



**MBJ AIRPORTS LIMITED  
(LICENSOR)**

**-AND-**

**XXXXXXXXX LIMITED  
(LICENSEE)**

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**SPECIALTY RETAIL/DUTY FREE LICENCE**

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**Sangster International Airport  
Montego Bay, St. James**

## TERM SHEET

### PAGE 1 OF TERM SHEET – FORMING PART OF LICENCE FOR RETAIL SPACE

1. **LICENSOR:** **MBJ AIRPORTS LIMITED**  
  
**MAILING ADDRESS:**  
Sangster International Airport  
Island Mailboxes Suite 4000  
Montego Bay, St. James  
Jamaica, W.I.  
  
**Attention:**  
  
**CORPORATE OFFICE ADDRESS:**  
Sangster International Airport  
Montego Bay, St. James  
Jamaica, W.I.  
  
Chief Commercial Officer  
Phone: (876) 952-3124  
Fax: (876) 971-9598
2. **LICENSEE'S LEGAL NAME:** **XXXXXXX LIMITED**  
  
**ADDRESS:**  
XXXX  
XXXXXX  
XXXXXX  
  
**STORE OPERATING NAME:** XXXX  
  
PHONE: (876)  
FAX: (876)  
Email: xxx
3. **THE AIRPORT:** Sangster International Airport  
Montego Bay  
Jamaica
4. **LICENSED PREMISES:** **Unit # XXX** as shown on the plan  
attached hereto as Schedule A.
5. **LICENSABLE AREA:** XX sq. m (approximately XX  
Sq.Ft.) as in the configuration  
generally shown on Schedule A  
(Subject to Section 4.11)
6. **TERM:** **XXXX to XXXXX**  
  
(Subject to Section 3.01)
7. **FIRST DAY OF THE TERM:** December 1, 2015  
("Commencement Date")
8. **LAST DAY OF THE TERM:** XXXX

9. **FIXTURING PERIOD:** XXXX to XXXX

10. **FEES:** In each Licence Year, (refer to table below)

The Fees shall be Minimum Annual Guaranteed Fee ("MAG") or xx.00% of Gross Sales, whichever is higher subject to Sub-section 10.02).

License Fees comprise the Minimum Annual Guaranteed Fees (MAG) plus Percentage Fee as follows:

Year	Period	MAG/Annum	MAG/Month	Percentage Fee (To be set off against MAG)
1				
2				
3				
4				

11. (a) **SECURITY DEPOSIT:** US\$XXXXX to be reviewed and increased annually, as deemed necessary by MBJ, to cover the average of three (3) month's Fees payable to the Licensor

(b) **COMMON AREA MAINTENANCE:** US\$20.00/Square Foot/Annum  
("CAM") In accordance with section 4.01(c)

12. **PROMOTION & MARKETING FUND** \$xxxx for the first License Year to be adjusted upwards each subsequent License Year to 0.2% of previous year's sales.

**13. PERMITTED USE OF THE LICENSED PREMISES:**

List of products to be sold, final product listing to be approved by MBJ  
XXXXXX

**14. LICENCE SECTION 9.06:** ENVIRONMENTAL ISSUES

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**LICENCE OF RETAIL SPACE  
SANGSTER INTERNATIONAL AIRPORT**

THIS LICENCE is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2020

BETWEEN:

**MBJ AIRPORTS LIMITED**, a Company incorporated under the laws of Jamaica having its registered office at, Sangster International Airport, Montego Bay, Jamaica ( hereinafter the "**Licensor**")

-AND-

**XXXXXX LIMITED** a Company duly incorporated under the Laws of Jamaica having its registered office **at XXXXXXXXX**, Jamaica (hereinafter "the Licensee")

**IN CONSIDERATION** of the mutual covenants contained herein, the parties hereby agree as follows:

**ARTICLE 1.00**  
**Definitions**

- 1.01** **Definitions**- In this Licence terms defined in Schedule B shall have the meanings designated therein respectively.

**ARTICLE 2.00**  
**GRANT OF LICENCE AND GENERAL COVENANTS**

- 2.01** **(a) Grant**- The Licensor agrees to grant a Licence, as of the effective date hereof and on the terms herein, to the Licensee and the Licensee hereby agrees to take the said grant of Licence from the Licensor of the Licensed Premises and any rights conferred hereunder, subject to the terms and conditions of this Licence, RESERVING ALWAYS unto the Licensor Fees as herein provided.

**(b)** The Licensee acknowledges that no exclusive right, pre-emptive right, right of first opportunity, or other similar right, express or implied, is given to or conferred upon the licensee under or by virtue of or related to this Licence with regard to any use, merchandise or service, or otherwise whatsoever.

- 2.02** **Licensor's General Covenants**- The Licensor covenants with the Licensee as follows:

- (a) to observe and perform all the covenants and conditions herein contained on the part of the Licensor to be observed and performed.

- 2.03** **Licensee's General Covenants**- The Licensee covenants with the Licensor:

- (a) to pay Fees without any deduction, abatement or set off whatsoever;

- (b) to observe and perform all the covenants and conditions herein contained on the part of the Licensee to be observed and performed; and
- (c) to comply with all laws and or rules applicable to the License Premises in the exercise of the rights of the Licensee hereunder.

**2.04 Indemnification**- The Licensee shall indemnify and hold harmless each of the Licensors and its respective directors, officers, agents and employees and the officers, agents and employees of the Government of Jamaica and the Airports Authority of Jamaica from and against all liabilities, losses, suits, claims, demands, fines, damages, costs and expenses (including all costs for investigation and defence thereof) based upon or attributable to the negligent acts or omissions of Licensee, its officers, invitees, agents or employees unless such damage or injury was caused due to the negligence of the Licensors or any other person for whom it is in law responsible.

**2.05 Head Lease –**

- (a) This License and the interest of the Licensee hereunder is subject to all the terms and conditions of the Property Lease No.1 and No.2 and the Assignment and Agency Agreement. The Licensors and Licensee acknowledge and agree that these Agreements require that this License contain certain covenants, obligations and agreements which are incorporated herein. However in the event of a conflict between the terms of these Agreements and the specific terms of this License, the terms of the Property Lease No. 1 & No. 2 and the Assignment and Agency Agreement shall prevail and the Licensee agrees to do all things necessary to enable compliance by the Licensors with the Head Lease.
- (b) The Licensee acknowledges and agrees that notwithstanding the entering into of this License, no privity of estate or privity of contract shall arise as between the Licensee and the Government of Jamaica and/or as between the Licensee and the Airports Authority of Jamaica.
- (c) The Licensee acknowledges that should the Licensors default in its obligations under the Property Lease No.1 and No. 2, the Assignment and Agency Agreement or the Concession Agreement and should these Agreements be terminated prior to the expiration of the Term, the Government of Jamaica and or the Airports Authority of Jamaica has the option, in its sole and unfettered discretion, to require the Licensee to attorn its interest hereunder to the Government of Jamaica and or Airports Authority of Jamaica, in which event, the Licensee shall forthwith attorn such interest to the Government of Jamaica and or Airports Authority of Jamaica.

**2.06 Government Not Responsible** – The Licensee acknowledges and agrees that in no event is the Government of Jamaica and or the Airports Authority of Jamaica liable or responsible in any way to the Licensee or any other person for any injury, loss, loss of profits, damages, consequential or indirect damages or for any claims resulting from any matter affecting any Airport infrastructure, whether or not the Airport infrastructure, as the case may be, was constructed by the Government of Jamaica and or Airports Authority of Jamaica and whether or not the matter affecting the Airport infrastructure is caused or contributed to by any fault, default, negligence, act or omission of the Government or any person for whom the Government may be responsible in law.

**ARTICLE 3.00**  
**Possession**

- 3.01 Early Occupancy** – The Licensee may not use or occupy the Licensed Premises or any part thereof before the commencement of the Term except with the Licensor's prior written consent and on the Terms and Conditions herein stated, mutatis mutandis; and any default arising during such occupancy shall be a default here under.

If the Licensee shall commence to carry on business with the Public in any part of the Licensed Premises during any period prior to the date stated in the Term Sheet as the Commencement Date, that period shall be added to the Term without further documentation and the Fixturing Period shall be shortened by excluding that period. For the purposes of this Section 3.01, the Licensee shall be deemed to continue to carry on business with the Public from the date upon which it commences to do so until the date stated in item 7 in the Term Sheet as the first day of the Term.

- 3.02 Delayed Possession** – The Licensor shall not be liable for any loss, damage or inconvenience resulting from any delay in delivering possession of the Licensed Premises and agrees that unless the delay is caused by or attributable to the Licensee, its servants, agents or independent contractors, no Fee shall be payable by the Licensee for the period prior to the Date on which, the Licensor can deliver possession of the Licensed Premises and then in amounts and on the Terms and conditions as are herein in this License provided.

**3.03 Acceptance of Licensed Premises**

Taking possession of or occupation of all or any part of the Licensed Premises by the Licensee, its contractors or subcontractors shall be conclusive evidence as against the agents, servants and Licensee that the Licensed Premises or such part thereof and the Common Elements are in satisfactory condition on the date of possession or occupation subject only to latent defects and to such deficiencies (if any) listed in writing in a notice delivered by the Licensee to the Licensor not more than ten (10) days after the date of possession or occupation.

The Licensee will accept the Licensed Premises in an "as is" condition; "as is" being the condition of the Licensed Premises as of the date of possession thereof by the Licensee.

If there is a Schedule C Part 11 headed "Licensor's Work" attached to the License then it is hereby agreed that the said Schedule is attached solely for the purpose of identifying base building standards and shall only apply following any damage in accordance with Article 10.00.

**3.04 Licensee's Work**

- (a) **Commencement of Licensee's Work** – Before commencing the Licensee's work in the fixturing of the Licensed Premises, the Licensee will:

See and obtain the Licensor's written approval of the Licensee's plans;

provide the Licensor with a certificate in the form used generally by the insurance industry as proper evidence that the insurance required to be placed by the Licensee under this License has been contracted;

satisfy itself and the Licenser that all the Licensee's work is to be performed by competent workmen whose labor union affiliations are compatible with others employed by the Licenser and its contractors; and the Licensee shall be responsible for obtaining all necessary consents and approvals, including zoning, development and business permits, licenses and inspections (the "Approvals") for its intended use of the Licensed Premises and will submit all applications for such Approvals to the Licenser for its consent prior to making application. Notwithstanding the Licenser's consent to an application, the Licensee will indemnify and defend the Licenser and save it harmless from and against any and all Claims incurred or suffered by the Licenser arising out of the Licensee's application for such Approvals and permits or the resulting Approvals and permits with respect to the use, intended or otherwise, of the Licensed Premises, whether such Claims are in respect of the Licensed Premises or in respect of the Airport.

The Licensee shall provide evidence satisfactory to the Licenser that the Licensee has obtained at its expense all Approvals from all governmental and regulatory authorities having jurisdiction, and post deposits when required by law. Should the Licensee fail to obtain any of the required Approvals or to post any deposit required by law, the Licenser may, but shall not be obligated to, do so on behalf of the Licensee at the Licensee's expense and the Licensee will pay to the Licenser the costs and expenses thereof as Fee on demand plus an administration fee of fifteen (15%) percent of such costs and expenses or One Thousand Dollars (\$1,000.00) United States Dollars whichever is the greater.

When the Licensee has received notice from the Licenser that the Licensee has satisfied the foregoing requirements, the Licensee shall proceed immediately to complete the Licensee's work.

- (2) **Completion of Licensee's Work** – The Licensee will complete the Licensee's work required by Schedule C Part III within the Fixturing Period at its expense and in strict compliance with Schedule C, Part I and III. The Licensee will promptly pay any charge specified in this License including in such Schedule.

During the Fixturing Period, the Licensee shall be subject to all of the other Terms and conditions of this License insofar as they are applicable, including without limitation, the provisions relating to the liability of the Licensee for its own acts, errors and omissions as well as those of its servants, employees, agents, contractors, invitees, concessionaries, Licensees and all other persons over whom the Licensee may reasonably be expected to exercise control, and the indemnification of the Licenser.

Any security that is provided by the Licenser is for the Airport as a whole. The Licenser will not be responsible for the security of the Licensed Premises or the Licensee's goods or the Licensehold Improvement before and during the Term of this License. The Licensee shall itself supervise and secure the Licensed Premises, its goods and the Licensehold Improvements.

**Article 4.00**  
**Fees and Reporting Requirements**

**4.01    Fees**

(a) The Licensee shall pay to the Licensors as fee for the Licensed Premises the higher of MAG or Percentage Fee. MAG is payable in advance and without notice or demand in equal monthly installments as set out in item 10 of the Term Sheet commencing immediately upon the commencement of business operations at the Licensed Premises or the expiry of the Fixturing Period. Percentage Fee is the amount determined in accordance with item 10 of the Term Sheet payable at the times and in the manner and subject to adjustments as provided in Section 4.04;

(b) [intentionally deleted]

(c) the Licensee's Occupancy Costs (also referred to as "Common Area Maintenance" or "CAM") during the Term, payable in monthly installments at the times and in the manner provided in Section 4.10 and such amount subject to increase at the start of each Fiscal Year in accordance with section 15.17; and

(d) all amounts [other than payments under subsections 4.01 (a) and (c)] payable by the Licensee to the Licensors under this License, at the times and in the manner provided in this License or, if not so provided, as reasonably required by the Licensors.

**4.02    Security Deposit**

1. **Security Deposit** – the Licensors acknowledge receipt of the amount identified as "Security Deposit" in item 11(a) of the Term Sheet to be held by the Licensors without interest as a Security Deposit (the "Security Deposit") for the due performance of all the Licensee's covenants and obligations under the License and not to be applied on account of MAG except as otherwise provided in this section 4.02 (1). The Security Deposit may be applied, in the sole discretion of the Licensors to any non-payment of Fee, including arrears. The application of the Security Deposit or any part thereof to remedying any default of the Licensee shall not restrict the Licensors from exercising any of its rights or further remedies as set out in the License or Pursuant to any statute or law. If any portion of the Security Deposit is used by the Licensors to remedy any default by the Licensee, the Licensee agrees to pay to the Licensors immediately an amount sufficient to restore to the Security Deposit to its original level.

