agencies of any hazardous material release which occurs on the Airport, or is caused by or results from activities of Licensee. Licensee shall immediately notify the Authority of any hazardous material release which occurs on the Airport regardless of whether the release was caused by or results from Licensee's activities or is in a quantity that would otherwise be reportable to a public agency.

- D. **Parking and Equipment Storage**. Licensee's vehicles and equipment, including the vehicles and equipment of Licensee's employees, guests, contractors and clients, if permitted to be operated on Airport property, shall be parked only in those areas approved for such parking, unless specifically authorized in writing by the Authority to be parked temporarily elsewhere. For any vehicle or equipment owned, leased or hired by Licensee and found in an unauthorized area or left unattended in a restricted area, Licensee shall be charged an unauthorized equipment storage fee of one hundred and fifty dollars (\$150.00) per unit of equipment or vehicle per day, plus any fines or citations for breach of airfield security regulations. Licensee agrees such vehicles or equipment may be immediately removed and stored by Authority at the expense of Licensee.
- E. **Independent Contractor**. Licensee is and shall remain an independent contractor responsible to all parties for its acts and omissions and agrees that Authority shall in no way be responsible Licensee's acts or omissions. Throughout the term of this License, Licensee shall retain sole responsibility, liability and cost for safeguarding all persons and property affected by its participation in the Lab and for the conduct of its activities on the Airport. Licensee shall at all times ensure that its activities associated with the Lab are conducted in a safe, prudent, professional and lawful manner.
- F. **Licenses, Certificates, and Permits**. Licensee shall at its sole cost and expense:
1. **Authority-issued License, Certificates, and Permits**. Licensee shall obtain and maintain in effect at all times all licenses, certificates and permits required for its occupancy, and use of Airport property and for the activities it conducts as part of its participation in the Lab;
  2. **Other Licenses, Certificates, and Permits**. Licensee shall obtain all licenses, permits and other operating, use or safety certifications required by federal, state and/or local regulatory agencies for Licensee's occupancy and use of the Airport. Licensee shall ensure in a timely manner that the Authority has been provided a copy of each such license, permit and certificate.
- G. **Operating Standards**. Licensee covenants and agrees that it shall conduct its services and all activities at Airport in a safe, lawful, prudent and professional manner, and in accordance with all applicable regulations currently in effect including all Authority Codes, Policies, and Rules and Regulations. Licensee acknowledges that

the Authority's Codes, Policies, and Rules and Regulations are available on the Authority's website ([www.san.org](http://www.san.org)) and will ensure that its employees and agents are sufficiently familiar with these documents so that they will not inadvertently be in violation. Licensee also agrees to abide by all other directives, including those issued by the Authority, which govern actions of individuals at the Airport.

- H. **Sustainability.** Licensee and Authority jointly agree that protection of the environment is an important mutual goal and objective. The Parties agree that this License should address the issues of global climate change, greenhouse gas ("GHG") emissions, pollution, traffic congestion, and recycling. The link to the "Memorandum of Understanding Between the Attorney General of the State of California and the San Diego County Regional Airport Authority regarding the San Diego International Airport Master Plan of 2008 (hereinafter "MOU") is <http://www.san.org/Airport-Projects/Environmental-Affairs#124540-air-quality>. The MOU contains provisions for operating the Airport in a manner which reduces GHG emissions. Licensee agrees to cooperate with the Authority in the development of such programs applicable to Licensee's operations. The Authority reserves the right to amend this provision to make it compatible with the Authority's pending implementation of its sustainability program.
- I. **Personnel, Training, Policies and Procedures.** Licensee shall ensure all its employees are properly trained, licensed, and certified for activities, including access to the Security Controlled Areas, associated with its participation in the Lab. Licensee shall produce copies of employee certification and licensing records upon demand by Authority. Licensee shall control the conduct, demeanor and appearance of its employees to ensure the maintenance of a high standard of service at all times.
- J. **Licensee's Contracting With Third Party.** Except for third-parties providing only non-revenue generating services, should Licensee contract with a Third Party to provide services or conduct activities not covered by this License at the Airport, such Third Party shall be deemed to be conducting a business at the Airport. Prior to the Third Party providing any services for or on behalf of Licensee, Licensee shall notify Authority and ensure the Third Party has a valid and appropriate license agreement with Authority. Authority has the right to charge fees and rent for such Third Party's use of the Airport for business purposes. Nothing herein shall be construed as in any way limiting the powers of Authority to fully exercise its governmental rights, its proprietary functions, its obligations under any bond covenants, or its rights to enforce any federal, state or local law, rule or regulation.
- K. **Safety Procedures and Fire Prevention Procedures.** Licensee shall comply with all fire safety rules, regulations and procedures at the Airport. Licensee shall install and maintain, at Licensee's sole expense, such extinguishing devices, signage and fixtures on and in its facilities and equipment and operating areas as may be required by the Airport Fire Department or any applicable law or regulation.
- L. **Security.** Licensee shall comply with all rules and regulations of Authority applicable to the Airport and airfield security. Licensee agrees to protect the security of the Airport perimeter and agrees to undertake measures necessary for the prevention of unauthorized access into any Security Controlled Area. Licensee's responsibilities expressly include, but are not limited to, implementing a security plan to meet the requirements of the TSA and the Authority. At its sole cost and expense, Licensee shall be responsible for providing its own security (i) for any equipment, vehicles,

materials and other personal property brought onto the Airport by or for Licensee, and (ii) for any activities provided or conducted by Licensee or by anyone on behalf of Licensee under this License.

- M. **No Obligations of Authority.** Licensee acknowledges that Authority has made no representations or warranties relating to the suitability of the Airport for any particular use. Except as otherwise expressly provided in this License, Authority shall have no obligation whatsoever to Licensee for the maintenance of the Airport or any improvements, fixtures, furnishings or equipment now or hereafter constructed, installed or used as a part of the Airport. Authority shall have no liability to Licensee arising out of any defect or deficiency in the Airport.
- N. **Authority's Right of Inspection.** Authority and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right to monitor all activities of Licensee and to inspect Licensee's areas of operation, equipment and conduct of business, including for the following purposes:
1. To determine Licensee's compliance with the terms and conditions of this License and with Authority's directives issued in connection herewith.
  2. To perform maintenance or other remedial work where Licensee is obligated to perform said work, but has failed, to do so, after Authority's notice of noncompliance, in which case Licensee shall reimburse Authority for the costs thereof promptly upon demand.
- O. **Licensee understands and acknowledges that:**
1. Entering into this License with the Authority does not guarantee any future contracts with the Authority; and
  2. Any and all travel and transportation costs shall be at its sole cost and expense.

**5. LICENSE FEES AND REPORTS.**

- A. In consideration for its use of the Lab and the benefits outlined in this License, Licensee agrees to the Revenue Sharing Agreement described more fully in "Exhibit E" entitled "Revenue Sharing Agreement", attached hereto and incorporated by reference herein.
- B. In the event Authority, in its sole discretion, authorizes Licensee to conduct revenue generating activities during the term of this License, then Licensee shall pay the Authority a one-time fee of \$100 for the right to generate limited revenue during the period of the Innovation Lab and this License. In addition to this one-time fee, any fees collected by Licensee pursuant to any statute, law, code or regulation shall be collected by Licensee and remitted to the Authority. Notwithstanding the foregoing, Licensee shall remain liable for the collection and remittance of any tax obligations to the appropriate authority resulting from its activities at the Airport. Licensee understands and acknowledges that it must enter into any other additional agreements as required by the Authority prior to continuing operations at the Airport.

