AUTOMATED TELLER MACHINE SERVICES

CONCESSION AGREEMENT

between

SPOKANE AIRPORT

and

_____________________________________________
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11/08/2015
AUTOMATED TELLER MACHINE SERVICES
CONCESSION AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____________________, 2015, by and between SPOKANE AIRPORT, by and through its AIRPORT BOARD, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, as a joint operation of the City and County of Spokane, municipal corporations of the State of Washington, hereinafter referred to as “Airport,” and ____________________________, a corporation organized and incorporated in the State of ____________, hereinafter referred to as “Concessionaire”;

WITNESSETH THAT:

WHEREAS, the Airport Board is the administrator and operator of SPOKANE INTERNATIONAL AIRPORT, hereinafter referred to as "SIA", located in the City and County of Spokane, State of Washington, and is authorized to grant leases for real property and premises at SIA for the promotion, accommodation and development of commerce, commercial and general aviation air transportation; and

WHEREAS, the Airport solicited for proposals to provide automated teller machine services at SIA; and

WHEREAS, ______________ is a __________ State chartered bank, submitted a proposal in response to the Airport’s solicitation, which was determined by the Airport to be the most responsible and responsive response to such solicitation; and

WHEREAS, the parties hereto desire to enter into an exclusive Automated Teller Machine Services Concession Agreement, hereinafter referred to as “Agreement,” granting the Concessionaire the nonexclusive use of SIA and its appurtenances for the purposes of operating its automated teller machine service (ATMs), as outlined in the Request for Proposals dated November 8, 2015, and as agreed to in the Proposal submitted by Concessionaire, both of which are attached hereto and made a part of this Agreement;

WHEREAS, the Concessionaire has agreed to install, operate and maintain four (4) ATMs at SIA subject to the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the premises provided herein, the rights and privileges and the mutual covenants and agreements hereinafter contained and other valuable considerations, the parties hereto agree, for themselves, their successors and assigns, as follows:

1. PREMISES

Concessionaire shall install four (4) ATMs at SIA. Two (2) ATMs will be located pre-security, with one (1) at A/B Main Terminal Area and one (1) located at C Concourse. Two (2) ATMs shall be located post security with one (1) located in the Main Terminal Rotunda and one (1) located post security on lower Concourse C.
2. **TERM**

   A. The term of this Agreement shall be five (5) years, commencing February 1, 2016, and expiring January 31, 2021, unless sooner terminated or canceled as herein provided.

   B. The Airport shall have the option, at its sole discretion, to extend this Agreement for one (1) two (2) year period. Such option shall be exercised by written notice from the Airport to Concessionaire not later than ninety days (90) prior to the expiration of the initial term and shall be contingent upon the Concessionaire’s satisfactory performance, as determined in the sole discretion of the Airport, during the initial term. The rent and fees for the option period shall be subject to adjustment as outlined in Article 3 – RENTS AND FEES, Paragraph D.

   C. Should Concessionaire continue to operate the ATMs after the expiration of the term or any renewal thereof without executing a new Agreement with the Airport, such holdover shall be on a month to month basis and shall be upon the same terms and conditions set forth in this Agreement. The notice required to terminate the holdover shall be the removal notice under Article 11 – REMOVAL OF ATMS of this Agreement, which may be given at any time while Concessionaire is holding over and which will terminate the holdover effective upon the removal of the ATMs as provided herein.

3. **RENTS AND FEES**

   A. Concessionaire agrees to pay to the Airport, in advance, by the first of each month, the following rents and fees:

      1. The sum of $___________ per month for the four (4) ATMs.

   B. The Concessionaire agrees to pay to the Airport on or before the 15th of each month, a fee in the amount of $___________ per monetary transaction of the preceding month. Monetary transaction shall mean all types of transactions being performed by the ATMs, except for balance inquiries. Concessionaire shall submit to the Airport a detailed statement of all transactions for the previous month. Said report shall include information for each of the ATMs, the number of transactions, the type of transactions and the amount to be remitted to the Airport.