It is further provided that the Licensors shall be relieved from any liability to the Licensee with respect to this Security Deposit if it is transferred to any purchaser of the Licensors' interest in the Licensed Premises.

If the Licensee is not then in default, the balance of the Security Deposit, if any, shall be refunded to the Licensee as soon as is reasonable after the Licensee vacates the Licensed Premises in accordance with the Terms of the License.

**4.03    Intent**

It is the purpose and intent of the Licensors and the Licensee that this License and the Fees Payable under Subsections 4.01 (a) and (b) shall be fully net and carefree to the

Licensor. Accordingly, subject only to the exceptions stated herein, the Licensee will pay or will reimburse to the Licensor all expenses relating to the Licensed Premises, their use and occupancy, their contents or the business carried on therein, and the part of all expenses relating to the Airport that are attributable thereto in accordance with the standards and practices prevailing in the Airport industry for similar projects from time to time. Nothing in this License shall limit the generality of this Section.

The Licensee will not be responsible for any part of the expenses listed under sub-heading "Exclusions" in the definition of Licensee's Occupancy Costs in Schedule B, or for the Licensor's Income taxes. Capital Tax and GCT are not income taxes for the purposes of this License.

#### **4.04 Payment of Fee**

1. **General** – All amounts payable by the Licensee to the Licensor pursuant to this License shall be deemed to be and shall be payable and recoverable as Fee in the manner herein provided and the Licensor shall have all rights against the Licensee for the default in any such payment as in the case of arrears of Fee. All Fee shall be paid to the Licensor in the lawful money of the United States of America, without deduction, abatement or set-off (except as provided for in the event of relocation of the Licensee by the Licensor pursuant to Section 6.07), at the local address of the Licensor set out in the Term Sheet or to such other Person or such other address as the Licensor from time to time designates in writing. The Licensee's obligation to pay Fee shall survive the expiration or earlier termination of this License. Any Fee or other sum received by the Licensor from or for the account of the Licensee, if the Licensee is in default under this License may be applied at the Licensor's option to the satisfaction in whole or in part of any of the obligations of the Licensee then due under this License in such manner as the Licensor sees fit regardless of any designation or instruction of the Licensee to the contrary.

#### **2. Percentage Fee**

- (a) The Licensee shall pay Percentage Fee, for each month in each License Year that the Percentage Fee exceeds the MAG.
- (b) The payment of Percentage Fee is first due and payable on the third (3<sup>rd</sup>) day following the first calendar month end of the Term that the Percentage Fee exceeds the MAG and thereafter on the third (3<sup>rd</sup>) day of each and every succeeding calendar month inclusive of the month immediately following the expiry of the Term that the Percentage Fee exceeds the MAG for the month under review. If the Annual Statement furnished by the Licensee under Section 4.05, at the end of a License Year, discloses that the MAG and Percentage Fee paid by the Licensee for the License Year is less than each month's MAG and Percentage Fee payable by the Licensee for the License Year, then the Licensee will pay any deficiency at the same time as it furnishes the Annual Statement.
- (c) If a License Year does not correspond to a twelve (12) calendar month period, Percentage Fee will be calculated for the License Year on a per diem basis based on the number of days in the License Year.

#### **4.05    Gross Sales Report**

##### Reporting Requirements:

- a) At or before noon on each Monday of Term (except the first week of the Term) the Licensee shall provide the Licensor with weekly sales report generated from a Point of Sale system showing a breakdown of the daily transactions by category and product of the immediately preceding week. This information is also to be presented in a spreadsheet and sent electronically to [monthlyreport@mbjairport.com](mailto:monthlyreport@mbjairport.com). The Licensee shall also provide ready access to authorised agents of the Licensor to Point-of-Sales data for the store for auditing purposes.
- b) Before the third (3<sup>rd</sup>) day of each calendar month, except the first month of the Term, the Licensee will deliver to the Licensor at the place then fixed for payment of fees, a statement (the "Monthly Statement") signed by the Licensee which (i) certifies that gross sales as reported in the monthly statement are correct and in accordance with this License; (ii) is in the form and detail that the Licensor requires; and (iii) states clearly the amount of Gross Sales for the preceding month of the License Year and the monthly payment of MAG and Percentage Fee made for the month. If requested by the Licensor, the Licensee will cooperate with the Licensor in providing sales figures prior to the due date of the Monthly Statement.
- c) Before the Sixty-first (61<sup>st</sup>) day after each Licence Year end (except the last License Year of the Term when the annual statement shall be delivered within three (3) days following the last day on which the Licensee carried on business with the public from the Licensed Premises) the Licensee will deliver to the Licensor at the place then fixed for the payment of Fee, a statement (the "Annual Statement") certified by a senior financial officer of the Licensee, certifying that the Annual Statement is correct and showing clearly month-by-month the amount of the Gross Sales for the preceding License Year. The Annual Statement will be in form and detail approved by the Licensor.
- d) Before the One Hundred and Eighty-first (181<sup>st</sup>) day after each Licence Year ends the Licensee will deliver to the Licensor an opinion by an independent public accountant (an "Accountant") stating that (i) the Accountant has examined, in accordance with generally accepted auditing standards, the Gross Sales (as defined in this License) of the Licensee for the License Year then ended; and (ii) Gross Sales are fairly presented for that License Year, on a basis consistent with that of the preceding License Year(s), as applicable.

Disclosure of Gross Sales Information: Within three (3) business days (or such other period as the Licensor may approve in writing) after the end of each month during the Term, the Licensee shall deliver to the Licensor a written unaudited statement in the form attached as Schedules K and or L hereof or such other form as the Licensor may from time to time prescribe, signed or certified by the Licensee in such manner as the Licensor may from time to time prescribe, of the Licensee's Gross Sales for the immediately preceding month broken down by product category, product types and individual concession outlet as set out in

Schedules K/L or broken down as otherwise prescribed from time to time by the Licensor.

The Licensor may require that the Licensee deliver such statement both electronically, in such manner as the Licensor may from time to time direct, and with a hard copy accompanying the payment of Fee. The Licensor may use and distribute the information in such reports for the Licensor's purposes.

- a. Financial Statement: Upon the written request of the Licensor, the Licensee shall submit to the Licensor within six (6) months after the Licensee's fiscal year end, an Audited Financial Statement by a licensed public accountant, for the Licensee's operations under this License.

**4.06 Records of Gross Sales** – The Licensee shall prepare and keep on the Licensed Premises or at such other place as the Licensor may consent to in writing, full, true and accurate original records of all gross sales including but not limited to all sales, charges, services, refunds, exchanges or other transactions, whether for cash or credit, for a period of not less than four (4) years following the end of each License Year including but not limited to:

1. cash register tapes including tapes from temporary register;
2. serially numbered sales slips;
3. settlement report sheets of transactions with sub-licensees, assignees, and concessionaires, if any;
4. original records showing that merchandise returned by customers was purchased at the Licensed Premises or other Licensed Premises operated by the Licensee by such customer;
5. memoranda, receipts or other records of merchandise taken out on approval;
6. such other records, if any, as would normally be examined by an independent chartered accountant pursuant to generally accepted accounting principles in performing an audit of the Licensee's Gross Sales;
7. true copies of returns showing payment to the relevant taxing authorities of sales tax or other taxes, if any, collected from customers on accounts of sales on or from the Licensed Premises;

and such obligation as well as the Licensor's right of inspection and audit shall survive the expiry of the Term. The content of and procedures followed on the preparation and maintenance of, the Licensee's books and records shall adhere to proper accounting practice and be in keeping with accepted auditing standards appropriate to the conduct of a detailed audit of the said gross sales as well as any such additional control and procedures that the Licensor may reasonably require from time to time. The Licensor and its employees, officers and agents or any auditor appointed by it, shall have access to those records at any time during regular business hours for the purpose of examination or audit.

The Licensee will record at the time of sale, in the presence of the customer, all receipts and sales or transactions whether cash or credit in a cash register or registers approved



by the Licensor as acceptable for such purposes having a sealed cumulative total along with any other control features that are required by the Licensor which include, in each case;

An automatic tape or other storage medium which shall permanently record each sales transaction, complete with any voids and refunds; and

Such other reasonable control features as are required and approved by the Licensor, from time to time, including, without limitation, a requirement that all registers and other devices be connected to any central computer network or point of sale system designated by the Licensor.

**4.07 Estimates of Gross Sales** - If the Licensee fails to maintain accurate records and data or to retain such records or to adapt proper procedures and control or to report Gross Sales all as required by this License and/or by the Licensor from time to time, or if the Licensor's auditor shall report to the Licensor that in its opinion, the Licensee's records, data, procedures or control are deficient for the purpose of determining Gross Sales or do not comply with the requirements imposed under this Article 4.00, the Licensor may estimate Gross Sales (or may order its auditors to do so) for any period affected by the failure or deficiency on the basis of such information as is accessible to the Licensor and which it considers reliable (including the apparent volume of business conducted on or from the Licensed Premises) and such estimate shall be binding upon the Licensee. The Licensee shall pay all cost incurred by the Licensor in making or obtaining such estimate and with respect to the inspection, which gave rise thereto, forthwith on demand.

**4.08 Audit of Gross Sales** – If the Licensee fails to report Gross Sales as required by this License or if in the course of an examination or audit by the Licensor it appears to the Licensor's auditor that Gross Sales for any period are greater by three (3%) percent or more than those reported by the Licensee for that period, the Licensee will pay all expenses of the examination or audit. Any report or opinion of the Licensor's auditor as to whether the Licensee has complied with requirements of this License or as to the amount of Gross Sales in any period shall be final and binding upon the parties. The Licensor and the Licensee shall promptly make any further adjustments in payment of Percentage Fee, the necessity of which is disclosed by an audit by the Licensor's auditor.

**4.09 Payment of Licensee's Occupancy Costs**

**a) Estimate and Payment**

The Licensor shall deliver to the Licensee a written estimate or a written revised estimate of the Licensee's Occupancy Costs for each Fiscal Year. The Licensee shall pay to the Licensor the sum estimated in equal monthly installments in advance over the Fiscal Year simultaneously with the Licensee's payments on MAG. If the Licensor does not deliver to the Licensee such an estimate, the Licensee shall continue to pay Licensee's Occupancy Costs based on the last such estimate delivered by the Licensor until a further estimate is delivered by the Licensor and the next payment on account of the Licensee's Occupancy Costs, shall be adjusted to take into account any over or under payment in the preceding installments paid in the Fiscal Year to which the estimates or revised estimate relate.

**b) Annual Statement and Adjustment** - the Licensor shall deliver to the Licensee within one hundred and twenty (120) days of the end of each Fiscal Year or so soon after that date as the same shall be prepared by or for the Licensor, a written statement (the "Year end

Statement") setting out in reasonable detail the Licensee's Occupancy Costs for the Fiscal Year. If the total of monthly installments of the Licensee's Occupancy Costs actually paid by the Licensee to the Licensors during the Fiscal Year differs from the amount of the Licensee's Occupancy costs determined to be payable for that Fiscal Year under Subsection 4.09 (1), the Licensee shall pay to the Licensors any deficiency owing thereby within thirty (30) days after the date of delivery of the Year end Statement or if the Licensee has paid an amount in excess of the Licensee's share then provided that the Licensee is not in default of any of its License obligations, the Licensors shall credit to the Licensee the sum thereof on account of the next succeeding payment of the Licensee's Occupancy Costs as the case may be, without interest.

c) **Disputes** - The Licensee may dispute the Licensors' Year end Statement of the Licensee's Occupancy Costs for any Fiscal Year only by giving notice thereof in writing to the Licensors within sixty (60) days of delivery of the Year end Statement in respect of that Fiscal Year. Notwithstanding delivery of such notice, the Licensee shall continue to pay Fees in accordance with the terms of this License. In the event of a failure to resolve the dispute, the determination of the Licensee's Occupancy Costs as made by the Licensors' Auditor shall be conclusive and binding upon both the Licensors and the Licensee. All costs of obtaining such determination with respect to this License shall be included in Licensee's Occupancy Costs; except that if the Licensors' auditor confirms the Licensors' calculations within a variance of Five (5%) percent, the Licensee shall pay the entire cost of such determination to the Licensors forthwith upon demand. If the Licensee and any one or more of the other licensees in the Airport are responsible to pay such cost, the Licensee will be jointly and severally liable with such other licensee or licensees.

d) **Changes to Areas Within Airport**- If the Licensable Area of the Licensed Premises, the Building or any part thereof is adjusted to give effect to any structural or functional change or if there is a new determination of the Licensable Area of the Licensed Premises under Section 4.11 at any time during the Term, the changes will be given effect in determining the amount of the Licensee's Occupancy Costs during the Fiscal Year in which that adjustment or determination occurs and for the purposes of subsequent License Years but no adjustment will be made with respect to amounts paid or previously calculated as being payable for or with respect to any previous Fiscal Year.

4.10 **Partial Month** - If the Term shall effectively include any partial month at the beginning or end thereof, MAG payable for such partial month shall be prorated on a per diem basis. A corresponding adjustment will be made for the Licensee's Occupancy Costs.

4.11 **Area Determination** - the Licensors may at its own cost, if it has not already done so, cause the Licensable Area of the Licensed Premises to be determined by an architect or surveyor and deliver to the Licensee the certificate thereof provided to the Licensors. The certificates so provided shall be binding on the parties unless the Licensee objects in writing to it within ninety (90) days after delivery of the certificate or save that, if the certificate was delivered to the Licensee prior to the Commencement Date, then within ninety (90) days after the Commencement Date. The notice of objection shall be accompanied by the certificate of an architect or surveyor showing a different calculation. If the architects or surveyors appointed by the Licensors or Licensee resolve the differences, their resolution shall be binding on the parties. If there is no resolution within the thirty (30) days following the notice of objection, the Licensors shall appoint a third surveyor or architect, approved by the Licensee acting reasonably, whose calculation shall bind the parties. The parties shall share the cost of the third surveyor or architect equally. If the Licensors has not provided a certification of the Licensable Area

of the Licensed Premises to the Licensee before or within one hundred and twenty (120) working days of the Commencement Date, the Licensee may obtain one at its sole cost and the foregoing provisions shall apply, mutatis mutandis.