**6. INSOLVENCY AND BANKRUPTCY.** Notwithstanding any other provisions of this



License, in the event Licensee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceeding, or in the event of any judicial sale of Licensee's interest under this License, (the date of the occurrence of any of the foregoing events is referred to as the "Date of Bankruptcy") then automatically and immediately, the term of this License shall convert to month-to-month, commencing on the Date of Bankruptcy and shall terminate upon fifteen (15) days written notice from the Authority to Licensee, or from Licensee to the Authority.

## 7. **TERMINATION.**

- A. **Default and Termination.** If Licensee fails to perform or observe any of the terms, covenants or conditions in this License, the Authority may give written notice to cure such omission. If Licensee fails to cure the omission within ten (10) days after service of the notice, the Authority may terminate this License by providing written notice of termination to Licensee. In such event, this License shall terminate on the date stated in the termination notice; Licensee shall have no further rights under this License and shall immediately vacate any and all areas covered by this License; and Authority shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of these areas. Authority further shall have all other rights and remedies as provided by law, including without limitation the right to recover damages from Licensee in the amount necessary to compensate Authority for all the detriment and injury proximately caused by Licensee's failure to perform its obligations under this License or which in the ordinary course would be likely to result therefrom.
- B. **Termination Without Cause.** Notwithstanding the right of Authority to terminate for default as specified in the preceding provision, this License may be terminated by the Authority or Licensee as a matter of right and with or without cause at any time upon the giving of thirty (30) days' advanced notice in writing to the other party of such termination. If Authority terminates this License without cause prior to the end of the term, Licensee shall be excused of its obligations under the Revenue Sharing Agreement.

If Licensee terminates this License without cause, then the Revenue Sharing Agreement term shall commence. Licensee understands and acknowledges that if Licensee terminates this License without cause, it shall pay the Revenue Sharing to the Authority as required by the Revenue Sharing Agreement, unless waived in writing by the Authority in its sole discretion.

- C. **Waiver.** The waiver by either party of any breach of any term, covenant or condition in this License 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 by the Authority of Licensee's payment of any fees, penalties, revenue share or audit costs shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant or condition of this License other than the failure of Licensee to pay the particular compensation, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such compensation.

D. **Survival of Authority's Rights.** The following rights of the Authority under this License shall survive any termination of this License including termination due to expiration of the License's term:

1. **Funds Due to the Authority.** All funds due to the Authority as provided in this License, including monthly fees, late fees, penalties, audit fees, and Revenue Sharing as described in "Exhibit E – Revenue Sharing Agreement".
2. **Right to Examine Business Records.** The Authority's rights to audit and enforce audit findings as provided in this License.
3. **Hold Harmless and Indemnity.** The Authority's rights to be held harmless and to be indemnified by Licensee as provided in this License.

8. **HOLD HARMLESS.** Licensee shall defend, indemnify and hold harmless Authority and its officers, officials, directors, employees, agents, representatives and volunteers (collectively hereinafter the "Authority-Related Parties"), from and against any and all liabilities, liens, claims, judgments, demands, causes of action, losses, damages, costs and expenses (including reasonable attorneys' fees and costs) (collectively hereinafter "Liabilities"), arising out of, related to, or in any way connected with, directly or indirectly; (i) any acts or omissions of Licensee or Authority; (ii) any obligations or activities undertaken in connection with this License; (iii) any damage to any person or property, or injury to or death to any person, including without limitation any claim or action alleging latent and other defects, whether or not discoverable by Licensee or Authority; (iv) any alleged or actual breach of any federal, state or local law or regulation; and (v) Licensee's duties under easements or contracts with third parties; except that this paragraph shall not apply to any Liabilities arising through the sole active negligence or willful misconduct of Authority. These indemnity obligations shall apply for the entire time that any third party can make a claim against or sue the Authority or the Authority- Related Parties and shall survive the termination of this License. Licensee and Authority agree to promptly provide notice to each other of any Liabilities following the learning thereof by such party. Licensee shall not settle or compromise any claim or matter pursuant to this paragraph without first obtaining Authority's written consent.

## 9. **INSURANCE REQUIREMENTS**

- A. Licensee shall maintain or cause to be maintained and to keep in effect at all times during the term of this License, the types and amounts of insurance specified in Exhibit "D", Insurance Requirements, attached hereto and incorporated by reference herein. As specified by Exhibit "D", such insurance shall also include and insure Authority, its Board and all its officers, employees, and agents, their successor and assigns, as an additional insured, against Licensee's acts or omissions in the performance of this License, in its provision of Services, use, and occupancy of the Airport, or other related functions performed by or on behalf of Licensee in, on or about Airport.
- B. Each specified insurance policy (other than Worker's Compensation and Employers' Liability) shall contain a Severability of Interest (Cross Liability) clause.

- C. All such insurance shall be primary and noncontributing with any other insurance held by Authority where liability arises out of or results from the acts of omissions of the Licensee or those of its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Licensee.
- D. Authority shall have no liability for any premiums charged for such coverage(s). The inclusion of Authority, Board and all its officers, employees, and agents, their successors and assigns, as an additional insured is not intended to, and shall not, make them, or any of them, a partner or joint venture with the Licensee in Licensee's provision of Services at Airport or in the performance of this License. In the event Licensee fails to furnish Authority with evidence of insurance and maintain the insurance as required, Authority upon ten (10) days prior written notice to comply, may (but shall not be required to) terminate this License.
- E. At least ten (10) days prior to the expiration date of the above policies, documentation showing that the coverage has been renewed or extended shall be filed with Authority. If such coverage is canceled or reduced, Licensee shall, within fifteen (15) days of such notice of cancellation or reduction of coverage, file with Authority evidence that the required insurance has been reinstated or provided by another insurance company or companies.
- F. Licensee shall provide proof of all specified insurance and related requirements including applicable endorsement to Authority through a duly authorized representative. The documents evidencing all specified coverage shall be filed with Authority prior to Licensee performing under this License or using the Airport. The documents shall contain the applicable policy number, the inclusive dates of policy coverage, and the insurance carrier's number, address, and telephone number, 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 non-renewal except after written notice by certified mail, return receipt requested, to the Authority at least thirty (30) days prior to the effective date thereof. Authority reserves the right to have submitted to it, upon request, all pertinent information about the agent, broker and carrier providing such insurance.
- G. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code §1760 through §1780, and any law, ordinance or other regulations and/or directives from the State of California's Department of Insurance or other regulatory board or agency. Licensee agrees, except where legally exempted, to provide Authority proof of said insurance by and through a surplus line broker licensed by the State of California.

**Mail or Email to:**

San Diego County Regional Airport  
Authority Risk Management Dept.  
P.O. Box 82776  
San Diego, CA 92138-2776  
certificates@san.org

- H. The procuring of such required policies of insurance shall not be construed to limit Licensee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this License. Notwithstanding said policies of insurance, and only

to the extent consistent with the obligations of Licensee set forth elsewhere in this License, Licensee shall be obligated for the full and total amount of any damage, injury or loss caused by its intentional misconduct, negligence or neglect connected with this License or with its use of Airport.