   C. Concessionaire may impose a customer usage fee with respect to some or all transactions at the ATM. Concessionaire shall disclose such fees to the customers in the manner and to the extent required by applicable law. Concessionaire shall charge a customer usage fee of $2.00 per transaction for non-___________ Bank customers. Concessionaire may decrease or eliminate the usage fee without notice to the Airport. Should Concessionaire at any time seek to impose a customer usage fee exceeding Two Dollars ($2.00) per transaction, it shall provide the Airport thirty (30) days prior written notice setting forth the amount of the proposed customer usage fee. Concessionaire may begin charging the proposed increased fee at the end of the thirty (30) day notice period unless the Airport, within that period, gives Concessionaire a rejection notice. A rejection notice may be given only if the proposed increased fee would exceed an amount equal to the market average rounded to the nearest Fifty Cents ($0.50). (As an example of such rounding, for illustration purposes only, if the market average, as defined below, is $1.74, the rounding would be to $1.50; if the market average, as defined below, is $1.75, the...
rounding would be to $2.00). “Market average” means the average (arithmetic mean) of the ATM customer usage fees then being charged in Spokane (meaning the Spokane Standard Metropolitan Statistical Area) by the three largest banks at that time which have branches in Spokane (regardless of where such banks are headquartered) measured by the amount of total deposits for the entire bank. If the Airport gives Concessionaire a timely rejection notice, Concessionaire may abandon that attempt to increase the fee or may submit to the Airport, within thirty (30) days after the date of the rejection notice, evidence of the Concessionaire’s calculation of the market average.

D. Should the Airport exercise its option to renew this Agreement as outlined in Article 2 – TERM, Paragraph B, rents and fees shall be subject to negotiation. In the event the Airport and Concessionaire are unable to agree to such rents and fees prior to the expiration of the initial term of this Agreement, the Airport shall have the option of treating Concessionaire as a holdover in accordance with Article 2 - TERM, Paragraph C, or the Airport may cancel the Agreement subject to Article 11 –REMOVAL OF ATMS.

4. FINANCIAL CONDITIONS

A. Concessionaire agrees to post with the Airport, prior to commencing operations at the Airport, and maintain throughout the term of this Agreement, a Performance/Payment Bond or a Cashier’s Check in the amount of Five Thousand Dollars ($5,000.00). Such bond shall be executed by the Concessionaire as principal, and by a surety company authorized to do business in the State of Washington, as Surety, and conditioned upon the full and faithful performance by the Concessionaire of all the terms and conditions set forth in this Agreement, and the payment by the Concessionaire of all amounts required to be paid by the Concessionaire to the Airport under the terms of this Agreement. Subject to prior approval by the Airport, Concessionaire may provide an irrevocable letter of credit payable without condition to the Airport in lieu of a Performance/Payment Bond. Any alternate security shall be upon terms and conditions acceptable to the Airport.

B. It shall be the duty of the Concessionaire to pay all fees and charges when due. Failure to pay the amounts due or comply with any other of the Concessionaire’s financial obligations to the Airport under this Agreement shall entitle the Airport to terminate this Agreement upon giving the Concessionaire ten (10) days advance written notice of its intention to do so, if said monetary default has not been remedied within said ten (10) day period. However, the Airport may extend the time period to correct the default if, in its sole discretion, due diligence is shown by the Concessionaire in curing the default. All amounts not paid by the Concessionaire when due shall bear interest at the maximum rate allowed by law.

C. Records and Reports Of Concessionaire

Concessionaire shall keep full and accurate books and records showing all transactions of same. The Airport shall have the right through its representatives, and at all reasonable times, to inspect any and all records and books except as prohibited by law. The Concessionaire agrees that all such records and books shall be available to the Airport for at least a five (5) year period following the end of this Agreement. Such records and books shall be made available to the Airport in an electronic format upon Airport’s request.

November 8, 2015
D. **Audit**

The Airport reserves the right, at the Airport’s expense, to inspect all the Concessionaire’s financial records as defined in this Article, for the purpose of verifying all transaction records. Upon request by the Airport, Concessionaire shall submit financial records in an electronic format for the Airport’s review. Further, the Airport reserves the right to demand an independent audit of all the Concessionaire’s financial records, regarding fees due the Airport pursuant to this Agreement. If, as a result of said audit, it is determined that the Concessionaire has understated the transactions by three percent (3%) or more, the entire expense of said audit shall be borne by the Concessionaire and paid to the Airport, with interest thereon at the maximum legal rate from the date such additional fees became due.

E. **Public Records Act**

Concessionaire acknowledges and agrees that documents or information provided by Concessionaire to Airport in accordance with this Agreement may be subject to disclosure pursuant to applicable law, which includes but is not limited to the Washington Public Records Act.