If any error shall be found in the calculation of the Licensable Area of the Licensed Premises and/or in the calculation of the Licensee's Occupancy Costs, Fee (including, without limitation, MAG) shall be adjusted for the Fiscal Year in which that error is discovered and thereafter, but not for any prior period.

## **ARTICLE 5.00**

### **Use, Occupation and Control**

**5.01 Use of Licensed Premises** – The Licensee shall use and occupy the Licensed Premises only for the purpose set out in item 13 of the Term Sheet and shall not use or permit the Licensed Premises or any part thereof to be used or occupied for any other purposes or business. The Licensee covenants that it will carry on business under the name as stated at Item 2 of the Term Sheet and shall use no other name whatsoever without prior written consent of the Licensor.

- a)** Without limiting the foregoing, the Licensee shall not use or permit the Licensed Premises or any part thereof to be used for:
- i. a chartered bank, trust company, mortgage company, or any business similar to any of the foregoing or any electronic or mechanical unit which performs any banking or deposit taking service and, without limitation, the Licensee will not install or operate or permit the installation or operation of an automated banking machine within the Licensed Premises;
  - ii. the sale of used or surplus articles, salvage, insurance salvage stock, or for any auction or as a pawn shop;
  - iii. any business which would in the Licensor's opinion: (i) be commonly associated with any fraudulent or deceptive advertising or selling procedures; (ii) because of the merchandise being sold or the merchandising or pricing methods adopted would tend to lower the character or reputation of the shopping centre within the Airport; iii) be objectionable, obscene, lewd or in bad taste; or (iv) be a nuisance;
  - iv. catalogue sales except for merchandise which the Licensee is permitted to sell "over the counter" pursuant to the provisions of this License and which are included in the determination of Gross Sales;
  - v. any fire, bulk, bankruptcy or liquidation sale, or any other special sale that in the Licensor's opinion suggests that business operations are to be discontinued from the Licensed Premises, other than a special sale such as is incidental to the normal routine of the Licensee's business with its regular customers;

- vi. any business which in the Licensors opinion is in breach of, or contravenes the provisions of, any of the Licenses or agreements of any other Licensees or occupants of the Airport or any part thereof;
  - vii. an outlet for the sale of motor vehicles or a service facility commonly known as a tire, battery and auto store or an auto accessory store;
  - viii. office or clerical purposes except as required in connection with the Licensee's retail business in the Licensed Premises; or
  - ix. the sale of, or other dealing with any Pollutant except if and so long as approved by the Licensors in writing (which approval may be withdrawn at any time notwithstanding any provision of this License) and whenever such approval is given, such sale thereof or other dealing shall be only in accordance with the written directions of, and conditions imposed by, the Licensors from time to time, and in accordance with any laws or regulations of any authority having jurisdiction; or
  - x. be unlawful by contravening any Act of Jamaica, statute or regulation.
- b) the Licensors shall have the right to cause the Licensee to discontinue, and the Licensee shall thereupon forthwith discontinue, the sale of any item, merchandise or commodity, the supply of any service, or carrying on of any business, activity or practice, which does not in the Licensors opinion fall within the permitted use and occupation of the Licensed Premises by the Licensee, and or which is prohibited hereunder (the "Prohibited Activity"). Failure by the Licensee to observe the permitted use and or discontinue the Prohibited Activity will be an Event of Default and may in the Licensors sole discretion and without prejudice to the Licensors other rights or remedies herein or at law result in termination of the License.

Nothing in this License shall prohibit or limit or be deemed to prohibit or limit the conduct by the Licensors or any Person other than the Licensee of any business in the Airport whether or not in competition with the business of the Licensee.

the Licensors makes no representations or warranties, express or implied, respecting the use or intended use of the Licensed Premises by the Licensee or respecting whether or not necessary approvals can be obtained for the Licensee's use or intended use.

**5.02 Conduct of Business** -The Licensee acknowledges that the regular conduct of its business in the Licensed Premises is of the utmost importance to other Licensees in the Airport and to the Licensors in the licensing of space therein, the renewal of other Licenses, the efficient and economic supply of services and utilities, the maintenance of Percentage Fee and the fees payable by other Licensees in the Airport and the character and quality of other Licensees in the Airport. The Licensee therefore covenants and agrees that it will, throughout the Term, continuously occupy and actively carry on business with the public in the whole of the Licensed Premises with due diligence and efficiency so as to produce all of the Gross Sales which reasonably may be produced by its business, and in particular the Licensee shall:

- a) be open for business at the times and on the days prescribed by the Licensors from time to time and undertakes to operate the Retail space as a distinct and separate business entity whose revenues, expenses and financial records/

statements will be maintained independently and not combined or consolidated with any other entity or branch of the applicant.

- b) keep on the Licensed Premises during all business hours an adequate complement of trained and experienced staff and a full and complete stock of merchandise;
- c) promote the use of distinctive trade names and symbols for the Airport as may be designated by the Licenser from time to time;
- d) maintain high quality window displays and shall keep the display windows and signs well lit during hours of business;
- e) operate in accordance with the MBJ Airports Limited Commercial Concessionaire Handbook. See Appendix I

and if the Licensee fails to do so:

- I. the Licensee will pay as Fee in addition to all other amounts payable under this License either US\$2,500.00 or US\$2.50 per square foot per day ( plus, in each case, Subsequent Adjustments, in accordance with Section 15.17 ) of the Licensable Area of the Licensed Premises for each day upon which the Licensee fails to carry on its business with the public in the whole of the Licensed Premises whichever is greater; and provided in all cases the Licensee will have the opportunity to rectify any failure within 24 hours.
  - II. the Licenser shall be entitled to obtain an injunction and or order for specific performance of the Licensee's covenant to carry on business in the Licensed Premises in a court of competent jurisdiction to restrain the Licensee from defaulting under the provisions of this License and a mandatory injunction to compel the Licensee to open or re-open for business with the public in the whole of the Licensed Premises in accordance with this License either upon the Licensee defaulting under this Section 5.02 or upon the Licenser establishing by affidavit or other evidence that the Licenser has reasonable cause to believe that the Licensee is about to default thereunder.
- f) Character of Business
- i. The Licensee shall operate and conduct its business upon the whole of the Licensed Premises in an up-to-date first class and reputable manner befitting the character of the Airport and the Building and shall act diligently and use all proper and reasonable efforts consistent with good business practice to achieve the highest degree of customer satisfaction for service and product choice, quality, and price, and, subject to the foregoing, to maximize the Gross Sales of the Licensee and hence the Percentage Fee payable to the Licenser.
  - ii. The Licensee shall engage sufficient suitable and appropriately licensed personnel, equipment and vehicles to provide a standard of service that is safe, prompt, reliable, efficient, friendly and polite, and personnel shall be

trained to achieve those ends and shall be properly groomed and attired all to the reasonable satisfaction of the Licensor.

- iii. The Licensee acknowledges that the Licensor will be conducting price comparison surveys of the prices charged by the Licensee and three (3) comparable outlets selling similar quality goods or services, for the goods or services offered by the Licensee from the Licensed Premises. The Licensee hereby authorizes the Licensor and its representatives to enter the Licensed Premises from time to time to survey the prices charged by the Licensee. The Licensor may, at its discretion, provide to the Licensee a report containing the results of the Licensor's price comparison survey (the "Price Comparison Report"). The Licensee covenants and agrees upon receiving the Prices Comparison Report from the Licensor to forthwith adjust the price of any and all items listed in the Price Comparison Report so that the price charged by the Licensee for an item does not exceed the average of the prices charged for the item at the three (3) comparable outlets.

The Licensee agrees to participate in promotional events scheduled for Concession Licensees in the Building. For the purposes of the Licensee's participation, the Licensee hereby authorizes the Licensor and its representatives to enter the Licensed Premises to carry out all work required to implement and support such programmes.

- iv. Each employee including on-site managers of the Licensee will attend and participate in Customer Service and Retail Development programs organized by the Licensor (which will require attendance and participation of two six-hour training sessions) within three months of such employee including managers becoming active in the operations at the Licensed Premises.

g) Hours of Business

- i. The Licensed Premises shall be open for business to the public during the general business hours of the Building and or as specified by the Licensor from time to time. If the Licensee fails to open for business during the hours specified by the licensor, the Licensee shall pay, as liquidated damages, and not as a penalty, and in addition to any other amounts payable under this License, an amount equal to 1/6 of the daily Minimum Fee for each hour the Licensee is not open for business, and the parties agree that this represents a genuine pre-estimate of damages which would be suffered by the Licensor in the event of a failure to remain open by the Licensee.
- ii. The Building shall be opened to the public during the general business hours of the Airport but thereafter all or part of the Building may be locked and the public excluded therefrom.
- iii. Unless otherwise approved in writing by the Licensor, the Licensee will operate and be open for business to the public between the hours of 7:00 a.m. to 10:00 p.m. or until the last scheduled international flight departs, whichever comes first (7 days per week, every day of the year). Subject

to other provisions of this License, the Licensee may operate during such additional hours as the Licensee may elect. Christmas Day and Good Friday Holiday days shall be discretionary opening days with limited number of stores open, to be agreed to by Concessionaires Association and presented to the Licensor for approval such approval not to be unreasonably withheld.

- iv. The Licensee will post its hours of business, at a location on the storefront approved by the Licensor, using signage supplied by the Licensor.

h) [Intentionally deleted]

i) Remedial Period

The Licensee agrees that if the annualized Gross Sales f, as reasonably determined by the Licensor, during the first License Year of the Term (the "Trial Period") is less than \$xxxxxx with passenger traffic within +/- 2 percent of the previous year, and no apparent reason for the sales pattern, the Licensor will work with the Licensee for a six (6) month period (the "Remedial Period") immediately after the Trial Period to improve the Licensee's operations and increase in Gross Sales. If at the completion of the Remedial Period, there is no substantial increase, as reasonably determined by the Licensor, in the Licensee's sales, the Licensee shall, within thirty (30) days from the end of The Remedial Period, submit a revised concept or proposal to the Licensor for approval. The Licensee agrees that it shall implement such approved revised concept or proposal within ninety (90) days from the end of the Remedial Period. If the Licensee fails to submit an alternative concept or proposal acceptable to the Licensor or to implement such approved revised concept or proposal within the time stipulated respectively, then the Licensor may terminate this License by providing reasonable notice.

### **5.03 Radius Restriction**

- a) The Licensee will not, within a distance of three (3) miles, subject to Subsection (3) herein, excluding any business of the Licensee existing at the date of this License, so long as the area of such premises is not increased (or such lesser distance as the Licensor may from time to time designate by written notice to the Licensee) from the nearest boundary of the Airport, directly or indirectly conduct, assist or license any business which is competitive with the Licensee's use of the Licensed Premises. In particular but without prejudice to the foregoing the Licensee will not take a sublicense or a license of a part or all of any other premises within the Airport and will not grant license or a franchise of its business to any Licensee of premises within the Airport.
- b) In addition to any other remedies the Licensor may have either elsewhere in this License or at law, if the Licensee breaches the foregoing Subsection 5.03 (1) of this License, the Gross Sales (as defined in this License, mutatis mutandis) of that business shall be Gross Sales hereunder.
- c) The Licensee represents that this License will not offend or cause a breach of any restriction by which the Licensee is bound under any other License or lease as the case maybe.

**5.04 Compliance with Laws** – The Licensee shall promptly and at its own cost comply with all present and future laws, regulations and orders relating to, and obtain and maintain in force, all permits and licenses and registrations required for, any of the following:

- a) the occupation, use of and the conduct of any business in or from the Licensed Premises;
- b) the condition of the Licensehold Improvements, furniture and equipment installed therein;
- c) Pollutants and the protection of the environment so far as those laws, regulations and orders or any of them relate to the Airport; and
- d) the making by the Licensee of any repairs, changes or improvements therein; and shall immediately give written notice to the Licensor of the occurrence of any event in the Licensed Premises or in the Airport constituting an offence thereunder or being in breach thereof and, if the Licensee shall, either alone or with others, cause the happening of such event, the Licensee shall immediately give the Licensor notice to that effect and thereafter give the Licensor from time to time written notice of the extent and nature of the Licensee's compliance with the foregoing provisions of this Section.
- e) promptly remove Pollutants from the Licensed Premises in a manner which conforms with all laws and regulations governing the movement of same; and
- f) if requested by the Licensor, obtain at the Licensee's cost and expense from an independent consultant designated or approved by the Licensor a report verifying the complete and proper removal of Pollutants from the Licensed Premises or, if such is not the case, commenting on the extent and nature of any failure to comply with the foregoing provisions of this Section 5.04

The Licensee agrees that if the Licensor determines in its sole discretion that the Licensor, its property, its reputation or the Licensed Premises or any one or more of the foregoing is placed in any jeopardy, as determined by the Licensor, by the requirements for any work required to ensure compliance with the foregoing provisions of this Section 5.04, or the Licensee is unable to fulfill its obligations under this Section, the Licensor may itself undertake such work or any part thereof at the cost and expense of the Licensee who shall pay the cost of same within ten (10) days of the Licensor making demand for same.

The Licensee shall, at its own expense, remedy any damage to the Licensed Premises and in the Airport caused by such event or work or by the performance of the Licensee's obligations under this Section.

If alterations or improvements to the Licensehold Improvements or to the Licensed Premises are necessary to comply with any of the foregoing or with the requirements of insurance carriers, the Licensee shall forthwith complete such



work, complying always with the applicable provisions of this License, to the extent that it can be done within the Licensed Premises and in any event shall pay the entire cost of alterations and improvements required.