10. **ATTORNEY'S FEES.** In the event any suit is commenced to enforce, protect or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Authority under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

11. **NOTICES.** Any notice or notices provided for by this License or by law to be given or served upon Licensee may be given or served by certified or registered letter addressed to Licensee at ADDRESS and deposited in the United States mail, or may be served personally upon said Licensee or any person hereafter authorized by Licensee in writing to receive such notice.

Any notice or notices provided for by this License or by law to be served upon Authority may be given or served by certified or registered letter addressed to President/CEO of Authority at the offices of the San Diego County Regional Airport Authority, Post Office Box 82776, San Diego, California 92138-2776, and deposited in the United States mail, or may be served personally upon said President/CEO or his/her duly authorized representative.

Any notice given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

12. **ASSIGNMENTS, SUBLICENSES AND ENCUMBRANCES.** Licensee shall not encumber or mortgage this License with any type of security instrument without the express prior written consent of Authority. Neither the whole nor any part of the areas covered by this License or any of the rights or privileges granted by this License shall be assignable or transferable in any way without the Authority's prior written consent. Licensee shall not grant permission to any other person to occupy any portion of the areas covered by this License without the Authority's prior written consent. Any assignment, transfer, sublicense, encumbrance or permission given without the Authority's prior written consent shall be void.

13. **CHANGES OR ALTERATIONS.** Licensee shall make no changes or alterations in or to the areas covered by this License, nor make, erect, or install any buildings, structures, signs, machines, or other improvements on such areas without the prior written consent of the Authority. Licensee further agrees to keep all areas covered by this License free and clear of rubbish, debris and litter.

14. **MAINTENANCE.** Licensee hereby agrees that the areas covered by this License are in a good and tenantable condition. Licensee shall take good care of these areas and appurtenances in connection with its participation in the Lab, including any personal property belonging to Authority and in compliance with all federal, state and local laws, rules, ordinances, codes and regulations which now exist or may hereafter become applicable, including but not limited to existing and future environmental laws. Licensee shall, at its sole expense, provide for the expeditious maintenance, sweeping and control of dust or any debris

generated or caused by Licensee's participation in the Lab within the AOA and the FBO leasehold. Licensee shall promptly remove all trash and debris attributable to its activities for disposal at a site away from the Airport. The accumulation of trash, dust and debris, the piling of boxes and other unsightly or unsafe materials, on or about the Airport, is strictly prohibited. Authority shall at no time during the term of the License be required to make any improvements or repairs to any areas used by Licensee as part of its participation in the Lab. Should Licensee discover any solid waste, hazardous waste, or any other similar material, including soils or groundwater, Licensee shall immediately discontinue all activities and notify Authority. Licensee shall determine the location of all utilities in connection with its participation in the Lab and take all necessary precautions to prevent interruption of any utility service. Should any interruption of any utility service occur as a result of Licensee's participation in the Lab, Licensee shall bear the sole expense and cost regarding said interruption.

15. **TITLE TO IMPROVEMENTS.** Structures, installations, and improvements of any kind hereafter placed by Licensee on the areas covered by this License, shall at the option of Authority be removed by Licensee within fifteen (15) days after the expiration of the term of this License or the sooner termination thereof. Authority may exercise said options as to any or all of the structures, installations, and improvements either before or after the expiration or sooner termination of this License. If Authority exercises such option and Licensee fails to remove such structures, installations, and improvements within said fifteen (15) days, Authority shall have the right to have such structures, installations, and improvements removed at the expense of Licensee. As to any or all structures, installations, and improvements that Authority does not exercise said option, title thereto shall vest in Authority, without cost to Authority and without payment to Licensee.
16. **REMOVAL OF PERSONAL PROPERTY AND MATERIALS.** Licensee hereby agrees that upon the expiration of this License or the sooner termination as herein provided, it shall remove within fifteen (15) days, as applicable, all personal property, including vehicles, and all debris, surplus, and salvage materials from the areas covered by this License or used by Licensee, so as to leave the areas in as good condition as when first occupied or used by Licensee, subject to reasonable wear and tear. Should any said debris, surplus, and salvage materials not be so removed within fifteen (15) days by Licensee, Authority may remove, sell, or destroy the same at the expense of Licensee and Licensee hereby agrees to pay Authority for the cost of such removal, sale, or destruction, or at the option of Authority, title to said debris, surplus, and salvage materials not removed shall become the property of Authority.
17. **TAXES.** This License may result in or create a taxable possessory interest and be subject to the payment of property taxes. Licensee agrees to and shall pay before delinquency all taxes and assessments of any kind, including any possessory interest taxes, assessed or levied upon Licensee by reason of this License or by reason of the business, provision of Services or other activities of Licensee upon or in connection with the areas covered by this License. Licensee shall also pay any fees imposed by law for licenses or permits for any business or activities of Licensee upon the areas covered by this License or under this License.
18. **CONFORMANCE WITH LAWS, RULES AND REGULATIONS.** In all activities on or in connection with the areas covered by this License and in all uses thereof, including activities and uses relating to aviation, Licensee shall abide by and conform to all

provisions of the San Diego Unified Port District Act; the San Diego County Regional Airport Authority Act; any ordinances of the City of San Diego in which the areas covered by this License are located, including its Building Code; any ordinances, codes, rules, and regulations of Authority; and any applicable laws of the State of California or the federal government, as any of the same now exist or may hereafter be adopted or amended. In particular, and without limitation, Licensee shall have the sole and exclusive obligation and responsibility to comply with the requirements of Article 8 of Authority Code entitled "Storm Water Code" and the Americans with Disabilities Act of 1990, including but not limited to any regulations promulgated thereunder.

Authority shall not be liable to Licensee for any diminution or deprivation of Licensee's rights hereunder on account of any such laws, ordinances, codes, statutes, rules, regulations, orders, limitations, restrictions, or prohibitions.

19. **LIENS.** Licensee agrees that it shall at all times save Authority free and harmless and defend and indemnify it against all claims and liens for labor or materials, as applicable, in connection with any improvements, repairs, or alterations to, in, or on the areas covered by this License and caused to be performed by Licensee, including the costs of defending against such claims and resulting reasonable attorney's fees.
20. **BANKRUPTCY.** In the event a petition is filed by or against Licensee (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of Licensee's property or for Licensee's interest in this License; or (iv) for the reorganization or modification of Licensee's capital structure, this License shall at the option of Authority immediately terminate and all rights of Licensee hereunder shall immediately cease and terminate.
21. **EASEMENTS.** This License and all rights granted hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved in, to, or over the areas covered by this License for any purpose whatsoever. This License shall further be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits, and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by Authority to be in the best interests of the development and maintenance of Airport.
22. **RIGHTS OF AUTHORITY.** Authority's rights are derived from the provisions of the San Diego County Regional Airport Authority Act, the Master Lease, and such other lease and permit agreements as it has executed or may execute, and applicable state and federal laws and regulations. This License is granted subject to the terms and conditions of said Act, the Master Lease, said agreements and other applicable laws and regulations.
23. **JOINT AND SEVERAL LIABILITY.** If Licensee is a limited liability company ("LLC"), partnership, or joint venture or is an entity comprised of more than one party or entity, the obligation imposed on Licensee under this License shall be joint and several, and each member, general partner, joint venture, party or entity of Licensee shall be jointly and severally liable for all obligations.
24. **ENTIRE UNDERSTANDING.** This License and its Exhibits contain the entire understanding between the parties. Licensee, by accepting this License, acknowledges

that there is no other written or oral understanding between the parties with respect to the areas and rights covered by this License. No modification, amendment, or alteration of this License shall be valid unless it is in writing and signed by the parties hereto.