5. **USE OF PREMISES**

A. Concessionaire shall use the Premises demised herein for the operation of its ATM service and for no other purpose without the prior written consent of the Airport.

B. Concessionaire, its agents, employees, suppliers and others doing business with Concessionaire shall have the right of ingress and egress to and from the Premises and the public use areas/facilities used in connection therewith, over designated Airport property and roadways, subject to rules and regulations governing the use of SIA and as same may be promulgated by the Airport from time to time.

C. Concessionaire agrees for itself, its agents and employees that it will not perform any acts or carry on any practices which would result in the necessity to repair or replace Airport property, normal wear and tear excluded, or be a nuisance or menace to other users of SIA.

D. Airport covenants that upon paying the rents and fees and performing the covenants and conditions herein contained, Concessionaire shall peacefully and quietly have, hold and enjoy the Premises demised herein.

E. Airport covenants and agrees that it is in lawful possession of the Premises demised hereby and has good and lawful authority to execute this Agreement.

6. **INSTALLATION**

A. Installation shall occur no later than February 1, 2016 and Concessionaire shall coordinate installation with the Airport. Concessionaire shall be responsible for site preparation, installation of the electrical connection to the ATMs and installation of the conduit for the power and communication lines. Concessionaire shall be responsible for all other work required to
install and connect the ATMs, including but not limited to, obtaining and installing the ATMs and the data circuit communications line to which the ATMs will be connected and making such connection. All such work is to be performed according to plans and specifications approved by the Airport.

B. Installation work shall be done at times agreed upon by both parties. Said times shall not interfere with Airport operations and will facilitate the prompt installation of the ATMs. Concessionaire agrees to promptly restore any Airport property damaged by Concessionaire’s employees or its agents during the installation of the ATMs.

C. It shall be the Concessionaire’s responsibility to obtain any and all building or electrical permits necessary to install the ATMs. Concessionaire shall provide copies of all permits to the Airport prior to work commencing.

D. The Airport and the Concessionaire shall mutually agree upon the appearance of the ATMs. Concessionaire understands the ATMs appearance must compliment the Airport’s overall interior enhancement program.

E. The ATMs shall remain the property of the Concessionaire or the party from whom Concessionaire is leasing the ATMs. At all times, the ATMs shall remain personal property regardless of the manner in which they may be affixed to SIA Premises.

F. In the event the Airport should require the relocation of any ATM to a new location at SIA, Concessionaire and Airport shall mutually agree on a new location. Should the Airport require the relocation of an ATM, the Airport shall be responsible for all expenses incurred as a result of said relocation.

7. MINIMUM SERVICE AND OPERATIONAL REQUIREMENTS

A. The Concessionaire shall have in circulation ATM cards supporting seven (7) networks, and at a minimum support Visa, Master Card and American Express.

B. The Concessionaire’s ATMs shall support the following transaction types in both English and Spanish formats:

- Cash withdrawal from credit card account
- Cash withdrawal from checking account
- Cash withdrawal from savings account
- Transfers from checking to savings
- Transfers from savings to checking
- Balance inquiry from checking
- Balance inquiry from savings

C. Concessionaire shall provide complete data processing of ATM transactions, which shall include but is not limited to communication, routing, authorizing, and settlement.

D. Concessionaire shall provide system monitoring, diagnostics and service dispatch.
E. Concessionaire shall provide vendor maintenance for necessary problem resolution and repair by qualified technicians. Hours of vendor maintenance should include, but not be limited to, 6:00 a.m. to midnight, seven (7) days per week. Response time must be less than two (2) hours.

F. Concessionaire shall provide maintenance for minor problems(s) (currency and/or forms replenishment) resolution not requiring vendor technicians during non-peak hours.

G. Concessionaire shall provide operational support for ATM balancing, settlement, adjustments and captured card processing.

H. Concessionaire shall maintain the availability of the ATM system in a manner that will ensure Ninety Five percent (95%) uptime (22.8 hours) for each twenty four (24) hour period, seven (7) days a week.