- 5.05 Prohibited Manner of Use** – The Licensee shall not commit, cause or permit any nuisance or any waste or injury to the Licensed Premises, the Airport or any of the Licensehold Improvements, merchandise or fixtures therein, any overloading of the floors of the Licensed Premises, any nuisance in or about the Licensed Premises or any use or manner of use causing annoyance to other licensees or occupants of the Airport. Without limiting the generality of the foregoing, the Licensee shall not use or permit the use of any portion of the Licensed Premises for any dangerous, illegal, noxious, odorous or offensive trade, business or occurrence. The Licensee shall keep the Licensed Premises and the Airport free of debris, Pollutants and anything of a dangerous, noxious, odorous or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or vibration, heat or noise noticeable outside the Licensed Premises. The Licensee shall not use equipment in the Licensed Premises in a manner that results in it being seen or heard outside the Licensed Premises.
- 5.06 Common Areas** – The Licensor agrees that the Licensee and its employees and invitees may use, in common with others entitled thereto, for their intended purposes during such hours as the Licensor may designate from time to time, and subject to the Rules and Regulations and Section 5.09 hereof, the common entrances, halls, malls, public seating areas, lobbies, washrooms, stairways, elevators and escalators (if any), designated loading bay and corridors of the Building giving access to the Licensed Premises and other Common Areas as the case may be. The Licensor shall have the right to use the Common Areas for purposes of display, merchandising, entertainment, special events, decoration, structures (permanent and temporary), public uses and other uses that do not unreasonably interfere with access to the Licensed Premises.
- 5.07 Rules and Regulations** – The Licensee shall observe and cause its employees and others over whom the Licensee can reasonably be expected to exercise control to observe the Rules and Regulations whether set out in Schedule D of this License or otherwise. The Licensor shall not be responsible to the Licensee for the non-observance of any rule or regulation or the terms of any License or agreement to be observed by any other Licensee or occupier of the Airport.
- 5.08 Signs** – The Licensee shall install and maintain at its cost an identification sign in the Licensed Premises fronting an interior wall and or the exterior entrance to the Licensed Premises, as the case may be, which shall be subject to the prior written approval of the Licensor, and shall be in accordance with the sign criteria established by the Licensor from time to time for the Building, and shall comply with all applicable by-laws, regulations and codes.

The Licensee shall not place any other sign or advertisement in the Airport so as to be visible from outside the Licensed Premises except with the prior written consent of the Licensor, which consent may be arbitrarily withheld or rescinded and established for the Building. Should the Licensor at any time object to any sign, symbol, notice, lettering or display either affixed to or visible from outside of the Licensed Premises, the Licensee shall remove the same forthwith at its cost, failing

which the Licensor may remove it on Licensee's behalf without liability except to the extent caused by Licensor's negligent acts.

The Licensee shall not install any lights, shades, awnings or decorations whatsoever or any means of sound production.

**5.09 Control by Licensor** – The Licensee agrees that the Licensor shall have control of the Airport and, without limiting the generality of anything contained elsewhere in this License, the Licensor hereby reserves the right to do, permit or perform any or all items set out in Sub-sections (a) to (i) of this Section 5.09 and may, from time to time:

- a) determine the business hours of the Airport and regulate access outside those hours and employ personnel, including supervisory personnel and managers, for the operation, maintenance and control of the Airport, and the Licensor may designate another Person or Persons to operate and manage the Airport or any part thereof;
- b) make such use of the Common Elements and permit others, including without limitation, the Concessionaires' Association and/or Promotion and Marketing Fund to use the Common Elements as the Licensor may from time to time determine (including without limitation the installation of kiosks of reasonable height) subject, in the case of use by others, to such terms and conditions and for such consideration as the Licensor may in its discretion determine, provided that such uses do not materially obstruct either access to, or visibility of, the Licensed Premises;
- c) close all or any part or parts of the Airport to such extent as may, in the opinion of the Licensor or any consultant engaged by the Licensor in that regard, be legally sufficient to prevent a dedication thereof or the accrual of rights therein to any Person or the public; grant modify and terminate easements and other agreements pertaining to the use and operation of the Airport or any part of it, and temporarily obstruct or close off or shut down part of the Airport for inspection, maintenance, repair, construction or safety reasons;
- d) renovate make repairs and replacements to expand or diminish the Common Elements and relocate the Common Elements, and the Licensed Premises in accordance with Section 6.07
- e) construct other buildings, structures or improvements in the Airport and make alterations of, additions to, subtractions from, or rearrangements of the Building, build additional stores in any part of the Airport, and construct additional storeys, buildings or facilities in, adjoining or near the Airport, enclose any open areas and add upwards and downwards from the main grade level;
- f) control public access to the Airport or any part parts thereof and in particular, but without limiting the generality of this Subsection, control such access by any Person (including, without liability to the Licensor, an employee or invitee of the Licensee) whose presence the Licensor or its agents consider detrimental to the Airport;

- g) control the employees' parking and vehicles belonging to the Licensee or its staff (including requiring the use of off-site parking) and levy charges for violations of the Licensors' directions or, in the alternative, have such vehicle(s) removed and the Licensee shall pay the cost of such removal immediately upon demand; and the Licensor reserves the right to charge the Licensee and their staff for on-site parking privileges;
- h) regulate delivery of goods to and from the Airport and any part thereof and all aspects of garbage collection and disposal. The Licensee is responsible for pickup and disposal of its garbage at its cost. If the Licensor provides facilities or designates a commercial service for the pickup and disposal of garbage instead of, or in addition to, the service provided by the local municipality, the Licensee will use such facilities and commercial service at its cost. As well, the Licensee covenants and agrees to comply with any and all garbage collection, disposal, recycling, reduction and reuse programmes (hereinafter referred to as the "Programmes" in this Subsection (h) and the Licensee acknowledges and agrees that should the Licensee not comply with such Programmes the Licensor may at its option, after charging the Licensee with Twenty Five Hundred United States Dollars (\$2,500.00) per infraction of such Programmes, which penalty fee is due and owing to the Licensor by the Licensee as Additional Fee ; and
- i) do and perform such other acts in and to Airports as, in the use of good business judgment, the Licensor determines to be advisable for the proper operation of the Airport.

However, the Licensor shall not be obliged to do so; and having done so the Licensor shall not be obliged to continue to do so; and by doing so the Licensor shall not be deemed to be in default under its covenant for quiet enjoyment; nor shall the same constitute an eviction of the Licensee or entitle the Licensee to any abatement of Fee or release the Licensee from any of its obligations under the License.

the Licensor reserves the right to maintain and use pipes, wires and conduits installed in the Licensed Premises at the commencement of the Term in connection with the operation of the Airport and the right to remove the same in whole or in part, to add such pipes, wires and conduits, and to alter, improve or protect the same, all from time to time, as the Licensor may consider necessary or advisable.

#### **5.10 Promotion and Marketing**

- a) **Concessionaires' Association** – If required by the Licensor, the Licensee will join with the Licensor and other Licensees in the incorporation of an Association of Concessionaires in the Airport (the "Concessionaires' Association") and thereafter during the term will be a member thereof in good standing and will abide by its constitution, rules and regulations and pay the dues levied by it. The Licensee will not join any association constituted substantially of concessionaires in the Airport except one designated by the Licensor.
- b) **Promotion and Marketing Fund** – The Licensee will budget for an annual payment (the "Marketing Payment") stipulated at Item 12 of the Term Sheet for each License Year for the creation and maintenance of a fund (the "Promotion and Marketing Fund") to be used as indicated by the Licensor in a reasonable manner for the promotion and marketing of the businesses located in the Airport

and, if a Concessionaires' Association is formed, the Licensor may pay all or part of the Promotion and Marketing Fund to it, otherwise, to the Licensor. The Marketing Payment will be made in monthly installments in advance, on the first day of each calendar month and if a fiscal Year is less than 12 months, the Marketing Payment will be pro-rated on a per diem basis based on 365 days.

- c) **Printed Promotions** – the Licensee shall promote the name of the Licensor and/or Sangster International Airport from time to time designates for the Airport by including such name in Licensee's promotional materials in connection with its business conducted in or from the Licensed Premises, all in such style or script as the Licensor may designate.
- d) **Licensee's Support** – Licensee shall participate in and support all promotional events and activities sponsored or participated in by the Licensor, the Promotion and Marketing Fund or the Concessionaires' Association, in connection with the Airport.

**5.11 Franchise** – The Licensee shall not operate its business in the Licensed Premises as a franchise except as disclosed to and agreed to by the Licensor in advance. If the Licensee shall conduct its business in or from the Licensed Premises under any franchise agreement as a franchisee, the Licensee shall:

- a) provide to the Licensor concurrently with delivery of this License to the Licensor executed by the Licensee, written confirmation by the franchisor that the franchise agreement has been executed and delivered and state the Term and confirming the name under which the Licensee will operate;
- b) keep the franchise agreement in good standing during the whole of the Term;
- c) not surrender the franchise agreement or cause or allow it to be terminated prior to the expiry of the Term; and
- d) not exercise any option to renew this License unless the term of the franchise agreement shall continue until the end of the renewal term.

**5.12 Overloading** – The Licensee will not install equipment that overloads the capacity of any utility or of any electrical or mechanical facility or which may exceed the load-bearing capacity of the floors of the Airport.

**5.13 Authorization of Enquiries** – The Licensee authorizes the Licensor to make enquiries from time to time of any government or governmental agency with respect to the Licensee's compliance with all laws and regulations pertaining to the Licensee, the Licensee's business and the Licensed Premises. The Licensee will from time to time provide such written authorization with respect thereto as the Licensor may reasonably require.

**ARTICLE 6.00**  
**Services, Maintenance, Repair**  
**and Alterations by the Licenser**

**6.01    Operation of Airport**– During the Term, and as long as no Event of Default shall exist, and as long as no event shall occur which with the passage of time or the giving of notice or both would constitute an Event of Default, the Licenser shall operate and maintain the Airport in accordance with applicable laws and regulations and standards from time to time prevailing.

**6.02    Maintenance, Repair and Replacement** – The Licenser shall operate, maintain, repair and replace the systems, facilitates and equipment necessary for the proper operation of the Airport (except as may be installed by or be the property of the Licensee) the cost of which shall be included in the Licensee's Occupancy Costs and shall maintain and repair the foundations, structure and structural component of the roof of the Building and repair damage to the Building which the Licenser is obligated to insure against under Article 9.00.

**6.03    Alterations by Licenser** – The Licenser may from time to time:

- a) make repairs, replacements, changes or additions to structure, systems, facilities and equipment in the Licensed Premises where necessary to serve the Licensed Premises or other parts of the Airport;
- b) make repairs, replacements, changes or additions in the exercise of its right(s) under Section 5.09

The Licenser in doing any or all of the foregoing may, without liability to the Licensee, but only as far as is reasonable, temporarily disturb or interfere with the Licensee's use or occupation of the Licensed Premises, the operation of its business therein, access thereto and egress therefrom or the services and utilities provided by the Licenser. The Licenser shall repair any damaged to the Licensed Premises caused thereby. No such work shall constitute an eviction or a breach of the Licenser covenant for quiet enjoyment or entitle the Licensee to any abatement of Fees.

**6.04    Access by Licenser** – The Licensee shall permit the Licenser to enter the Licensed Premises at any time outside normal business hours in case of an emergency and otherwise during normal business hours as the Licenser may reasonably require: (a) to examine, inspect and show the Licensed Premises for purposes of Licensing, sale or financing; (b) to examine any goods in Licensed Premises and to take samples of any goods which the Licenser or its servant or agent may consider or suspect to be a Pollutant; (c) to make repairs, replacements, changes or alterations as provided for this License; (d) to take such steps as the Licenser may deem necessary for the safety, improvement or preservation of the Licensed Premises or the Airports; and (e) for purposes of inspection pursuant to Section 7.05 and Subsection 9.06(3) hereof. No such entry shall constitute a breach of the Licenser's covenant for quiet enjoyment or entitle the Licensee to any abatement of Fees.

**6.05    Energy Conservation** – The Licenser shall not be in default of its obligations under this License if it acts in accordance with a directive, policy or request of an authority having jurisdiction with respect to energy conservation, security or environmental matters.

**6.06 Supervision and Extended Services** – The Licensor may supervise any work done by the Licensee in the Licensed Premises and the moving of heavy articles. In each case, the Licensee will pay the Licensor's costs and expenses together with a reasonable administration fee promptly upon receipt of invoices.

**6.07 Relocation by Licensor** – The Licensor reserves the right to change the location of the Licensed Premises within the Airport for any purpose, which in the Licensor's sole opinion, will benefit the airport. The premises to which the Licensee is relocated shall be referred to herein as the "new Premises. If the Licensor exercises this right to relocate, then:

- a. Fees may be adjusted for the new Premises.
- b. the Licensor shall use reasonable efforts to relocate the Licensee in premises of comparable size to the Licensed Premises;
- c. During the period of relocation, no Fee shall be payable for the period of time, if any, during which the Licensee is unable to carry on business with the public in the Airport;
- d. the exercise by the Licensor of its right to relocate granted hereunder shall be without recourse by the Licensee for any losses, costs or expenses which the Licensee may incur or suffer except as provided in this Section 6.07;
- e. the Licensee shall re-use in the new Premises any of the Licensehold improvements which are at least equal in quality to the standards for like businesses in new stores then prevailing in the Airport;
- f. the Licensor shall pay to the Licensee provided the Notice of Relocation (as hereafter defined) is given during the initial Term, an amount in respect of the Licensee's undepreciated capital cost of Licensehold Improvements. Licensee's undepreciated capital costs of such Licensehold Improvements shall be the actual initial cost to Licensee of purchase, construction and installation of all Licensehold Improvements not reused or sold, calculated on a straight-line basis from the date of initial installation to the end of the initial Term minus any resale value of Licensee's Trade Fixtures, any costs of renovation within the initial Term, the amount or cash value to Licensee of all inducements, if any, given to Licensee upon Licensee entering into this License whether such inducements were in the form of cash, free or reduced fee , fixturing allowance or otherwise. The Licensee shall provide to the Licensor particulars of any amount the Licensee claims under this Subsection and evidence of the expenses on which the claim is founded. The amount payable under this Subsection shall become payable fourteen (14) days after the Licensee has provided such calculation and evidence to the Licensor or when the Licensee executes and delivers the New License provided for in Subsection 6.07(j) or when the Licensee opens for business with the public in the new Premises, whichever last occurs (the "Payment Date");

- g. the Licensee shall not pay the Licensors' charges provided for in Schedule C with respect to the Licensee's work in the construction and installation of the Licensee's Leasehold improvements in the new Premises; and
- h. the Lessor and the Licensee shall execute and deliver either a License or other form of documentation which the Lessor, in its sole discretion, deems appropriate (the New License") for the new Premises, which License shall provide for a thirty (30) day fixturing period ending on and including the date so specified for termination of this License, and have a term equal to the remainder of the Term granted hereby and which License shall contain the same terms and conditions as this License, or those terms and conditions contained in the standard document then being used by the Lessor, subject only to changes made necessary by this Section 6.07 and an appropriate description of the new Premises and upon execution of the New License, the Lessor and the Licensee shall release one another from any further obligation under this License except that any default with respect to the payment of Fee under this License shall continue as a default under the New License until paid.