25. **PEACEABLE SURRENDER.** Upon the termination, expiration or cancellation of this License, Licensee shall peaceably surrender and return the areas covered by this License to Authority in as good condition as at the commencement of this License, subject to normal and ordinary wear and tear resulting from the use of such areas as herein provided.
26. **ACCEPTANCE OF PREMISES – RISK OF HARM.** Licensee accepts and shall be responsible for any risk of harm to any person and property resulting from its participation in the Lab, including without limitation employees of Licensee.
27. **WARRANTIES AND GUARANTEES.** Authority makes no warranty, guarantee, or covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever, concerning the condition of the areas covered by this License, including the physical condition thereof, or any condition which may affect the areas covered by this License. Licensee agrees that Authority shall not be responsible for any loss or damage or costs which may be incurred by Licensee by reason of any such condition or conditions.
28. **NON-EXCLUSIVE RIGHTS.** The rights granted herein for Licensee's participation in the Lab at the Airport shall be non-exclusive. Authority may, at any time, grant rights to other persons or entities who may have rights similar to those non-exclusively granted herein. Authority may, in its sole discretion, grant rights to others to provide services or sell goods that Concessionaire is not authorized to provide or sell.
29. **PUBLIC RECORDS DISCLAIMER.** The San Diego County Regional Airport Authority ("Airport Authority") is a public entity and subject to the California Public Records Act ("CPRA"). (Cal. Gov. Code §6250, et seq.) Licensee understands that all information and records submitted in connection with participation in the Lab are potentially subject to disclosure in accordance with the CPRA. Licensee must specifically identify, in writing, all copyrighted material, trade secrets or other proprietary information that Licensee claims are exempt from disclosure pursuant to the CPRA. Should the Authority withhold from disclosure any records at the request of Licensee, then Licensee agrees to indemnify and hold harmless the Airport Authority and its Board, officers, officials, directors, employees, agents, and volunteers, from any claims, liability or damages, including reasonable attorney's fees and court costs, against the Airport Authority and to defend any actions brought against the Airport Authority for its refusal to disclose such material, trade secrets or other proprietary information to any requesting party.
30. **INTERPRETATION.**
  - A. **Section Headings.** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.
  - B. **Fair Meaning.** The language of this License shall be construed according to its fair meaning, and not strictly for or against either the Authority or Licensee.
  - C. **Void or Invalid Provisions.** If any provision of this License is determined to be

void or invalid by any court of competent jurisdiction, then such determination shall not affect any other provision of this License, and all such other provisions shall remain in full force and effect.

- D. **Two Constructions.** It is the intention of the parties hereto that if any provision in this License 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.
  - E. **Laws of California.** This License shall be construed and enforced in accordance with the laws of the State of California.
  - F. **Gender.** 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.
  - G. **Time.** Time shall be the essence in complying with the terms, conditions and provisions of this License.
  - H. **Integration Clause.** It is understood that no alteration or variation of the terms of this License shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement, not incorporated herein in writing, shall be binding on any of the parties hereto.
  - I. **Other Agreements Not Affected.** Except as specifically stated herein, this License and its terms, conditions, provisions and covenants, shall not in any way change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the Parties, under any other agreement between the Parties.
  - J. **Venue.** The venue of all legal actions regarding this License shall lie in San Diego County, except where venue by regulation or statute must mandatorily lie in the District of Columbia.
  - K. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
  - L. **Electronic Transmission.** The Parties agree that a facsimile (“FAX”) or other electronically transmitted version of this License, when properly executed and transmitted, shall be considered for all purposes to be an original document, and shall be deemed for all purposes to be signed and constitute a binding agreement.
31. **FEDERAL AVIATION ADMINISTRATION REGULATIONS:** During the performance of this License, the Licensee, for itself, its assignees, successors in interest and subcontractors (hereinafter referred to as the “Licensee”) agrees as follows:
- A. **CIVIL RIGHTS – GENERAL (49 U.S.C. § 47123).**
    - 1. Licensee agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting



from Federal assistance. If the Licensee transfers its obligation to another, the transferee is obligated in the same manner as the Licensee.

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

**B. CIVIL RIGHTS – TITLE VI.**

1. Title VI Solicitation Notice. The Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
2. Title VI Compliance with Nondiscrimination Requirements: During the performance of this License, the Licensee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Licensee”) agrees as follows:
  - a) The Licensee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
    - (1) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
    - (2) In the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; or
    - (3) The Licensee will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
  - b) With respect to Licensee, in the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the License and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said License had never been made or issued.
3. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program. The Licensee for himself/herself, his/her heirs, personal representatives, successors in interest, assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of

race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Licensee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts and Authorities.

4. Title VI List of Pertinent Nondiscrimination Acts and Authorities: During the performance of this License, the Licensee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Licensee") agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:
  - a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin);
  - b) 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
  - c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects;
  - d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*, as amended) prohibits discrimination on the basis of disability and 49 CFR Part 27;
  - e) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), prohibits discrimination on the basis of age;
  - f) Airport and Airway Improvement Act of 1982 (49 U.S.C. Chapter 471 § 47123, as amended) prohibits discrimination based on race, creed, color, national origin, or sex;
  - g) The Civil Rights Restoration Act of 1987 (PL 100-209) broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not;
  - h) Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131 – 12189 as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38) which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities;

- i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) prohibits discrimination on the basis of race, color, national origin, and sex;
  - j) Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - k) Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (“LEP”). To ensure compliance with Title VI, Licensee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. (70 Fed. Reg. at 74087 to 74100); and
  - l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. §1681, *et seq.*).
- C. **FEDERAL FAIR LABOR STANDARDS ACT** (Federal Minimum Wage, 29 U.S.C. § 201 *et seq.*). All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Licensee has full responsibility to monitor compliance to the referenced statute or regulation. The Licensee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
- D. **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970** (29 CFR Part 1910). All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of Occupational Safety and Health Act of 1970 (29 CFR Part 1910) with the same force and effect as if given in full text. The Licensee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Licensee has full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety Health Act of 1970 (29 CFR Part 1910). The Licensee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor-Occupational Safety and Health Administration.
- E. **RIGHTS TO INVENTIONS** (2 CFR Part 200 Appendix II(F)). Leases or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Authority in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Leases, and Cooperative Agreements. This License incorporates by reference the patent and inventions rights as specified within the 37 CFR § 401.14. Licensee must include this requirement in all sub-tier contracts involving experimental, developmental or research work.
- F. **BREACH OF CONTRACT** (2 CFR Part 200 Appendix II(A)). Any violation or breach of terms of this License on the part of the Licensee or its subcontractors may result in the

suspension or termination of this License or such other action that may be necessary to enforce the rights of the parties of this License. The Authority will provide Licensee written notice that describes the nature of the breach and corrective actions the Licensee must undertake in order to avoid termination of the contract. The Authority's notice will identify a specific date by which the Licensee must correct the breach. Authority may proceed with termination of the License if the Licensee fails to correct the breach by the deadline indicated in the Authority's notice. The duties and obligations imposed by the License and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

- G. **AIRPORT DEVELOPMENT:** The Authority reserves the right to further develop or improve the landing area as it sees fit, regardless of the desires or views of Licensee and without interference or hindrance.
- H. **REPAIR OF AIRPORT:** The Authority reserves the right, but shall not be obligated to Licensee, to maintain and keep the landing area and all its facilities in repair as well as the right to direct and control all activities of Licensee in this regard.
- I. **SUBORDINATION:** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the Authority and the United States, relative to the development, operation, or maintenance of the Airport.
- J. **RIGHT OF AIR NAVIGATION:** The Authority reserves for itself, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein covered by this License. This public right of flight shall include the right to cause any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Airport.
- K. **OBSTRUCTIONS:** Licensee, by accepting this License, expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on Authority land above the mean sea level elevation of fifty (50) feet. In the event the aforesaid covenants are breached, the Authority reserves the right to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Licensee.
- L. **NO INTERFERENCE:** Licensee agrees for itself, its successors and assigns that it will not make use of Authority premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Authority reserves the right to cause the abatement of such interference at the expense of Licensee.
- M. **EXCLUSIVE RIGHTS:** 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 § 308a of the Federal Aviation Act of 1958 (49 U.S.C. § 40103; P.L. 103-272; 108 STAT. 1102, and as it may be amended in the future).