I. Concessionaire shall provide monthly reporting of total transactions and type of transactions.

J. Concessionaire shall be responsible for all ongoing operating costs.

8. MAINTENANCE

A. On an ongoing basis, the Airport shall be responsible for:

1. The cost of electrical power sufficient to operate the ATMs and any signs referred to in Article 9 - SIGNAGE, Paragraph A;

2. Reporting malfunctions to the Concessionaire’s designated point of contact;

B. On an ongoing basis, the Concessionaire shall be responsible for:

1. Regularly scheduled and unscheduled emergency equipment diagnosis, servicing, repair and maintenance, including replacement of parts.

2. Maintenance of electrical and communications lines and communication links to the ATMs;

3. Clearing and settlement of transactions;

4. Integration with Concessionaire’s alarm system; and

5. Providing cash, receipts, ribbons and other supplies as required.

9. SIGNAGE

A. Concessionaire shall provide and install a sign or signs on or above the ATMs that
identifies the Concessionaire and its network affiliations. Concessionaire shall also provide logo panels, as part of the signage that identifies to cardholders that its bank participates in their network. All signage shall be submitted to the Airport for approval prior to installation.

B. To the extent that Concessionaire uses any electronic medium for identification and/or advertising which includes any reference to Concessionaire’s relationship with SIA, Airport shall have the right to review and approve the same.

10. ACCES

A. The Airport shall provide, at all times when SIA is open, access to the ATMs by cardholders.

B. Concessionaire and agents shall be entitled access to the ATMs and related property within SIA for purposes of servicing and maintaining the ATMs at all times while SIA is open.

11. REMOVAL OF ATMS

A. Concessionaire shall remove the ATMs from SIA no sooner than Ninety (90) days following the date that a written removal notice is given to either party. A removal notice shall not be given any earlier than Ninety (90) days before the date upon which this Agreement will expire or terminate under the provisions of this Agreement (including but not limited to the holdover provisions of this Agreement). Until the ATMs are removed, they shall be operated in accordance with the terms and conditions of this Agreement. Upon removal of the ATMs, the cost of restoring the Premises to the condition they were in at the time of the installation of the ATMs shall be the Concessionaire’s responsibility. If Concessionaire fails or refuses to remove the ATMS in accordance with this Agreement, Airport shall be entitled to judicial relief in accordance with applicable law.

B. In the event that the Airport ceases to be operated by the Airport, then the ATMs may be removed.

C. Concessionaire shall be responsible for all expenses associated with the removal of the ATMs.

12. EXCLUSIVITY

While this Agreement is in effect, Concessionaire shall be the exclusive operator of ATMs at the Airport.

13. CONCESSIONAIRE’S RIGHTS AND OBLIGATIONS

The parties hereto covenant and agree as follows:

A. Concessionaire’s equipment, used by the Concessionaire at SIA shall be maintained at Concessionaire’s sole expense, in good, safe and operative order, and in a clean
and neat condition.

B. Personnel performing services at SIA shall be neat, clean and courteous. Concessionaire shall not permit its agents, servants or employees to conduct business or otherwise act in a loud, noisy, boisterous, offensive or objectionable manner.

1. Personnel performing services at SIA at post security locations may not be armed in any manner. Possession of any type of firearm or weapon is strictly prohibited while at any post security location.

C. Concessionaire shall observe and comply with any and all applicable Airport, Federal, state and local laws, statutes, ordinances and regulations and shall abide by and be subject to all reasonable rules and regulations which are now, or may from time to time be, promulgated by the Airport concerning operation or use of SIA.

D. Concessionaire shall be responsible for all its expenses in connection with its operation at SIA and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Concessionaire, and shall secure all such permits and licenses.

14. SECURITY

A. Concessionaire recognizes its obligations for security on SIA as prescribed by 49 CFR Part 1542, as amended, and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of SIA. Concessionaire shall comply with Transportation Security Regulation Part 1542 (Airport Security), as amended, and SIA security policies as presently outlined in its Airport Security Plan, as such Plan may be amended from time to time. Concessionaire shall pay any forfeitures or fines levied upon it, the Airport or SIA through enforcement of Transportation Security Regulation Part 1542, as amended, or any other applicable federal, state or local regulation, due to the acts or omissions of Concessionaire, its employees, agents, suppliers, invitees or guests and for any attorney fees or related costs paid by the Airport as a result of any such violation.