If the Licensee by notice in writing to the Lessor within fifteen (15) days of receipt by the Licensee of the Notice of Relocation advises that it will not, acting reasonably, accept the new Premises and if there are no alternate Licensed Premises available and/or acceptable then either the Lessor or the Licensee may, within sixty (60) days after the date specified in service of the Notice of Relocation by the Lessor hereunder, terminate this License with effect on the date specified in the Notice of Relocation by giving written notice of termination to the other it being understood and agreed between the parties that in the event the Licensee does not relocate, for any reason whatsoever, the Lessor shall not be liable or obligated to compensate the Licensee for any claim or loss occasioned by the Licensee except that the Lessor shall reimburse the Licensee for the unamortized portion of the Licensee's investment in the Licensed Premises if the License is terminated.

**6.08 Interruption** - The Lessor's obligations under this Article 6.00 are subject to the following limitations and restrictions:

- a) if and so long as all or part of the systems, facilities and equipment in the Airport or the supply of utilities to the Airport are destroyed, damaged or interrupted, the Lessor shall have a reasonable time in which to complete any necessary repair or replacement and shall only be required to maintain such services as are reasonably possible in the circumstances;
- b) the Lessor shall use reasonable diligence in carrying out its obligations under Section 6.01, 6.02 and 6.03, but shall not be liable under any circumstances for any consequential damages, whether direct or indirect to any Person or property for any failure to do so;
- c) no reduction or temporary discontinuance of services under this Article 6.00 shall be construed as breach of the Lessor's covenant for quiet enjoyment or as an eviction of the Licensee or entitle the Licensee to any abatement of Fee or release the Licensee from any obligation under this License;

- d) The Licensors shall have no responsibility for any inadequacy of performance of any systems within the Licensed Premises if the Licensed Premises depart from the design criteria for such systems as established by the Licensors for the Building;
- e) Nothing contained in this Article 6.00 shall derogate from 10.00; and
- f) The Licensors shall not be required to expend more upon repair of damage to the Building which the Licensors is obliged to insure under Article 9.00 than the proceeds of insurance actually received by the Licensors.

**ARTICLE 7.00**  
**Payments for Services, and Maintenance, Repair and**  
**Alterations by Licensee**

**7.01 Utilities** -Licensee shall pay for all utilities provided to the Licensed Premises.

(a) The charges applied by the Licensors for the Licensee's electricity consumption shall be the same as the rates at which Licensee would purchase that utility directly from the utility company and otherwise based on all other relevant factors including, but not limited to, the hours of use, number and types of equipment and the proportion of the Licensable Area of the Licensed Premises to the Licensable Area of all premises to which the common meter relates. Upon receipt of the Licensors' statement of apportionment, Licensee shall promptly reimburse the Licensors for all amounts apportioned to Licensee by the Licensors. The Licensors may elect by notice to Licensee to estimate the amount, which will be apportioned to Licensee. Licensee will pay that amount in monthly installments on the due date for payment of MAG.

The Licensee shall upon the Licensors's request, install a separate utility meter or meters in the Licensed Premises at the Licensee's expenses. There is no obligation on the Licensors to install separate meters.

The Licensee shall not, without the prior written approval of the Licensors, which may be unreasonably withheld, install or cause to be installed in the Licensed Premises any equipment that will require additional utility usage in excess of that normally required for a retail business.

(b) In addition to the payments to the Licensors required by Article 7.01(a), the Licensee shall pay all rates, charges, costs and expenses as may be assessed or levied by any supplier of utilities.

**7.02 Ventilating and Air-Conditioning**

- a) The Licensors shall be entitled to regulate those parts of the ventilating and air-conditioning facilities within the Licensed Premises (including the distribution system for the Licensed Premises) that are not part of the Common Elements so as to maintain reasonable conditions of temperature and humidity within the Licensed Premises and to avoid direct or indirect appropriation of ventilating or air-conditioning from the Common Elements. The Licensee shall be responsible for all and maintenance to the Ventilating and Air-Conditioning equipment



located within the Licensed Premises, including but not limited to any variable air volume valve, thermostat or fan coil unit; and any items (including but not limited to booster units and make-up air units) installed by or on behalf of Licensee that are located outside the Licensed Premises will be maintained solely by the Licensor at the expense of Licensee, and Licensee will pay to the Licensor an administration fee of fifteen percent (15%) of that expense.

- b) The cost of maintaining, repairing and replacing exhaust systems or make-up air systems that serve more than one licensee will be allocated by the Licensor amongst the Licensees using them in accordance with the recommendations of the Licensor's engineer.
- c) The Licensee will pay, monthly in advance, the charges under Schedule "G".

**7.03 Alterations by Licensee** – The Licensee may from time to time at its own expense make changes, additions and improvements to Licensed Premises to better adapt the same to its business, provided that any change, addition or improvement shall:

- a) comply with the requirements of the Licensor's insurer;
- b) be made only after detailed plans and specifications thereof have been submitted to the Licensor and the Licensee receives the prior written approval of the Licensor to proceed with such changes, additions and improvements ;
- c) equal or exceed the then current standard for the Building and shall conform to the Licensor's then current Licensee Design Criteria;
- d) be carried out only by persons selected by the Licensee and approved in writing by the Licensor who shall, if required by the Licensor, deliver to the Licensor ten (10) days before commencement of the work, performance and payment bonds as well as proof of workers' compensation and public liability and property damage insurance coverage, with the Licensor named as an additional insured, in amounts, with companies and in form reasonably satisfactory to the Licensor, all of which shall remain in effect during the entire period in which the work will be carried out;
- e) to the extent that they relate to systems of the Building, at the Licensor's discretion be done by the Licensor or its contractors at the expense of the Licensee;
- f) not require the Licensor to do any work or incur any expense except as the Licensor may approve; and
- g) be made only after the Licensee has provided to the Licensor evidence of all requisite permits and licenses and any other information reasonably required by the Licensor.
- h) The Licensee shall supply the Licensor with one complete and accurate copy in such form as prescribed from time to time by the Licensor (which may include USB flash drive) of the as-built drawings of any work performed by or on behalf of the Licensee no later than thirty (30) days following the completion of such work.

The application provisions of Parts I and III of Schedule C shall govern any work performed by the Licensee pursuant to Section 7.03, mutatis mutandis.

**7.04 Maintenance and Repair** – Subject to Article 10.00 hereof, the Licensee shall at its cost, maintain the Licensed Premises in a first class condition. The obligation includes but is not limited to, repainting and redecorating the Licensed Premises at reasonable intervals, making repairs and replacements to plate glass, store fronts, signs (interior and exterior) mouldings, doors, hardware, partitions, wall, fixtures, lighting and plumbing fixtures, wiring, piping, ceiling, floors and thresholds therein and maintaining, repairing and replacing all operating equipment in the Licensed Premises unless it forms part of the Common Elements.

**7.05 Inspection** – The Licenser may from time to time enter upon the Licensed Premises:

- a) to inspect the Licensed Premises and their condition;
- b) to inspect any work being done by the Licensee; and
- c) to inspect for purposes set out in Subsection 9.06(3).

The Licensee shall, at its own cost, make good any deficiency in the condition of the Licensed Premises or in such work. If the Licenser or its agents shall determine that the work being done by the Licensee is in breach of this License or fails to comply with the requirements of this License in any respect, the Licensee shall forthwith remedy such breach or failure to comply and shall desist from continuing the same.

**7.06 Liens** - The Licensee shall pay promptly when due all costs for work done or caused to be done or goods affixed by the Licensee in the Licensed Premises which could result in any lien or encumbrance on the Licenser's interest in the Airport or any part thereof, or the filing or registration of any security interest or notice thereof and shall keep the title to the Airport, including the Licensed Premises and every part thereof and the Licensehold Improvements, free and clear of such lien or encumbrance or security interest or notice thereof; and shall indemnify and hold the Licenser harmless against any Claims arising out of the supply of goods, materials, services or labour in connection with the work done or caused to be done or goods affixed by the Licensee at the Airport. The Licensee shall immediately notify the Licenser of any lien, encumbrance, claim of lien, security interest, or notice thereof or other action of which it has, or reasonably should have, knowledge and which affects the title to the Airport or any part thereof, or Licensed Premises or any part thereof, and shall, at its own expense, cause the same to be removed and discharge any such lien, encumbrance, claim of lien or security interest. If Licenser bears the said cost the Licensee shall pay to the Licenser, on demand, the amount so paid and all the Licenser's cost (including legal fees) in connection therewith. The Licensee shall not affix or cause to be affixed to the Licensed Premises or the Airport any goods acquired under conditional sale or with respect to which any lien, encumbrance or security interest exists. The Licenser may from time to time post such notices in such places on Licensed Premises as the Licenser considers advisable to prevent or limit the creation of any liens upon the Airport or any part thereof.

**7.07 Roof** – The Licensee shall not be entitled to install upon the roof of the Building any equipment, signs, satellite dishes or other fixtures for communications except as consented to in writing by the Licenser and then only on the terms and conditions

imposed or approved by the Licensors in writing, all of which the Licensee hereby agrees to perform, observe and comply with.

## **ARTICLE 8.00**

### **Taxes**

**8.01 Taxes Payable by the Licensors** – the Licensors covenants and agrees to pay all Taxes assessed against the Licensors or the Airport on account of its ownership thereof when due (except for Taxes payable directly to the taxing authority by the Licensee under Subsection 8.02) and subject to the provision hereafter contained in this Article 8.00. Provided however, that the Licensors may defer payment of any such Taxes or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levy of such Taxes in each case to the fullest extent permitted by law as long as its shall diligently prosecute any contest or appeal of such Taxes.

**8.02 Taxes Payable by Licensee** – The Licensee shall promptly pay, when due to taxing authority or the Licensors at the Licensors's direction every Tax upon or account of the following:

- a) any Taxes imposed or assessed against or in respect of the personal property and Licensehold Improvements of the Licensee in the Licensed Premises or in respect of any business operations carried on or in respect of the use or occupancy thereof by the Licensee or any sublicensee of the Licensee, if levied or assessed separately from Taxes upon the remainder of the Airport and referred to herein as "Business Taxes".

The Licensee agrees to provide to the Licensors within three (3) days of receipt thereof, an original or duplicate copy of any separate Tax bill.

In the event that there shall not be a separate assessment and separate tax bill for Business Taxes levied in respect of the Licensed Premises, the Licensee shall at the same time as MAG pay the Licensee's Share of Taxes which may be assessed, levied, rated, or imposed against the Airport. The Licensee shall deliver promptly, upon request of the Licensors, receipts for all such payments and will furnish such other information as the Licensors may require.

**8.03 Tax Increases Attributable to Licensee** – If taxes are greater than they otherwise would have been by reason of the constitution or ownership of the Licensee, the use of the Licensed Premises by the Licensee, any election by the Licensee, or any other reason peculiar to the Licensee, the increase attributable to such reason, as determined by the Licensors, shall be paid by the Licensee to the Licensors fifteen (15) days prior to the due date for payment thereof by the Licensors, in addition to Taxes otherwise payable by the Licensee under this License.

**8.04 GCT** – The Licensee shall pay the Licensors the amount of all GCT accruing due with respect to Fees no later than the due date for payment thereof by the Licensee under the relevant laws and regulations. The Licensee's obligations to pay GCT under this section shall not be limited or precluded by any limitation contained in this License upon the Licensors's right to recover or receive payment from the Licensee of taxes upon the Licensors's income or profits or otherwise.

**8.05 Licensor's Election** – Notwithstanding that any Tax (including without limitation, any of the foregoing payable by the Licensee under Section 8.02) may be separately imposed, levied, assessed or changed by the appropriate authority for or in respect of the Licensed Premises and other portions of the Airports, the Licensor may elect that such Tax be added to the Licensee's Occupancy Costs and the Licensor may in its absolute discretion allocate such amounts amongst the Licensees of the Airport and the amount allocated to the Licensee shall form part of the Licensee's Occupancy Costs.

**8.06 Right to Contest** – The Licensor shall have the right to contest in good faith the validity or amount of any tax, rate, levy, assessment, fee or other charge which, the Licensor is responsible to pay under Section 8.01. The Licensor may defer payment of any taxes payable by it pursuant to section 8.01.

The Licensee, if legally entitled to do so, may contest in good faith the validity or amount of any Tax for which it is responsible to pay under Section 8.03 and for which it is separately assessed. The Licensee may, upon notice to the Licensor, defer payment of any taxes payable by it pursuant to Section 8.02 for which it is separately assessed, in each case to the extent permitted by law; provided the no contest by the Licensee shall not involve the possibility of forfeiture, sale or disturbance of the Licensor's interest in the Licensed Premises or the imposition of any penalty or interest, charge or lien and that, upon the final determination of any contest by the Licensee, the Licensee shall immediately pay and satisfy the amount found to be due, together with any costs, penalties and interest. If as a result of any contest by the Licensee, any tax, rate, levy, assessment, fee or other charge is increased, the Licensee shall be responsible for the full amount of such increase in respect of both the period to which the contest relates and to any subsequent tax periods which commence during the term.