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32. **SIGNATURES OF PARTIES.** It is an express condition of this License that said License shall not be complete or legally effective until signed by the President/CEO or his/her authorized designee on behalf of Authority and by an authorized officer of Licensee.

<p><b>APPROVED AS TO FORM</b></p>   <p>_____</p> <p style="text-align: center;">General Counsel</p> <p>Date: _____</p>	<p><b>SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY</b></p>  <p>_____</p> <p style="text-align: center;">Signature</p> <p>_____</p> <p style="text-align: center;">Kimberly J. Becker Name</p> <p>_____</p> <p style="text-align: center;">President/CEO Title</p> <p>Date: _____</p>
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**LICENSEE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

By my signature above, I, hereby certify under penalty of perjury under the laws of the State of California, that I am an officer or employee of the organization with authority to bind and obligate the organization.

**If your corporation has a seal, please affix below:**

## **EXHIBITS**

- Exhibit A Rights and Responsibilities
- Exhibit B Opportunity Statement
- Exhibit C Licensee Solution
- Exhibit D Insurance Requirements for Licensee
- Exhibit E Revenue Sharing Agreement

## EXHIBIT A

### RIGHTS AND RESPONSIBILITIES

- A. Licensee's Responsibilities.** Licensee's Responsibilities shall include, but are not limited to, the following:
- a. Develop and test its product/service ("Solution") during the SAN Airport Innovation Lab ("Lab") program;
  - b. Make available at least one key member from its team - in person or via Skype – to meet with the Authority once a week for the Term of this License and during the Lab program;
  - c. Shall present the Solution twice during the Lab program. Once in the middle and once at the end. Purpose of these meetings is the testing of the actual product/service by select Authority members;
  - d. Present final presentation, including demonstration of Solution and results of testing, if applicable, to Authority staff;
  - e. All members of Licensee who will be working at the Airport shall have background checks and go through Authority security training for badging purposes as defined on the Authority's website at [www.san.org](http://www.san.org);
    - i. Cost of the badging process at the sole cost and expense of Licensee; and
    - ii. Badges are a requirement for testing anything at the Airport;
  - f. Licensee to sign a non-disclosure agreement, if requested by the Authority, regarding the other participants present in the Lab, and any agreement that each innovator will remain the holder of the respective Intellectual Property generated during the Lab;
  - g. Licensee shall report to Authority weekly results of Solution testing and development. Such report shall include the following information, at a minimum:
    - i. Progress made on the prototype and business model since the last week;
    - ii. Specification of test set-up with passengers (if applicable);
    - iii. Outcome of passenger tests (if applicable):
      - 1. Improvement of passenger experience (measured through qualitative methods such as interviews or quantitatively with surveys [Net promoter score, Likert scales, ...])
      - 2. Approximate revenue generated this week; and



- iv. Milestones for the following week;
- h. Shall seek written approval from the Authority before using any branding or message of the Lab or the Airport.

**B. Authority's Responsibilities.** The Authority agrees to:

- a. Provide working space for up to 3 employees in the Lab space;
- b. Provide parking for up to 2 cars per company in the parking lot in front of or around the Authority offices;
- c. If approved by the Authority, in its sole discretion, provide access to Airport infrastructure and/or its passengers for Licensee to test its Solution;
- d. Provide feedback and collaborate with Licensee staff;
- e. Provide access to Authority executives for Licensee to present its Lab Solution 1-2 times during the Lab Program (in person or via teleconference);
- f. Provide introductions and recommendations to other Airports, at Authority's sole discretion, based upon success of testing at the Airport; and
- g. Provide "education seminars" during Innovation Lab program (e.g. overview of airport procurement RFP process, airport finance etc.).

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## **EXHIBIT B**

### **OPPORTUNITY STATEMENT**

The Authority published the following Opportunity Statements, which requested companies to provide Airport solutions and participate in the SAN Airport Innovation Lab:

#### **A. Opportunity Statement**

SAN offers a unique setting for innovators to overcome the challenges of the airport industry. We are seeking innovators that will bring ideas/solutions that will accomplish one or more of the following:

- increase revenue
- enhance operational efficiency
- decrease costs
- improve passenger experience

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**EXHIBIT C**

**LICENSEE SOLUTION**

A. **Solution.** Licensee's Solution shall be the following:

1. [Description of solution]

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## EXHIBIT D

### INSURANCE REQUIREMENTS FOR LICENSEE

Licensee shall at all times during the term of this Permit maintain, at its expense, the following minimum levels and types of insurance:

1. **Commercial General Liability** (including, without limitation, Contractual Liability, Personal and Advertising Injury, and Products/Completed Operations coverages written on an “occurrence,” not “claims made” basis): one million dollars (\$1,000,000) each occurrence and twice in the aggregate.
  - a. If policy maintains a self-insurance retention (SIR), amount shall not exceed five thousand dollars (\$5,000) unless previously accepted by the Authority in writing.
  - b. The Commercial General Liability policy shall be endorsed to include the Authority, its Board, agents, officers and employees as additional insureds.
  - c. The coverage provided to the Authority, as an additional insured, shall be primary and noncontributory.
  
2. **Commercial Automobile Liability:** If Licensee’s activities include driving a vehicle on non-secured side of the Airport, Licensee shall maintain commercial auto liability insurance in the amount of one million dollars (\$1,000,000) per occurrence. If Licensee drives on the secured airfield side of the Airport, then Licensee’s coverage shall be in the amount of ten million dollars (\$10,000,000) combined single limit for bodily injury and property damage.
  
3. **Worker’s Compensation and Employer’s Liability:** In the amounts required by California State law, but not less than one million dollars (\$1,000,000) Employer’s Liability. Such coverage shall include a waiver of subrogation endorsement in favor of the Authority.

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**EXHIBIT D**

**REVENUE SHARING AGREEMENT**  
**FOR PARTICIPATION IN SAN AIRPORT INNOVATION LAB**

THIS Revenue Sharing Agreement (“Agreement”) is granted the same day as the accompanying NON-EXCLUSIVE LICENSE AGREEMENT TO PARTICIPATE IN THE SAN AIRPORT INNOVATION LAB (“License”) by and between the San Diego County Regional Airport Authority, a local governmental entity of regional government, (“Authority”) and \_\_\_\_\_, validly existing, in good standing and organized under the laws of the State of \_\_\_\_\_ and authorized to do business in the State of California (“Company”).