B. Concessionaire shall abide by rules and regulations adopted by the Airport in carrying out the Airport’s obligations under Aviation Security Regulations and Directives for the proper identification of persons and vehicles entering the aircraft operations area and other security measures as the Airport deems necessary from time to time. Concessionaire shall obtain SIA identification badges for all personnel working in restricted areas, which will require each worker to complete the SIA ID Card Application Form, available from the SIA Police. The applicant must submit his/her fingerprints for a criminal history background check. Any costs associated with badging shall be the responsibility of the Concessionaire. The Concessionaire shall deliver to the SIA Police Department in writing the names, mailing addresses and telephone numbers of all employees performing services under this Agreement. Any change in personnel shall be reported to the Airport and the SIA Police Department. The Concessionaire shall be responsible for the prompt recovery of SIA keys and security identification badges.
C. Pursuant to applicable federal regulations, Concessionaire shall conduct an annual self-audit of Airport access media, such as keys and access cards, used by Concessionaire, its employees, agents, suppliers. Concessionaire shall provide the Airport with a written report of said audits and shall replace, reset or re-key, as appropriate, all affected Airport area access locks or devices whenever missing, lost, or stolen access media exceed five (5) percent of the access media issued for the affected lock or device.

D. The Airport shall have complete control over granting, denying, withholding or terminating security clearance for said employees. Clearance is required for all employees acting on behalf of Concessionaire in connection with this Agreement. Concessionaire shall not permit any employee to begin work until SIA Police grants clearance to each individual employee.

E. Concessionaire and Concessionaire’s employees shall identify, challenge, and report all unauthorized personnel (anyone without proper SIA-issued identification) to SIA Police Department in the SIA Terminal during all hours. NOTE: SIA Police are in the Terminal twenty-four (24) hours per day, seven (7) days per week.

15. INDEMNITY AND WAIVER OF DAMAGES

A. The Concessionaire shall indemnify, hold harmless and defend the Airport, the City and County of Spokane, their elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including reasonable attorney’s fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Concessionaire’s conduct of business or from any activity or other things done, permitted, or suffered by Concessionaire in, or about the Premises or SIA or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Airport, the City and County of Spokane, their elected and appointed officials, agents and employees, provided that the Airport shall give the Concessionaire prompt and reasonable notice of any such claim or actions made or filed against it.

B. Concessionaire hereby agrees to release and hold harmless the Airport, the City and County of Spokane, its elected and appointed officials, agents and employees, from any damages to the Concessionaire caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on SIA; and the Concessionaire does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Airport, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on SIA. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.

C. Concessionaire further agrees to hold the Airport, the City and County of Spokane, their agents, officials and employees free and harmless for any claims arising out of the damage, destruction or loss of any or all of Concessionaire’s equipment excluding any claims arising out of the sole negligence of the Airport, the City and County of Spokane, their elected
officials, agents and employees.

16. INSURANCE

Concessionaire shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability as specified below, and insurance shall be placed with companies or underwriters authorized to issue said insurance in the State of Washington and carry a Best’s rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be standard comprehensive insurance coverage, with aircraft exclusions deleted to cover all operations of the Concessionaire. The policy(ies) shall include, but not by way of limitation, bodily injury; property damage; automobile, including owned, non-owned, leased and hired; aircraft; and contractual coverage, including the obligations pursuant to Article 15 – INDEMNITY AND WAIVER OF DAMAGES, herein. The insurance policy(ies) shall be standard comprehensive insurance coverage, with aircraft exclusions deleted to cover all operations of the Concessionaire. The policy(ies) shall include, but not by way of limitation, bodily injury; property damage; automobile, including owned, non-owned, leased and hired; aircraft; and contractual coverage, including the obligations pursuant to Article 15 – INDEMNITY AND WAIVER OF DAMAGES, herein. The Airport, the City and County of Spokane, their elected and appointed officials, agents and employees shall be named as additional insureds with respect to Concessionaire’s use of SIA and the Premises which are the subject of this Agreement. The Concessionaire’s insurance shall be primary and non-contributory with any insurance maintained by the additional insureds. Concessionaire shall promptly upon execution of this Agreement, furnish to the Airport appropriate certificates of insurance and additional insured endorsements evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than Five Million Dollars ($5,000,000.00), combined single limit with an annual aggregate coverage of Five Million Dollars ($5,000,000.00). The automobile liability coverage shall not be less than One Million Dollars ($1,000,000) for owned, non-owned and hired automobiles (land side only). The Concessionaire’s insurance policies shall be endorsed so that the insurance carrier will provide the Airport with at least thirty (30) days notification prior to cancellation or material change. Such notice of cancellation or material change shall be mailed to the Airport by certified mail. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written evidence or renewal shall be furnished to the Airport at least thirty (30) days prior to such expiration. Upon written request by the Airport, Concessionaire shall permit the Airport to inspect the originals of all applicable policies. The Concessionaire’s insurance identified in this Article 16 shall include a waiver of subrogation in favor of the additional insured. This Article 16 shall be subject to periodic adjustments by the Airport.