The Licensee shall not contest any taxes payable by it or appeal any assessment therefore except that, in each case, the Licensee:

- a) will deliver to the Licensor any notices of appeal or other like instrument and obtain the Licensor's consent thereto, which consent will not be unreasonably withheld, before filing the same;
- b) will deliver whatever security the Licensor may reasonably require;
- c) will promptly and diligently prosecute the appeal at its sole expense; and
- d) will keep the Licensor fully informed.

## **ARTICLE 9.00**

### **Insurance, Liability and Environmental**

**9.01 The Licensor's Insurance** – During the term, the Licensor shall place insurance coverage on and with respect to the Airport excluding the area(s) to be insured by the Licensee as set out in Section 9.02, which coverage shall include the following, if available at reasonable cost in the opinion of the Licensor:

- (a) all risks insurance for all full reconstruction value of the Airport, excluding Licensehold Improvements, as determined by the Licensor;

- (b) as an extension to the insurance maintained pursuant to Subsection 9.01(a), insurance on the License fee income derived by the Licenser from the Airport on a gross License fee income form with a period of indemnity of not less than the period as estimated by the Licenser from time to time which would be required to rebuild and, if necessary, to re-licensee the Airport in the event of the complete destruction thereof;
- (c) comprehensive general liability insurance; and
- (d) such other insurance which is or may become customary or reasonable for owners of projects similar to the Airport to carry in respect of loss of, or damage to, the Airport or liability arising therefrom.

The insurance referred to in this Section shall be carried in amounts determined reasonably by the Licenser. The insurance shall be written in the name of the Licenser with loss payable to the Licenser and to any mortgagee (including any trustee under a deed of trust and mortgage) of the Airport from time to time. The Policies of insurance referred to in Subsections 9.01(a), (b), (d) and (e) shall contain a waiver of the insurer's right of subrogation as against the Licensee. The Licenser hereby waives its right of recovery against the Licensee, its employees and those for whom the Licensee is in law responsible with respect to occurrences required to be insured against by the Licenser hereunder.

Notwithstanding any contribution by the Licensee to insurance premiums as provided for in this License, no insurable interest is conferred upon the Licensee under policies carried by the Licenser. Except as specifically provided in this License, the Licenser shall in no way be accountable to the Licensee regarding the use of the insurance proceeds arising from any claims and shall be under no obligation to show the Licensee proof of the placement of any insurance coverage referred to herein.

**9.02 Licensee's Insurance** – At its own expense the Licensee shall take out and thereafter maintain in force at all times during the Term and at all times when the Licensee is in possession of the Licensed Premises insurance policies as follows:

- a) all risks insurance or Licensehold Improvements and on all other property of every description, nature and kind owned by the Licensee or for which the Licensee is legally liable, which is installed, located or situate within the Licensed Premises or elsewhere in the Airport, including without limitation, all inventory or stock-in-trade in an amount not less than the full replacement cost thereof without deduction for depreciation; such insurance shall be subjected to a replacement cost endorsement and shall include a stated amount co-insurance clause and a breach of conditions clause;
- b) comprehensive or commercial general bodily injury and property damage liability insurance to respond to any and all incidents occurring in the Licensed Premises in the minimum amount One Million United States Dollars (US\$1,000,000.00), per occurrence including the following extensions: owners and contractors protective; limited pollution coverage endorsement; that is "sudden and accidental pollution or contamination" products and completed operations; personal injury; occurrence basis property damage; blanket contractual and non-owned automobile liability; such insurance shall include the Licenser and the Licenser's agent and nominee (if any) as named additional insured, and shall

protect and indemnify the Licenser and the Licenser's agent and nominee (if any) in respect of Claims by the Licensee as if the Licenser and the Licenser's agent and nominee (if any) were separately insured; such insurance shall include cross liability and severability of interest clauses;

- c) machinery insurance, if applicable, including repair or replacement endorsement in an amount satisfactory to the Licenser and providing coverage with respect to all objects introduced into the Licensed Premises by or on behalf of the Licensee or otherwise constituting Licensehold Improvements;
- d) plate glass insurance on all internal and external glass within or fronting the Licensed Premises; however, notwithstanding the foregoing, the Licensee may elect to self-insure for the insurance described in this Subsection 9.02(d);
- e) business interruption insurance on the profit providing all risks coverage with a period of indemnity of not less than twelve (12) months and subject to a stated amount co-insurance clause; and
- f) any other form of insurance of insurance in such amounts and against such risks as the Licenser may from time to time reasonably require.

The Licensee acknowledges and agrees that it shall be solely responsible for insuring the Licensehold Improvements, its equipment and stock and any other property owned or brought into the Licensed Premises by the Licensee whether affixed to the Building or not.

The insurance policies referred to in this Section be subject to such higher limits as the Licensee, or the Licenser acting reasonably, or any mortgagee of the Licenser's interest in the Airport may require from time to time. The policies of insurance referred to in Sub-Section 9.02(a), (b), (c), (d) and (e) shall contain a waiver of the insurer's right of subrogation as against the Licenser. The Licensee hereby waives its right of recovery against the Licenser, its employees and those for whom the Licenser is in law responsible with respect to occurrences required to be insured against by the Licensee hereunder. Any and all deductibles in the Licensee's insurance policies shall be borne solely by the Licensee and shall not be recovered or attempted to be recovered from the Licenser. In addition, all such policies shall be non-contributing with, and will apply only as primary and not excess to, any insurance proceeds available to the Licenser.

The Licensee shall provide to the Licenser at the commencement of the Term and at least thirty (30) days prior to the renewal of all insurance referred to in this Section 9.02, and promptly at any time upon request, a certificate of insurance evidencing the insurance coverage maintained by the Licensee in accordance with this Section 9.02. The delivery to the Licenser of a certificate of insurance or any review thereof by or on behalf of the Licenser shall not limit the obligation of the Licensee to provide and maintain insurance pursuant to this section 9.02 or derogate from the Licenser's rights if the Licensee shall fail to fully insure.

All policies shall provide that the insurance shall not be cancelled or changed to the prejudice of the Licenser without at least thirty (30) days prior written notice given by the insurer to the Licenser. All policies of insurance shall be placed with a company licensed to sell commercial insurance in Jamaica.

The Licensee acknowledges and agrees that, if it fails to obtain and maintain in force any of the insurance set out in this Section 9.02, then the Licensee shall indemnify the Licenser in full with respect to the total costs and or losses arising therefrom.

**9.03 Placement of Licensee's Insurance by the Licenser** – If the Licensee fails to place or maintain all or any of the insurance coverage referred to in Section 9.02, the Licenser may, at its option, place all or any part of such insurance in the name of or on behalf of the Licensee and the Licensee shall pay to the Licenser upon demand all costs incurred by the Licenser in so doing including, without limitation, the premium or premiums for such insurance together with the Licenser's administrative fee of fifteen (15%) percent of such premium.

**9.04 Dangerous Use** – Licensee shall not do, omit or permit anything which will increase the cost of the Licenser's insurance or render any insurance on or relating to the Airport subject to cancellation; and Licensee pay to the Licenser upon demand the amount of any increase in the cost of insurance caused by anything so done, omitted or permitted. Licensee shall forthwith upon request comply with requirements of the Licenser's insurers, cease any activity complained of and make good any circumstance which has resulted in an increase in insurance premiums or the cancellation of an insurance policy.

**9.05 Limitation of the Licenser's Liability** – The Licenser, the Licenser's Agents and employees and any Person for whom it or they are in law responsible shall not be liable under any circumstances for any damage caused by anything done or omitted to be done by the licensee of the Airport or any damage resulting from the exercise of the Licenser's control over the Airport or any part thereof except to the extent caused by the Licenser's negligent acts.

**9.06 Environmental Issues**

- a) **The Licenser's Requirements** – The Licensee shall maintain in the Licensed Premises or Airport only those Pollutants set out in Schedule H hereto, and if requested at any time or time to time by the Licenser during the Term, provide the Licenser with a list indicating the type, quantity and purpose of such Pollutants set out in Schedule H. The Licensee shall notify the Licenser in writing of any proposed changes to schedule H and the Licensee must receive the Licenser's prior written consent to any such changes, which consent may be arbitrarily withheld. It is expressly prohibited for the Licensed Premises to be used for the sale, transport, transfer, production, storage, manufacture, processing, packaging of, or other dealing with, any Pollutants except if, and so long as, approved by the Licenser in writing (which approval may be withdrawn at any time notwithstanding any provision of this License or the Term Sheet) and whenever such approval is given, such sale, transport, transfer, production, storage, manufacture, processing, package thereof, or other dealing therewith, shall be only in accordance with the written directions of, and conditions imposed by, the Licenser from time to time, and any present or future governmental requirements. The Licensee shall immediately notify the Licenser of the existence of any Pollutants in the Airport of which it becomes aware.

**b) Licensee's Inspection of Goods** – The Licensee shall inspect all goods delivered to the Licensed Premises and will ensure that no Pollutants are brought into the Licensed Premises by or for the Licensee or its employees, Licensees, agents or invitees or into any other part of the Airport by or for it or them except in each case, pursuant to and

is, in accordance with Subsection 9.06(1) or with the Licensors's prior written consent. The Licensee shall at its own cost cause any goods, the nature of which is not known to the Licensee with certainty, to be tested by a qualified Person to determine whether they are or contain any Pollutant before accepting the same into the Licensed Premises or on the Airport. If the Licensee is found to be in breach of the requirements of this subsection 9.06(2), the Licensors may, on the behalf of the Licensee, rectify such breach and the Licensee shall promptly reimburse the Licensors for the cost of any test, analysis or inspection of goods in Licensed Premises and the Airport which are, or which the Licensors has reason to suspect, may be or contain a Pollutant.

**c) Governmental Requirements** – If, during the Term or any renewal or extension of this License, any governmental authority having jurisdiction shall require the clean-up of any Pollutants held, released, abandoned or placed upon the Licensed Premises or the Airport or released into the environment by the Licensee or any Person for whom the Licensee is in law responsible in the course of the Licensee's business or as a result of the Licensee's use or occupancy of the Licensed Premises, whether during the Licensee's occupancy of the Licensed Premises or any other premises in the Licensee shall, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work required and shall provide to the Licensors full information with respect to proposed plans and comply with the Licensors's reasonable requirements with respect to such plans. The Licensee agrees that if the Licensors determines, in its own discretion, that the Licensors, its property, its reputation or the Airport is placed in any jeopardy by the requirement for any such work, the Licensors may itself undertake such work or any thereof at the cost and expense of the Licensee. The Licensee is required to return the property in just or better condition as originally delivered to the Licensee.

**9.07 Environmental Covenants** – In addition to and without restricting any other obligations or covenants herein, the Licensee covenants that it will:

- a) comply in all material respects with all Environmental Laws (including, but not limited to, obtaining any required permits, licenses or similar authorizations) relating to the Licensed Premises or the Airport or the use of the Licensed Premises or the Airport by the Licensee; and
- b) promptly notify the Licensors in writing of any charges laid by any governmental authority alleging violation of any Environmental Laws including, but not limited to, spills or releases of Pollutants relating to the Licensed Premises or Airport or the operations therein and of any notice by any governmental authority alleging or concerning violation of, or imposing requirements or asserting responsibility under, or pursuant to, any Environmental Laws, and of any order made by any environmental authority against the Licensee. The Licensee shall also promptly notify the Licensors in writing of any notice received by it from any other third party concerning any release or alleged release of any Pollutant from the Licensed Premises. The Licensee undertakes to notify the appropriate authority and failure by the Licensee to do so shall authorize but not obligate the Licensors to notify the said regulatory authorities; and



- c) permit the Licensors to enter and inspect the Licensed Premises and the Licensee's operations; conduct tests and environmental assessments or appraisals; remove samples from Licensed Premises; examine and make abstracts from and copies of any documents or records relating to Licensed Premises; and interview the Licensee's employees all at such reasonable times and intervals as the Licensors may desire; and
- d) not cause or permit any dumping of pollutant on the surface, water, land etc. specifically require that material be collected or disposed of, off site in compliance with the Environmental Laws, not cause or permit a release at or from the Licensed Premises of any Pollutants except in compliance with Environmental Laws or the Licensors' criteria and guidelines and not seek or permit at any time during the Term of this License to dispose of any Pollutants in the Licensed Premises and/or Airport without the prior written approval of the Licensors to do so. In the event of an accidental spill, the Licensee will notify the Licensors promptly;
- e) not permit any Person to engage in any activity on the Licensed Premises that may reasonably be anticipated to lead to a violation of any Environmental Laws or the imposition or assertion of liability or responsibility under any Environmental Laws on such Person, the Licensee or the Licensors, including, without limitation, the issuance of an order; and
- f) upon expiration or termination of the License or any renewal thereof remove promptly from the Licensed Premises any Pollutants brought unto the Licensed during the Term of the License or any renewal thereof or used or released by the Licensee on the Licensed Premises (or if removal such Pollutants is prohibited by any Environmental Laws, the Licensee shall take whatever action is required to ensure compliance with any Environmental laws) in accordance with any Environmental Laws; and
- g) upon expiration or termination of this License, make good any and all damage caused by spills, leakage, etc. from any aboveground or underground storage tanks, pipes and other equipment associated therewith, including but not limited to any product which is in and or has escaped from such tanks, installed at the Licensed Premises by or on behalf of the Licensee, or used by the Licensee; and
- h) upon expiration or earlier termination of this License or any renewal or extension thereof, remove by excavation or other method approved by the Licensors in its sole discretion, all Pollutants which have been spilled or otherwise released at or from the Licensed Premises and /or the Airport and make good any all damage caused by such removal and all testing etc. is at sole cost of the Licensee. Provide proof, to the Licensors at the expiration or during the term of the License of the cleanliness of the premise; and
- i) promptly provide to the Licensors a copy of any environmental site assessment of the Licensed Premises conducted by or for the Licensee at any time during the Term of the License or any renewal thereof; and

- j) maintain all environmental and operating documents and records, including but not limited to permits and orders relating to the Licensee's operations at the Licensed Premises in the manner and for the time periods requires by any Environmental Laws which may be reviewed by the Licenser at any time during the term on twenty-four (24) hours' prior written notice, excepting emergencies, whether real or perceived.