**WITNESSETH**

**WHEREAS**, Company proposed a solution for X service at the Airport [description of solution] and

**WHEREAS**, Company participated in the Authority’s SAN Airport Innovation Lab (“Lab”) to develop, promote, and/or test Company’s Solution, as described herein, which was a response to the Authority’s Opportunity Statement as further described in the License; and

**WHEREAS**, in recognition of using the SAN Airport Innovation Lab and the benefits outlined in the License and attached Exhibits and in consideration of the Authority waiving its normal lease and revenue requirements, the parties agree to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereby agree to the following:

**B. Term**. The term of this Agreement shall commence one calendar day after the termination date of the License or when Company leaves or completes the Lab program, whichever is earlier, and end five (5) years thereafter (“Term”).

**C. Definitions**.

- a. **“Monthly Gross Income”** shall mean any and all consideration of any kind billed, invoiced, derived or received by Company, before deductions for expenses, arising out of or related to the Solution, including but not limited to, for direct and indirect sales or license of Solution in and to airports, airlines, malls, convention centers, amusement parks, resorts, universities, municipalities, or any person or entity in the United States or worldwide for the Term of this Agreement. “Monthly Gross Income” shall include gross income billed, invoiced, derived, or received by Company subcontractors, concessionaires, licensees, successors,

assigns, agents or any other party operating on behalf of Company. The calculation for Monthly Gross Income shall be the amount prior to any deduction of bad debts or uncollected billings.

Monthly Gross Income excludes the following:

1. **Tax.** Any applicable taxes payable by Company to any governmental agency as a direct result of providing Solution, provided that the amount of such taxes is accurately depicted on the customer invoice and Monthly Report.
2. **Pass-Through Payments.** Any amounts paid in its entirety by Company to a Third Party, of which said Third Party currently operates under a concession agreement with the Authority and pays a concession fee to the Authority for said amount.
3. **No Double Counting.** Amounts billed or invoiced shall not be double counted when they are actually received by the Authority.

- b. **“Solution”** shall mean the innovation, products, services, systems and/or processes developed, in part or in whole, by participation in the SAN Airport Innovation Lab.

“Solution” shall include any derivatives, including but not limited to, improvements, versions, transfers, enhancements, functionalities, spin-offs, or future developments of the innovation, products, services, systems and/or processes developed, in part or in whole, by Company’s participation in the Lab.

**D. Revenue Sharing.** Company, for the Term of this Agreement, shall pay and remit to the Authority the following:

- a. **Revenue Share:** x Percent of Company’s Monthly Gross Income for the Term of this Agreement (“Revenue Share”).

**b. Payments of Revenue Sharing.**

1. Company shall pay to the Authority the Revenue Share on a monthly basis no later than the twentieth (20<sup>th</sup>) day of each month for the preceding month. Overdue payments are subject to Late Fees as described herein.
2. Company shall make all payments by check payable to the “San Diego County Regional Airport Authority” and mail to:

San Diego County Regional Airport Authority

Treasurer's Office  
P. O. Box 81323  
San Diego, California 92138-1323

or deliver to the Treasurer's Office, San Diego County Regional Airport Authority, 3225 North Harbor Drive, Commuter Terminal, 3<sup>rd</sup> Floor, San Diego California, 92101.

Authority may change the designated place for payment at any time upon ten (10) business days' written notice to Company. Company assumes all risk of loss and responsibility for Late Fees, as described herein, if any payment is made by mail.

3. All payments due under this Agreement shall be made in U.S. dollars. Any currency conversions that are required under this Agreement shall be made using the foreign exchange rates (as reported in by Federal Reserve System, <https://www.federalreserve.gov/releases/h10/current/default.htm>) as of the date of Company's Revenue Share payment or due date of Revenue Share payment, whichever is earlier. Any costs related to conversions shall be at the sole expense of Company and the Authority shall receive the full amount of payments without reduction.
4. No payment by Company, receipt or acceptance by Authority of a lesser amount than the correct amount of the monthly Revenue Share due under this Agreement, any endorsement or statement on any check, or any letter accompanying any check or payment shall be deemed a waiver of the Authority's rights under this Agreement. The Authority may accept and deposit any such check or payment without prejudice to the Authority's right to recover the balance due or pursue any other available remedy.

**c. Late Fees.**

1. Company hereby acknowledges that late payment by Company to Authority of Revenue Share and other sums due hereunder shall cause Authority to incur costs not contemplated by this Agreement. Accordingly, in the event Company fails to render to Authority the Monthly Report or payment of the Revenue Share and other sums as specified herein by the 20th day of each month, Company shall pay, in addition to the unpaid Revenue Share, Fifty Dollars (\$50) plus interest at ten percent (10%) per annum of the overdue Revenue Share amount.
2. Late Fees extend to any interest charges and currency devaluations.

3. The parties hereby agree that the Late Fees are appropriate to compensate Authority for loss resulting from Company's failure to remit payments by the date described herein, including, without limitation, lost interest, lost opportunities, legal costs, and the cost of servicing the overdue account.
4. Acceptance of such Late Fee or overdue Revenue Share payment by Authority shall in no event constitute a waiver of Company default with respect to such overdue amount, or prevent Authority from exercising any of its other rights and remedies. The Authority shall have the right, but no obligation, to waive for good cause any late charges upon written application of Company for any such overdue period.

**E. Reports of Monthly Gross Income.**

- a. **Monthly Report.** Company shall submit to the Authority, in a format designated by the Authority in its sole discretion, a report ("Monthly Report") stating, at a minimum:
  - i. the Monthly Gross Income;
  - ii. the calculations Company used to obtain the Monthly Gross Income amount;
  - iii. the locations where the Solution is licensed or sold;
  - iv. the Revenue Share due to Authority; and
  - v. applicable taxes.
- b. Company shall submit the Monthly Report to the Authority by the twentieth (20th) day of each month.

**F. Audit.**

- a. Company shall keep and maintain, during the Term of this Agreement and at least five (5) years thereafter, complete and accurate books and records in connection with the sales or licenses of Solution and the computation of the Revenue Share in respect thereof, including invoices, correspondence, books of account, ledgers, records, banking, financial statements and other records relating to, associated with, or supporting the various items to be shown on the Monthly Report.
- b. Such books and records shall be available for inspection and audit at any time or times during or after the Term of this Agreement during reasonable business hours and upon reasonable notice by the Authority.



- c. If the Authority conducts such an audit and inspection which discloses a deficiency of less than five percent (5%) between the amount found to be due to the Authority and the amount actually paid to the Authority, then Company shall pay the Authority the amount of the deficiency plus interest at the rate of two percent (2%) per month, from the period starting with the date Company submitted payment to the Authority to the date of the results of the audit. If the audit discloses a deficiency of five percent (5%) or more between the amount found to be due to the Authority and the amount actually paid to the Authority, Company shall, in addition to paying the deficiency together with interest as calculated above, promptly reimburse the Authority and/or its representatives for all costs and expenses incurred in conducting such audit.
- d. The exercise by the Authority, in whole or in part or at any time, of the rights to audit records and accounts or of any other right herein granted, the acceptance by Authority of any statement or statements or the receipt and deposit by Authority of any payment shall be without prejudice to any rights or remedies of Authority and shall not estop or prevent the Authority from thereafter disputing the accuracy of any such statement or payment.