17. TAXES

Concessionaire agrees to pay all lawful taxes and assessments which, during the term hereof or any extension as provided for herein, may become a lien or which may be levied or charged by the state, county, city or other tax-levying body upon the Premises herein or upon any taxable interest acquired by the Concessionaire in this Agreement, or any taxable possessory right which the Concessionaire may have in or to the Premises or facilities hereby leased or the improvements thereon, by reason of its occupancy thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by the Concessionaire in or about the Premises. Nothing herein shall prevent the Concessionaire from protesting through due process, any taxes levied. Upon any termination of this Agreement all taxes then levied or a lien upon any of said property or taxable interest therein shall be paid in full without proration by the Concessionaire forthwith, or as soon as a statement thereof has been issued by the tax collector if termination
occurs during the interval between the attachment of the lien and issuance of statement.

18. **WAIVER OF SUBROGATION**

   A. The Airport and Concessionaire each waive any rights it may have against the other on account of any loss or damage occasioned to Airport or Concessionaire, as the case may be, their respective property, the Premises or its contents or to other portions of SIA arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried or required to be carried pursuant to this Agreement. Each of the parties hereto, on behalf of their respective insurance companies insuring the property of either Airport or Concessionaire against any such loss, to the extent of any recovery under such insurance, waives any right of subrogation that it may have against the other. Each waiver shall be expressly included in, and shall comply with the requirements of the respective insurance policies. Should either or both of the respective insurance companies assess a charge for such waiver, each party shall pay only for the charges assessed by its respective insurer.

   B. Concessionaire further expressly waives any and all claims against the Airport, the City and County of Spokane, their agents and employees of whatever nature, for any and all loss or damage sustained by the Concessionaire, except loss or damage caused by the sole negligence of the Airport, its agents or employees, including interruption of the Concessionaire’s business operations, by reason of any defect, deficiency, failure or impairment of the Premises, or any utility service to or in the Premises, including, but not limited to, the water supply system, electrical wires leading to or inside the Premises, gas, electric or telephone service, or any other failure which may occur during the term of this Agreement from any cause.

19. **GOVERNMENT RESERVATIONS AND RESTRICTIONS**

   The rights granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

   A. It is understood and agreed to by Concessionaire that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right forbidden by the Airport Development Act, 49 U.S.C., 47101 et seq., and Section 308 of the Federal Aviation Act of 1958 and as amended.

   B. During time of war or national emergency, the Airport shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.

   C. This Agreement shall be subject to the terms of any sponsor’s assurances and agreements now required or imposed in the future, between the Airport and the Federal Aviation Administration or any successor federal agency.

   D. This Agreement shall be subordinate to the provisions of any existing or future agreement between the United States Government and the Airport relative to the use, operation or maintenance of SIA, the execution of which has been or may be required as a condition
precedent to the expenditure of federal funds for the development of SIA, by the provisions of
the Airport Improvement Program, and as the program may be amended, or any other federal act,
deed, grant agreement or program affecting the operation, maintenance of SIA now or in the
future; provided however, that the Airport shall, to the extent permitted by law, use its best
efforts to cause any such agreement to include provisions protecting and preserving the rights of
Concessionaire in and to the Premises and improvements thereon.

20. **APPROVAL OR DIRECTION BY AIRPORT**

Wherever consent, approval or direction by the Airport is required under this Agreement,
such consent, approval or direction by the Airport shall be effective if given by the Airport’s
Chief Executive Officer or his designee in the manner set forth in this Agreement.