**9.08 Environmental Indemnification** – The Licensee shall indemnify and hold the Licenser harmless at all times from and against any and all loss, damages, penalties, fines, costs, fees, and expenses (including legal fees on a attorney and client or substantial indemnity basis and Consultant's fees and expenses) resulting from:

- a) any breach of or non-compliance with the foregoing environmental covenants of the Licensee; and
- b) any legal or administrative action commenced by, or claim made or notice from, any third party, including, without limitation, any governmental authority, to or against the Licenser and pursuant to or under any Environmental Laws or concerning a release or alleged release of Pollutants at the Licensed Premises into the environment and related to or as a result of the operations of the Licensee or those acting under its authority or control at the Licensed Premises, and any and all cost associated with air quality issued, if any.

#### **9.09 General Requirements**

- a) Pollutants- If the Licensee shall bring or create upon the Airport or the Licensed Premises any Pollutants or if the conduct of the Licensee's business shall cause there to be any Pollutants upon the Airport or the Licensed Premises then, notwithstanding any rule of law to the contrary, such Pollutants shall be and remain the sole and exclusive property of the Licensee and shall not become the property of the Licenser notwithstanding the degree of affixation of the Pollutants or the goods containing the Pollutants to the Licensed Premises or the Airport, and notwithstanding the expiry, repudiation, disclaimer or earlier termination of this License, and at the option of the Licenser, any substance or material contaminated by such Pollutants shall become the property of the Licensee or, at the Licenser's option, the Licenser, in addition to its obligation to remove such Pollutants, if directed by the Licenser, shall remove from the Airport any substance or material contaminated by such Pollutants and make good any damage done in so doing; all at the cost and expenses of the Licensee and upon terms and conditions approved by the Licenser.
- b) Survival of Covenant, etc – The obligations of the Licensee hereunder relating to Pollutants shall survive the expiry, assignment, repudiation, disclaimer or earlier termination of this License.

To the extent that the performance of these obligations requires access to or entry upon the Licensed Premises or the Airport or any part thereof, the Licensee shall have such entry and access after such expiry, repudiation, disclaimer or earlier termination only at such times and upon such terms and conditions as the Licenser may from time to time specify.

The Licensor may, at the Licensee's cost and expense, itself or by its agents, servants, employees, contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Licensee; but having commenced such work, the Licensor shall have no obligation to the Licensee to complete such work.

This Subsection 9.09) supersedes any other provision of this License to the contrary.

## **ARTICLE 10.00**

### **Damage/ Destruction and Expropriation**

#### **10.01      Interpretation of Article 10.00**

In this Article:

- a) "Damage" means damage (including but not limited to, smoke and water damage and damage that amounts to destruction) that (i) for the purpose of Section 10.02 results from a peril against which the Licensor is required to insure under Section 9.01 or against which the Licensor otherwise insures, and (ii) for the purpose of Section 10.03 results from any cause, and "Damaged" has a corresponding meaning.
- b) "Expropriation" means the taking of the Lands and Buildings forming the Airport without the consent of the owner by a government authority, or transferred, conveyed, or dedicated in contemplation of a threatened expropriation, and "Expropriated" has a corresponding meaning.

#### **10.02      Limited Damage**

If during the Term, the Licensed Premises or any part thereof or other parts of the Building providing access or Services essential to the Licensed Premises shall be Damaged by any hazard against which the Licensor is obligated to insure or has insured hereunder, the Licensor, if permitted by law so to do, shall proceed with reasonable diligence to rebuild and restore or repair the Licensed Premises or comparable premises or such access routes or Services subject to Section 10.03, as the case may be, in conformity with current laws and to extent of insurance proceeds received. The covenants of the Licensee to repair shall not include any repair of Damage required to be made by the Licensor under this Section.

When the Licensor notifies the Licensee that it has completed enough of the Licensor's work to enable the Licensee to start the Licensee's work ("the Licensor's Notice") the Licensee will complete the Licensee's work and reopen the whole of the Licensed Premises for business as soon as possible thereafter but in any case within thirty (30) days after the Licensor's notice.

Fees payable by the Licensee from the date of such Damage to the date of completion of the Licensor's work or availability of access or Services, as the case may be, shall abate to the extent of all amounts which the Licensor may, acting reasonably, attribute to this License out of the aggregate amount which the Licensor may receive from insurance on License Fee income derived by the Licensor from Airport.

**10.03      Damage to Building** – Notwithstanding that the Licensed Premises may not be affected, if in the opinion or determination of the Licenser or the Licenser's architect or engineer (the "Opinion"), rendered within thirty (30) business days of the happening of Damage or Expropriation, the Building shall have been Damaged or Expropriated to an extent that any one or more of the following conditions exist:

- a) any department store Licensee or any other Licensee of the Building who is, the Licenser's opinion, a major Licensee of the Building becomes entitled to terminate its License as a result of such Damage or Expropriation;
- b) the building is totally or partially demolished, whether or not for complete or partial reconstruction;
- c) the Building is incapable of being rebuilt or repaired or restored notwithstanding the use of reasonable diligence, within six (6) months after the occurrence of such Damage or Expropriation;
- d) more than thirty-five (35%) percent of the Licensable Area of the Building is Damaged or Expropriated as the case may be;
- e) any or all of the Services in or serving the Building are Damaged; or
- f) the Licensed Premises have been Damaged by any hazard against which the Licenser is obligated to insure or has insured as provided for hereunder or Expropriated to an extent that the Licensed Premises shall be incapable of being rebuilt, repaired or restored with reasonable diligence within six (6) months after the occurrence of such Damage or Expropriation;

then the Licenser may, at its option, terminate this License by notice in writing to the Licensee within thirty (30) days after the rendering of the Opinion, and this License shall terminate from the date of such notice; and the Licensee shall immediately surrender the Licensed Premises and all interest therein to the Licenser and the Fee, except Percentage Fee, shall be apportioned and shall be payable by the Licensee on the date of such notice and the Licenser shall reimburse the Licensee for the unamortized portion of the Licensee's investment in the Licensed Premises and the Licenser may re-enter and repossess the Licensed Premises.

**10.04      Effect of Non-termination of License** – If the Airport is Damaged or Expropriated to the extent described in Section 10.03 and the Licenser does not terminate this License the Licenser will rebuild or repair the Airport to the extent of its obligations under its Licenses for Licensable Premises but the rebuilt or repaired Airport may be different in design and configuration from the Airport before the Damage or Expropriation.

**10.05      Expropriation** – Both the Licenser and Licensee agree to co-operate with each other in respect of any Expropriation of all or any part of the Licensed Premises or any other part of the Airport, so that each may receive the maximum award in the case of any Expropriation to which they are respectively entitled at law. If and to the extent that any portion of the Airport other than the Licensed Premises is Expropriated, then the full proceeds accruing therefrom or awarded as a result thereof shall belong solely to the Licenser, and the Licensee shall abandon or assign to the Licenser any rights which the Licensee may have or acquire by operation of law so such proceeds or award and shall

promptly execute such documents as in the opinion of the Licensor are or may be necessary to give effect to this provision.

**10.06 No Abatement** – Except as specifically provided in Sections **10.02** and **10.03**, there shall be no abatement of Fee, and the Licensor shall have no liability to the Licensee by reason of any injury to, or interference with, the Licensee's business or property arising directly or indirectly from fire or other casualty, however caused, or from the making of any repairs resulting therefrom or from any Damage to, or Expropriation of, the Airport or any part or parts thereof.

**10.07 Notify the Licensor** – The Licensee shall immediately notify the Licensor or its representative in the Airport of any accident or defect in the Airport, the Licensed Premises or any systems thereof and, as well, of any matter or condition which may cause injury or damage to the Airport or any person or property located therein.

## **ARTICLE 11.00**

### **Default**

**11.01 Interest** – The Licensee shall pay interest on a full indemnity basis for the losses occasioned to the Licensor by reason of any delay in payment of fee due, at the highest rate of overdraft interest charged by the Licensor's commercial bankers in Jamaica on United States Dollar denominated debt, as to which a certificate from the Licensor's bankers will be conclusive of the rate to be applied or at the maximum rate of interest permissible by law in Jamaica, whichever is higher, from the due date of payment until the same is fully paid and satisfied.

**11.02 Costs of Enforcement** – The Licensee shall pay the Licensor forthwith upon demand all costs and charges and fees (including legal fees on a attorney and client basis) reasonably incurred either during or after the Term in enforcing payment of Fees hereunder and is obtaining possession of the Licensed Premises after default of the Licensee or upon expiration or earlier termination of this License or in enforcing any covenant, proviso or agreement of the Licensee herein contained, or in determining the Licensor's rights or the Licensee's obligations under this License or both.

**11.03 Performance of Licensee's Obligations** – All covenants and agreements to be performed by the Licensee under any of the terms of this License shall be performed by the Licensee, at the Licensee's sole cost and expense. If the Licensee fails to perform any act to be performed by it hereunder other than payment of Fee, then in the event of an emergency, actual or apprehended or if the failure continues for ten (10) days following notice thereof and the Licensee has not taken the necessary and reasonable steps to cure the failure, the Licensor may (but shall not be obligated to) perform the act without waiving or releasing the Licensee from any of its obligations relative thereto; but having commenced to do so, the Licensor may cease to do so without completing performance thereof. The Licensee shall pay to the Licensor all sums paid and costs incurred by the Licensor in so doing together with interest thereon at the rate set out in Section 11.01 from the date payment was made or such cost incurred by the Licensor, forthwith on demand plus fifteen percent (15%) of the cost for overhead and supervision.

**11.04 Events of Default** – If and whenever:

- i) all or any part of the Fees hereby reserved is not paid due and without the requirement for any notice whatsoever from the Licensor; or

- ii) a writ of execution is issued against the Licensee or Indemnifier or any of their assets or a creditor takes possession thereof; or
- iii) the Licensee or Indemnifier takes any steps or suffers any order to be made its winding-up or other termination of its corporate existence or becomes insolvent or commits an act of bankruptcy or becomes bankrupt or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors or becomes involved in voluntary or involuntary winding-up proceedings or if a receiver or receiver/Manager shall be appointed for all or any part of the business, property, affairs or revenues of the Licensee or Indemnifier; or
- iv) the Licensee makes a bulk sale of its goods or moves or commences, attempts or threatens to move its goods, chattels and equipment out of the Licensed Premises (other than in the normal course of its business); or
- v) the Licensee fails to move into or take possession of the Licensed Premises or vacates or abandons the Licensed Premises in whole or in part fails to actively carry on business in the whole of the Licensed Premises strictly in accordance with the use and trade or operating name provisions of this License or carries on a business in violation of Section 5.01 hereof; or
- vi) Gross Sales in the first two (2) License Years is less than **US\$xxxxxx** per annum or if the Licensee fails to report Gross Sales as required pursuant to Article 4.00 hereof; or
- vii) the Licensee or any Indemnifier or any Person bound to perform the obligations of the Licensee pursuant to this License either as guarantor or Indemnifier or as one of the parties constituting the Licensee fails to observe, perform and keep each and every material covenant, agreement, provision, stipulation and condition herein contained to be observed, performed and kept by the Licensee or the Indemnifier (other than payment of Fees ) and persists in the failure after 10 days' notice by the Licensor requiring the Licensee to remedy, correct, desist or comply unless the Licensee commences to rectify within the 10 day notice period and thereafter promptly, effectively and continuously proceeds to rectify the breach ; or
- viii) Transfer occurs except as permitted by, and in accordance with, Article 12.00; or
- ix) any Pollutant is present in the Licensed Premises without the prior written consent of the Licensor or otherwise than in compliance with terms and conditions imposed by the Licensor in giving its consent thereto; or
- x) a report or statement required from the Licensee under this License is false or misleading except if that results from an innocent clerical error; or
- xi) any policy of insurance taken out by the Licensor with respect to the Airport shall be cancelled by reason of any act or omission of the Licensee; or
- xii) the Licensee fails to observe and perform the Rules and Regulations or to observe and comply with the constitution of the Concessionaires' Association; or

- xiii) if the Licensee operates its business under any franchise agreement as a franchisee, the Licensee causes or permits the franchise agreement to expire or terminated during the Term; or
- xiv) the Licensee fails to perform any other material term, obligation, covenant or agreement under this License; or
- xv) the Licensee has defaulted in the performance of any obligation, agreement or covenant and notice of such Event of Default, if required pursuant to this License, has been given by the Licensor hereunder,

then the Licensor shall be entitled to any or all those remedies set out in Section 11.05. Each of the foregoing circumstances constitutes an "Event of Default" for the purpose of this License.