**G. Buy-Out Clause.** Should Company sell or otherwise, assign, hypothecate, encumber or transfer rights to the Solution to another entity (whether voluntary or involuntary, or by merger, consolidation, dissolution or operation of law)(collectively, "Transfer"), the Parties shall make good faith efforts to negotiate a settlement of Company's obligations to Authority under this Agreement. In the event the Parties fail to settle, the settlement amount owed by Company to Authority under this Agreement shall be the greater of (as determined by the arbitrator): (1) an estimate of the Revenue Share the Authority would have received absent Company's Transfer; or (2) X% of the value of the Solution at the time of Transfer.

**H. Notice.**

- a. Any notice or notices provided for by this Agreement or by law to be given or served upon Company may be given or served by certified or registered letter addressed to Company at ADDRESS and deposited in the United States mail, or may be served personally upon said Company or any person hereafter authorized by Company in writing to receive such notice.
- b. Any notice or notices provided for by this Agreement or by law to be served upon Authority may be given or served by certified or registered letter addressed to President/CEO of Authority at the offices of the San Diego County Regional Airport Authority, Post Office Box 82776, San Diego, California 92138-2776, and deposited in the United States mail, or may be served personally upon said President/CEO or his/her duly authorized representative.

c. Any notice given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

I. **Time is of the Essence.** Time is of the essence in this Agreement. If Company fails to competently remit to the Authority the Revenue Share within the time periods specified herein, or, if no time periods are specified, within a reasonable time period, Authority may assess Late Fees.

J. **Hold Harmless.**

a. Company shall defend, indemnify and hold harmless Authority and its officers, officials, directors, employees, agents, representatives and volunteers (collectively hereinafter the "Authority-Related Parties"), from and against any and all liabilities, liens, claims, judgments, demands, causes of action, losses, damages, costs and expenses (including reasonable attorneys' fees and costs) (collectively hereinafter "Liabilities"), arising out of, related to, or in any way connected with, directly or indirectly:

1. Any acts or omissions of Company or Authority;
2. Any obligations or activities undertaken in connection with this Agreement;
3. Any damage to any person or property, or injury to or death to any person, including without limitation any claim or action alleging latent and other defects, whether or not discoverable by Company or Authority;
4. Any alleged or actual breach of any federal, state or local law or regulation; and
5. Company's duties under easements or contracts with third parties; except that this subsection a. shall not apply to any Liabilities arising through the sole active negligence or willful misconduct of Authority.

b. These indemnity obligations shall apply for the entire time that any third party can make a claim against or sue the Authority or the Authority-Related Parties and shall survive the termination of this Agreement.

c. Company and Authority agree to promptly provide notice to each other of any Liabilities following the learning thereof by such party.

d. Company shall not settle or compromise any claim or matter pursuant to this paragraph without first obtaining Authority's written consent.

**K. Joint and Several Liability.** If Company is a limited liability company (“LLC”), partnership, or joint venture or is an entity comprised of more than one party or entity, the obligation imposed on Company under this Agreement shall be joint and several, and each member, general partner, joint venture, party or entity of Company shall be jointly and severally liable for all obligations.

**L. Termination.** The Parties may only terminate this Agreement by mutual written consent.

**M. Assignment or Transfer Prohibited.** Company may not in any manner, by operation of law or otherwise, assign, hypothecate, encumber or transfer this Agreement or any of the rights, duties or obligations under this Agreement, in whole or in part, without the express, prior written consent of the Authority. Any attempted or purported assignment of any right or obligation pursuant to this Agreement, without such consent, shall be voidable at the sole discretion of Authority.

**N. Independent Contractor.** Company is an independent contractor in the performance of this Agreement and shall act in an independent capacity and not as an officer or employee of the Authority. Company shall have no authority to act as an agent on behalf of the Authority unless specifically authorized to do so in writing. Authority shall have no liability for Company’s actions and performance and assumes no responsibility for taxes, bonds, payments, or other commitments, implied or express, that may be made by or for Company. Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between Company and Authority or between Company and any other entity or party or cause Authority to be responsible in any way for the debts or obligations of Company or any other party or entity.

**O. Arbitration of Disputes.**

- a. The parties agree to resolve any claims, disputes, or controversy that the parties cannot resolve themselves arising from this Agreement of any kind or nature regardless of when the dispute first arose or the nature of the relief sought exclusively through binding arbitration. The arbitration shall be administered by and conducted at the San Diego Office of the Judicial Arbitration and Mediation Services (“JAMS”) in accordance with JAMS Streamlined Arbitration Rules (“JAMS Rules”), unless otherwise agreed by both parties, and the laws of the State of California. The arbitrator shall apply the same substantive law, with the same statutes of limitations and same remedies that would apply if the claims were brought in a court of law.
- b. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules:

1. Unless otherwise agreed by the Parties, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court;
2. If state or federal law requires the Company to take steps or procedures before commencing an action in court, then the Company shall be required to take such steps or follow such procedures, as the case may be, before commencing the arbitration including, but not limited to, requirements of the California Tort Claims Act;
3. The Authority and Company, to the extent such party is defending a claim in the arbitration, may have any necessary and appropriate parties included as parties to the arbitration;
4. All parties must be represented by counsel;
5. The parties have a right to conduct an inspection, examination, and/or test of any defect, personal injury, or property damage relevant to any claim in arbitration;
6. The California Evidence Code shall apply to the arbitration;
7. Judgment on the award may be entered by any court having jurisdiction; and
8. The arbitration may allocate all of the costs of the arbitration, including the fees of the arbitrator, against the party who did not prevail.

c. NOTICE: BY INITIALING IN THE SPACE BELOW, COMPANY AGREES TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND COMPANY IS GIVING UP ANY RIGHTS IT MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, COMPANY IS GIVING UP ITS JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF COMPANY REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, IT MAY BE COMPELLED TO ARBITRATE UNDER THE CALIFORNIA CODE OF CIVIL PROCEDURE. COMPANY'S AGREEMENT TO THIS ARBITRATION AGREEMENT IS VOLUNTARY.

COMPANY HAS READ AND UNDERSTANDS THE FOREGOING AND AGREES TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

**COMPANY'S INITIALS X\_\_\_\_\_**

By my initial above, I, hereby certify under penalty of perjury under the laws of the State of California, that I am an officer or employee of the Company with authority to bind and obligate the Company.

P. **Bankruptcy**. In the event Company commences a proceeding under the Federal Bankruptcy Act or is adjudicated bankrupt or insolvent, or a judicial sale is made of Company's interest under this Agreement, this Agreement shall at the option of the Authority immediately terminate and all rights of Company hereunder shall immediately cease and terminate. If during the term of this Agreement, Company files for bankruptcy protection, it covenants and agrees to serve the Authority with a copy of the court filing documents within five (5) days thereafter.