21. **ADDITIONAL RIGHTS AND OBLIGATIONS OF THE AIRPORT**

A. Except as herein provided, the Airport agrees that it will, with reasonable
diligence and in a manner consistent with that of a reasonably prudent operator of an airport of
comparable size, develop, operate, maintain and keep in good repair and order SIA and all
common use and public appurtenances, facilities and equipment provided by the Airport as the
same relates to Concessionaire's air transportation business. The Airport agrees that it will
operate SIA in a manner consistent with standards established by the Federal Aviation
Administration, or any successor Federal agency exercising similar powers for airports of
comparable size and in accordance with rules and regulations of the Federal Aviation
Administration and any other governmental agency having jurisdiction thereof.

B. The Airport shall have the right to adopt and enforce reasonable rules and
regulations not in conflict with Federal rules and regulations with respect to the use of SIA,
which Concessionaire agrees to observe and obey.

22. **AGREEMENT SUBORDINATE TO BOND ORDINANCE**

This Agreement and all rights of the Concessionaire hereunder are expressly
subordinated and subject to the lien and provisions of any pledge or assignment made by the
Airport, the City of Spokane or County of Spokane to secure any bonds authorized by law to be
issued for the development or improvement of SIA, and the Concessionaire agrees that the
holders of the said bonds shall possess, enjoy and may exercise all rights of the Airport
hereunder to the extent such possession, enjoyment and exercise are necessary to ensure
compliance by Concessionaire and the Airport with the term and provisions of the bond
covenant.

23. **PERFORMANCE BY THE AIRPORT**

If the Concessionaire should fail to do anything required to be done under the terms and
conditions of this Agreement, except for the payment of rents, fees or charges, the Airport may,
at its sole option and after giving written notice to the Concessionaire, perform such act on
behalf of the Concessionaire. Upon notification to the Concessionaire of the cost thereof by the
Airport the Concessionaire shall promptly pay the Airport the amount due.
24. **SURRENDER OF POSSESSION**

Upon the expiration of this Agreement or its earlier termination as herein provided, Concessionaire shall remove all of its property from SIA and surrender entire possession of its rights at SIA to the Airport, unless this Agreement is renewed or replaced.

25. **ASSIGNMENT AND SUBLETTING**

Neither Concessionaire nor any assignee or other successor of Concessionaire shall in any manner, directly or indirectly, by operation of law or otherwise, assign, sublet, transfer or encumber any of Concessionaire's rights in and to this Agreement or any interest therein, nor license or permit the use or the rights herein granted in whole or in part without the prior written consent of the Airport.

26. **LEGAL CLAIMS AND ATTORNEY FEES**

A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the operation of the Concessionaire’s ATM service at SIA. The Airport and Concessionaire shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Concessionaire is an independent contractor in every respect, and not the agent of the Airport.

B. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any rent, fees or other sum or charges otherwise payable by Concessionaire, this Agreement or the breach of any covenant or condition of this Agreement, or for the restitution of the Premises to the Airport and/or eviction of Concessionaire during the term of this Agreement, or after the expiration thereof, the prevailing party will be entitled to reasonable attorneys’ fees, consultants’ fees, witness fees and other costs, both at trial and on appeal. For purposes of calculating attorneys’ fees, legal services rendered on behalf of the Airport by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Spokane, Washington.

27. **LIENS AND ENCUMBRANCES**

Concessionaire agrees that it shall pay, or cause to be paid, all costs and expenses for work done, materials delivered, and professional services provided to the Premises for improvements done at Concessionaire’s request, during the leasehold term for improvement to the Premises. Concessionaire shall keep the Premises free and clear of all mechanic’s or materialmen’s liens or any other liens on account of any work done on the Premises at Concessionaire’s request. Concessionaire agrees to and shall indemnify, and hold the City of Spokane, County of Spokane, and the Airport free from and harmless against all liability, loss, damage, cost, attorney’s fees and all other expenses on account of claims of lien of laborers or materialmen, or others, for work performed or materials or supplies furnished to Concessionaire for use on the Premises.

November 8, 2015
28. **FEDERAL NONDISCRIMINATION**

   A. Concessionaire understands and acknowledges that the Airport has given to the United States of America, acting by and through the FAA, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act 1964 and by 49 CFR Part 21 as a condition precedent to the Government making grants in aid to the Airport for certain Airport programs and activities, and that Airport is required under those regulations to include in every agreement pursuant to which any person or persons, other than Airport, operates or has the right to operate any facility on SIA providing services to the public, the following covenant, to which Concessionaire agrees:

   B. Concessionaire, in its operation at and use of SIA, covenants that:

      1. No person on the grounds of race, color, or national origin shall 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 grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

      3. It shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as that regulation may be amended; and

      4. Concessionaire further agrees promptly to provide the Airport, upon written request by the Airport, such information the Airport is required to obtain from Concessionaire to show compliance with applicable nondiscrimination laws.