Q. **Proprietary Information and SSI Information of Authority or TSA.**

- a. **General:** Company's Solution may involve access to and creation of Proprietary Information or SSI Information.
- b. **Restrictions on Use and Disclosure:** During the term of this Agreement and thereafter, Company shall: (a) hold and use Proprietary Information or SSI Information in strict confidence and solely for the benefit of Authority and not for the benefit of Company or any third party; (b) not copy or use any Proprietary Information; and (c) not disclose or otherwise make available any Proprietary Information or SSI Information to any third party unless first authorized in writing by the Authority.
- c. **Restrictions on References to Authority:** Company shall not represent in any way that Authority endorses or supports Company or Company's activities without the prior written consent of Authority. Company is prohibited from making any representations regarding the relationship between Company and Authority without the prior written consent of Authority. Company shall not make any representations about Authority or use the Authority's name or the name of any of its Board Members, employees, or agents in documents or material generated by Company without the Authority's prior written consent.
- d. **Indemnity:** Company shall hold harmless and indemnify Authority for the payment of any civil penalties assessed Authority by the TSA or DHS because of Company's unauthorized release or divulging of any SSI Information.
- e. **Definitions:** For purposes of this Section, the following definitions shall apply:
  - i. **Proprietary Information:** means all confidential, personal, proprietary and trade secret information and materials of the Authority, or of its Board, officers, employees, or of its suppliers, vendors or customers. Proprietary Information includes, without limitation, any: (a) information, ideas or materials of a technical or creative nature, such as designs and specifications, computer source and object code, and other materials and concepts relating

to the Authority's intellectual property rights; (b) information, ideas or materials of a business nature, such as non-public financial information; information regarding profits, costs, marketing, purchasing, sales, customers, suppliers, contract terms, employees and salaries; development plans; business and financial plans and forecasts; (c) all personal property, including, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints and other documents or materials, or copies thereof, received by Company in the course of Company's rendering of the Services to the Authority, including, without limitation, records and any other materials pertaining to the Work Product; and (d) information, ideas and opinions of a personal nature, such as the thoughts, impressions, personal histories and goals of Authority employees.

- ii. SSI Information: means all documents, data, reports, drawings, specifications and other works, whether complete or incomplete, in oral, written, graphic or electronic form related to airport or airline security or contingency plans, security incident response plans, security directives, or any other such documents or materials protected by 49 CFR Part 1520, *et seq.*
- iii. TSA: means the Transportation Security Administration, or any successor to the TSA.
- iv. DHS: means the U. S. Department of Homeland Security.

R. **Waiver**. Waiver by either party of any breach by the other party of any one or more of the terms or conditions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other term or condition of this Agreement. Failure on the part of either party to require full and complete compliance by the other party with any of the terms or conditions of this Agreement shall not be construed as changing the terms or conditions or preventing full enforcement of other provisions to this Agreement.

S. **Partial Invalidity**. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

T. **Interpretation**.

- a. **Section Headings**: Section headings in this Agreement are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.
- b. **Fair Meaning**: The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.

- c. **Two Constructions:** If any provision in 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.
- d. **Governing Law:** This Agreement and all of its terms and conditions shall be construed, interpreted and applied in accordance with, governed by, and enforced under the laws of the State of California.
- e. **Venue:** Notwithstanding applicable provision of 28 U.S.C. § 1391 or of California Code of Civil Procedure § 394, the Parties agree that the venue in all matters arising out of this Agreement shall be the Superior Court of California, County of San Diego.
- f. **Gender:** The use of any gender 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.
- g. **Integrated Agreement:** The Parties agree that this Agreement and any documents to which it refers contain the whole agreement between the Parties relating to the terms and conditions by which Company is to provide Services. The Parties further agree that this Agreement supersedes all previous understandings and agreements between the Parties regarding such terms and conditions. Each party to this Agreement acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance that is not set out in this Agreement or in any documents to which it refers, that was made before the execution of this Agreement. Each party waives all rights and remedies which, but for this provision, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance. However, nothing in this provision shall limit or exclude any liability for willful misconduct or fraud. The Parties further agree that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.
- h. **Other Agreements Not Affected:** Except as specifically stated herein, this Agreement and its terms, conditions, provisions and covenants shall not in any way change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the Parties under or by reason of any other agreement between the Parties.

**U. Federal Aviation Administration Regulations.** During the performance of this Agreement, the Company, for itself, its assignees, successors in interest and subcontractors (hereinafter referred to as the “Company”) agrees as follows: \_

**N. CIVIL RIGHTS – GENERAL:** (49 U.S.C. § 47123).

- 1) Company agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.
- 2) This provision binds the Company and any subCompany from the bid solicitation period through the completion of the contract. This provision is in addition to that required of the Title VI of the Civil Rights Act of 1964.

**O. CIVIL RIGHTS – TITLE VI:**

- 1) Title VI Solicitation Notice. The Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- 2) Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the “Company”) agrees as follows:
  - b) Compliance with Regulations: The Company (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
  - c) Non-discrimination: The Company, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subCompanies, including procurements of materials and leases of equipment. The Company will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  - d) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Company for



work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subCompany or supplier will be notified by the Company of the Company's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- e) Information and Reports: The Company will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Company will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  
- f) Sanctions for Noncompliance: In the event of a Company's noncompliance with the Non-discrimination provisions of this contract, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - (1) Withholding payments to the Company under the contract until the Company complies; and/or
  - (2) Cancelling, terminating, or suspending a contract, in whole or in part.
  
- g) Incorporation of Provisions: The Company will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Company will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Company becomes involved in, or is threatened with litigation by a subCompany, or supplier because of such direction, the Company may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Company may request the United States to enter into the litigation to protect the interests of the United States.

- 3) Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the “Company”) agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:
- a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
  - b) 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
  - c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*, as amended) (prohibits discrimination on the basis of disability and 49 CFR Part 27);
  - e) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - f) Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123, as amended) (prohibits discrimination based on race, creed, color, national origin, or sex);
  - g) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Companys, whether such programs or activities are Federally funded or not);
  - h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j) Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k) Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (“LEP”). [To ensure compliance with Title VI, Company must take reasonable steps to ensure that LEP persons have meaningful access to your programs.] (70 Fed. Reg. at 74087 to 74100); and
- l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. §1681, *et seq.*).

**P. FEDERAL FAIR LABOR STANDARDS ACT:** All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Company has full responsibility to monitor compliance to the referenced statute or regulation. The Company must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**Q. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970:** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Company must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Company retains full responsibility to monitor its compliance and their subCompany’s compliance with the applicable requirements of the Occupational Safety Health Act of 1970 (29 CFR Part 1910). The Company must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor-Occupational Safety and Health Administration.

- R. **RIGHTS TO INVENTIONS:** (2 CFR Part 200 Appendix II(F)). Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Authority in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Leases, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR § 401.14. Company must include this requirement in all sub-tier contracts involving experimental, developmental or research work.
  
- S. **SUBORDINATION:** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the Authority and the United States, relative to the development, operation, or maintenance of the Airport.
  
- T. **NO INTERFERENCE:** Company agrees for itself, its successors and assigns that it will not make use of Authority premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Authority reserves the right to cause the abatement of such interference at the expense of Company.
  
- U. **EXCLUSIVE RIGHTS:** 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 § 308a of the Federal Aviation Act of 1958 (49 U.S.C. § 40103; P.L. 103-272; 108 STAT. 1102, and as it may be amended in the future).

V. **Signatures.**

- A. **Signature of Parties:** It is an express condition of this Agreement that it shall not be complete or effective until signed by Authority and by Company.
  
- B. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

<b>APPROVED AS TO FORM</b>	<b>SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY</b>
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<p>_____</p> <p style="text-align: center;">General Counsel</p> <p>Date: _____</p> <p>_____</p>	<p style="text-align: center;">_____ Signature</p> <p style="text-align: center;">_____ Kimberly J. Becker Name</p> <p style="text-align: center;">_____ President/CEO Title</p> <p>Date: _____</p>
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**COMPANY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

By my signature above, I, hereby certify under penalty of perjury under the laws of the State of California, that I am an officer or employee of the organization with authority to bind and obligate the organization.

**If your corporation has a seal, please affix below:**