29. **PRIOR AND COLLATERAL AGREEMENTS**

   This Agreement shall constitute the entire Agreement between the parties and no other stipulation, agreement or understanding, written or oral, expressed or implied of the parties hereto or of their agents, relating to the rights granted herein and the use of the Premises demised herein, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed.

30. **SUBMISSION OF AGREEMENT**

   The submission of this document for examination and negotiation does not constitute an offer to enter into an Agreement. This document shall become effective and binding only upon execution and delivery hereof by the Airport and Concessionaire. No act or omission of any
officer, employee or agent of the Airport shall alter, change or modify any of the provisions hereof.

31. **RELATIONSHIP OF THE AIRPORT AND CONCESSIONAIRE**

   Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Concessionaire and the Airport shall be deemed to create any relationship other than that of Concessionaire and the Airport.

32. **SEVERABILITY**

   If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

33. **NON-WAIVER OF BREACH**

   The waiving of any of the covenants of this Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by the Airport to any act by Concessionaire requiring Airport’s consent shall not be deemed to waive consent to any subsequent similar act by Concessionaire.

34. **SURVIVAL OF INDEMNITIES**

   All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Concessionaire shall, at the Airport’s option, defend the Airport at Concessionaire’s expense by counsel satisfactory to the Airport.

35. **APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY**

   This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the United States District Court for the Eastern District of Washington at Spokane or the Spokane County Superior Court for the State of Washington, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

36. **NOTICES**

   All payments, demands and notices required herein shall be deemed to be properly served if personally delivered, or if sent by overnight courier or certified mail, to the last address
furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

AIRPORT: Properties & Contracts Director
Spokane International Airport
9000 W. Airport Dr., Suite 204
Spokane, WA 99224

CONCESSIONAIRE: ______________________________
____________________________
____________________________

The date of service of such notice shall be upon personal delivery, one (1) day after such notice is deposited with reliable overnight courier or three (3) days after such notice is deposited in a Post Office of the U.S. Post Office Department.

37. **TIME OF ESSENCE**

   It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

38. **HOLDOVER**

   Any holding over at the expiration or termination of the term of this Agreement, with or without the consent of the Airport, shall constitute a tenancy from month to month. The month to month tenancy shall be subject to all other terms and conditions of this Agreement.

39. **AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISES (ACDBE)**

   ACDBE Participation: In accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 23, Subpart C, the Airport has implemented an Airport Concessions Disadvantaged Business Enterprise (ACDBE) concession plan under which qualified firms may have the opportunity to operate or participate in the operation of an airport business. An ACDBE goal of .25%, as measured by total estimated annual gross revenues, has been established for concession programs. The Concessionaire shall make every reasonable attempt to achieve this goal.

   ACDBE participation may be in the form of one or more subleases, joint ventures, partnerships, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23, Subpart C. In the event that the Concessionaire qualifies as an ACDBE, the goal shall be deemed to have been met. The foregoing requirements with respect to ACDBE participation are not intended to force the Concessionaire to change its business structure.

40. **ENTIRE AGREEMENT**

   A. It is understood and agreed that this Agreement (including all Exhibits and other
documents incorporated by reference) contains the entire agreement between the Airport and Concessionaire as to this Agreement. It is further understood and agreed by Concessionaire that the Airport and the Airport’s agents and employees have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against the Airport for, and the Airport shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement. Any other written or oral agreement with the Airport is expressly waived by Concessionaire.

B. The Request for Proposals published by the Airport in connection herewith and the Concessionaire’s proposal or response to such Request for Proposals shall all form a part of the Agreement between the parties hereto. In the event of a conflict between the terms and conditions of this Agreement and any of said documents, the terms and conditions of this Agreement shall take precedence.

41. PARAGRAPH HEADINGS

Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written.

SPOKANE AIRPORT BOARD: APPROVED AS TO FORM:

By: Lawrence J. Krauter
    Chief Executive Officer
Date: _____________________________

James A. McDevitt
General Counsel
Date: _____________________________

CONCESSIONAIRE

Title: _____________________________
Date: _____________________________

November 8, 2015