**11.05 Remedies on an Event of Default** – Upon the happening of an Event of Default, the Licensor may, at its option, and in addition to and without prejudice to all rights and remedies of the Licensor available to it either by any other provision of this License or by statute or the general law;

- a. be entitled to the full amount of the current month's and the next ensuing three (3) months installments of Fee including the average Percentage Fee paid by the Licensee during the Term which shall immediately realize its charge over all chattels situate upon the Licensed Premises become due and payable, and the Licensor immediately enforces the collection of the same together with any arrears then unpaid;
- b. without notice or any form of legal process, forthwith re-license or sublicense the Licensed Premises or any part or parts thereof for whatever term and at whatever fee and upon whatever other terms, covenants and conditions the Licensor considers advisable including, without limitation, the payment or granting of inducements all on behalf of the Licensee; and on each such re-licensing or sublicensing the fees received by the Licensor therefrom will be applied first to reimburse the Licensor for any such inducements and for expenses, capital or otherwise, incurred by the Licensor in making the Licensed Premises ready for re-licensing or sublicensing; and secondly to the payment of any costs and expenses of re-licensing or sublicensing including brokerage fees and legal fees on a attorney and client basis; and third to the payment of Fees as it becomes due and payable. If fees received from re-licensing or sublicensing during any month is less than Fees to be paid during that month hereunder, the Licensee will pay the deficiency which will be calculated and paid monthly on or before the first day of every month; and no re-licensing or sublicensing of the Licensed Premises by the Licensor or entry by the Licensor or its agents upon the Licensed Premises for the purpose of re-licensing or sublicensing or other act of the Licensor relating thereto including, without limitation, changing or permitting a sublicensee to change locks, will be construed as an election on its part to terminate this License unless a written notice of Termination is given to the Licensee; and if the Licensor elects to re-license or sublicense the Licensed Premises without terminating, it may afterwards elect to terminate this License at any time by reason of Event of Default then existing;

- c. seize and sell such goods, chattels and equipment of the Licensee as are in the Licensed Premises and supply the proceeds thereof to all Fees to which the Licensors are then entitled under this License. Any such sale may be effected by public auction, private sale or otherwise, and either in bulk or by individual item, or partly by one means and partly by another, all as the Licensors in its sole discretion may decide;
- d. terminate this License by leaving upon the Licensed Premises notice in writing of the termination, and such termination shall be without prejudice to the Licensors' right to damages; it being agreed that the Licensee shall pay to the Licensors on demand as damages the loss of income of the Licensors to be derived from the Licensed Premises for the unexpired portion of the Term had it not been terminated;
- e. re-enter into and upon the Licensed Premises or any part thereof in the name of the whole and repossess and enjoy the same as of the Licensors' former estate, anything herein contained to the contrary notwithstanding;
- f. and the Licensee shall pay to the Licensors forthwith upon demand all expenses of the Licensors in re-entering, terminating, re-licensing, collecting sums due or payable by the Licensee or realizing upon assets seized or otherwise exercising its rights and remedies under this Section including the Licensee inducements, Licensing commissions, legal fees (on a attorney and client basis) and all disbursements and the expense of keeping the Licensed Premises in good order, repairing the same and preparing them for re-licensing.
- g. If the Licensors terminate this License then, for the purpose of calculating the Licensors' damages, Percentage Fee shall be deemed to have been payable thereafter at the highest rate at which Percentage Fee was payable with respect to any License Year preceding the date of termination.

**11.06 Availability of Remedies** – The Licensors may from time to time resort to any or all of the rights and remedies available to it upon the occurrence of an Event of Default, all of which are intended to be cumulative and not alternative.

**11.07 Waiver** – If The Licensors shall overlook, excuse, condone or suffer an Event of Default, this shall not operate as a waiver of the obligation in respect of any continuing or subsequent Event of Default, and no such waiver shall be implied but shall only be effective if expressed in writing.

the Licensors' acceptance of Fees after Event of Default is not a waiver of any Event of Default under this License even if the Licensors knows of the Event of Default at the time of acceptance of the Fee.

**11.08 Waiver of Exemption and Redemption** – Notwithstanding anything contained in any statute now or hereafter in force limiting the right of distress, none of the Licensee's goods or Trade Fixtures in the Licensed Premises at any time during the Term shall be exempted from levy by distress for Fee in arrears, and this agreement of the Licensee in this Section may be pleaded as an estoppel against the Licensee.

**11.09 Debt and Financial Restructuring or Future Legislation** – By virtue of its interest in this License, the importance of the Licensee continuing to carry on business in the



Licensed Premises in accordance with this License, the general synergy and interdependence of the Licensable Area Premises of the Airport and the Licensor's entitlement to damages where this License is terminated by reason of an Event of Default, the Licensor does and will (despite any changes in circumstances of the Licensee or its business) constitute a separate class or category of creditor in any plan of arrangement or other proposal submitted by or on behalf of the Licensee.

**ARTICLE 12.00**  
**Assignment, Sublicensing and Other Transfers**

**12.01 License Personal to Licensee** – The Licensee acknowledges that the Licensor has entered into this License based on the Licensee's qualifications to operate the Licensee's business under its trade name as specified in item 2 of the Term Sheet pursuant to the information given and representations made by the Licensee to the Licensor with respect thereto. As such, this agreement is intended by the parties to create a License under such trade name. The Licensee acknowledges that the Licensor is the operator of the Airport and has bargained for and entered into this License in order to derive the economic and other benefits of such operation, and that the Licensee has no intention of profiting from an increase in the value of the Licensor's interest and or estate created hereunder so as to deprive the Licensor of the benefits of its ownership of the Airport. The parties have agreed to the provisions of this Article 12.00 in order to give effect to the foregoing understandings.

**12.02 Limitation** – The Licensee will not attempt cause or permit a Transfer without the prior written consent of the Licensor and then only as provided in this Article 12.00. When no event of Default exists but subject to the application of the Licensor's Option set out in Article 12.03 in priority hereto, that consent shall not be unreasonably withheld with respect to a Transfer which is not by way of mortgage or charge (floating or otherwise).

The Licensee shall not transfer this License by way of assignment unless the Licensee and the assignee covenants with the Licensor by way of amendment of the License before or concurrently with such assignment to pay as MAG during the balance of the Term an amount equal to the greater of:

the greater of the annual MAG that pertains on the day before the Transfer (the "Current MAG") or the average annual total of MAG and Percentage Fee paid or payable by the Licensee for the last three twelve (12) month License Years that precede the Transfer or (if less than three such License Years precede the Transfer), the highest annual total of MAG and Percentage Fee since the Commencement Date; or

the current MAG multiplied by the percentage increase in the C.P.I. United States from the month in which Commencement Date occurs to the month in which the Transfer occurs.

If it is stated in the Term Sheet, Section 4.01 or an addendum to that Section that the annual MAG is to increase at specified times, the excess amount will be added to the increased MAG. The terms of this Section 12 shall not apply to transfers and/or assignments to subsidiaries or parent companies.

### **12.03 Consent**

- a) **Licensor's Option** - If the Licensee intends to effect a Transfer of all or any part of the Licensed Premises or this License, or any estate or interest hereunder, then and so often as such event shall occur, the Licensee shall give prior written notice to the Licensor of such intent, specifying therein the proposed Transferee and providing such information with respect thereto including, without limitation, information concerning the principals thereof and credit, financial or business information relating to the proposed Transferee as the Licensor (or any mortgagee of the Licensor) requires, including a business plan that details staffing and the manner of operation of the business within the Licensed Premises and, if the occupant of the Licensed Premises is to be a franchisee, written evidence from the franchiser that the franchise agreement has been executed and delivered and is for the remainder of the Term. The Licensor shall, within thirty (30) days after having received such notice and all such necessary information, notify the Licensee in writing either that: (a) it consents or does not consent to the Transfer in accordance with the provisions and qualification in this Article 12.00; or (b) it elects to cancel this License in preference to giving of such consent.

If the Licensor elects to cancel this License as aforesaid, the Licensee shall notify the Licensor in writing within fifteen (15) days thereafter of the Licensee's intention either to refrain from period of fifteen (15) days, this License will thereby be terminated upon the expiration of the said fifteen (15) day period. If the Licensee advises the Licensor it intends to refrain from such Transfer, then the Licensor's election to cancel this License as aforesaid shall become null and void in such instance.

b) **Consideration for Consent**

- i. In considering whether to give its consent, the Licensor may have regard to the financial status, credit rating, reputation and past business record of the proposed Transferee and its key employees; whether the proposed use is consistent with a World Class Airport and its effect on the Licensor's ability to License other space in the Airport at fees and rental rates consistent with the World Class nature of the Airport; the refusal of mortgagee to give any consent required under its security on the Airport; whether the nature of the business to be carried on in the Licensed Premises is in conflict with any other Licensee or in breach of any restrictive covenants the Licensor may have granted, regardless of when given; the likely effect on the merchandising mix; the length of time since the last transfer; whether the transfer amounts to a mortgage, charge or debenture of or in respect of the License or the Licensed Premises and any other factors which the Licensor, in its sole discretion considers relevant. The Licensee will provide the Licensor with all information requested by the Licensor in order to enable the Licensor to consider the request for consent.
- ii. Notwithstanding and without in any way affecting or limiting the foregoing provisions of this Section, it is agreed that the Licensor may reasonably withhold its consent to a Transfer if the Transfer occurs during the first twenty-four (24) months of the Term or when there is less than twelve (12)

months remaining on the Term and otherwise unless the Licensee is able to demonstrate to the Licensors' satisfaction that:

- I. the proposed Transferee has a good business and personal reputation
- II. the proposed Transferee has not had the status of a bankrupt, either personally, or as the beneficial owner of at least twenty-five (25%) percent of the issued shares of any class of a corporation or as member of a partnership, either of which has been a bankrupt, in five (5) years immediately preceding the request for a consent to Transfer;
- III. the financial strength of the proposed Transferee is at least as strong as that of the Licensee at the date of this License, and at least sufficient to discharge the obligations of the Licensee under this License for the balance of the Term;
- IV. the business of the proposed Transferee is likely to produce an amount of Percentage Fee at least equal to that which was received from the Licensee in the twelve (12) months immediately prior to the date of the request for Transfer;
- V. the proposed Transferee is not an existing occupant of any part of the Airport or has not engaged in the twelve (12) month immediately preceding the request for a consent to Transfer in bona fide negotiations with the Licensors with a view to the Licensing of space in the Airport and is not in any way affiliated with any such existing occupant or bona fide prospective Licensee;
- VI. the transfer would not result in a breach of any agreement, including any grant of exclusive use rights, by which the Licensors is bound with respect to the Airport.

c. Documentation – The Transferor and Transferee shall enter into an agreement to jointly and severally covenant with the Licensors to pay, observe and perform all the covenants and obligations contained in the License (as amended by such Transfer) on the part of the Transferee to be paid, observed and performed. Any assignment which is consented to by the Licensors under this Article shall be conditional, whether or not so stated, upon the Transferee, jointly and severally with the Transferor, entering into written agreement directly with the Licensors assuming the obligations of a Licensee hereunder.

d. Costs – A non-refundable fee of One Thousand United States Dollars (US\$1,000.00) plus GCT is payable by the Licensee to the Licensors representing all costs and expenses associated with the Licensors' considering, investigating and responding to the Licensee's request for consent to Transfer.

e. Remedy – If the Licensee is of the opinion that any consent under this Article 12.00 has been wrongfully withheld, its sole remedy shall be to obtain a determination of the issue in a court of competent jurisdiction and, without limitation, its remedies in respect thereof shall not include compensation for, or recovery of, any loss, injury or damage arising therefrom or the termination of this License.

**12.04 Receipt of Payments** – No acceptance by the Licenser of Fee or other payments made by a Transferee is:

- a) a waiver of the requirement for the Licenser's consent to every Transfer or of the Licenser's remedies and right;
- b) the acceptance by the Licenser of the Transferee as Licensee; or
- c) a release of the Licensee by the Licenser with respect to any unpaid Fee, or otherwise.

**12.05 Effect of Transfers** – No Transfer shall relieve the Licensee of its obligations under this License, unless specifically granted in writing.

**12.06 Subsequent Transfers** – the Licenser's consent to a transfer shall not be deemed to be consent to any subsequent Transfer whether or not so stated

**12.07 Profit Fees upon Sublicenses** – In the event of any Transfer which is a sublicensing or subletting of the Licensed Premises by the Licensee by virtue of which the Licensee receives the Fees in the form of cash, goods or services from the Transferee which is greater than the Fees payable hereunto to the Licenser, the Licensee will pay any such excess to the Licenser in addition to all Fees payable under this License, and such excess Fees shall be deemed to further Fees payable hereunder.

**12.08 Advertising** – The Licensee will not advertise the Licensed Premises or any part thereof as being available for Leasing or to be Licensed or this License as being for sale in any medium and will not cause or permit any such advertisement.

**12.09 Grant of Security Interest by Transferee** – The Licensee will cause any Transferee and any new Indemnifier of this License to grant a mortgage, charge and security interest to the Licenser in form corresponding to the Security Interest granted in Section 15.20 by delivery of a written security agreement in form and substance satisfactory to the Licenser prior to the effective date of the Transfer.

The Licensee will pay all cost associated with the granting, registration and perfection of mortgages, charges and security interests made pursuant to this License upon any Transfer of this License.

## **ARTICLE 13.00** **Transfers by Licenser**

**13.01 Sales or other Disposition of Airport by Licenser** – Nothing in this License shall restrict the right of the Licenser rights to assign, sell, convey, assign, pledge or otherwise deal with the Airport subject (except as provided in Section 13.02) to the rights of the Licensee under this License. A sale, conveyance or assignment of the Airport by the Licenser shall operate to release the Licenser from Liability accruing thereafter under this License from and after the effective date thereof and the Licensee shall thereafter look solely to the Licenser's successor in interest. Provided always that the Licenser shall remain liable to the Licensee for all liabilities, under this License, accruing before the sale, conveyance or assignment of the Airport including any refunds or security deposit, unless such liabilities are sold, assigned, transferred or conveyed to the Licensers successor in interest.

**13.02 Subordination** – Subject to Section 13.03, this License, at the option of any mortgagee, trustee, or chargee, is and shall be subject and subordinate in all respects to any and all mortgages (including deeds of trust and mortgage) and other interests in the Airport or any part thereof now or hereafter created by the Licensors, its predecessors or successors in title and all advances thereunder, past, present and future as amended and extended. Licensee agrees to execute promptly and in any event within 10 days after request therefore by the Licensors or the mortgagee under any such mortgage an instrument confirming such subordination in such form as they may request.

#### **ARTICLE 14.00** **Surrender**

**14.01 Possession and Restoration** – Upon the expiration or termination of the Term, the Licensee shall immediately quit and surrender possession of the Licensed Premises and all Licensehold Improvements in substantially the condition in which the Licensee is required to maintain the Licensed Premises, excepting only damage covered by insurance under Section 9.01, and the Licensee shall deliver to the Licensors the keys, mechanical or otherwise, and combinations, if any, to the locks in Licensed Premises and the entries thereto. Notwithstanding the foregoing: (a) the Licensors shall have the right, at its sole option, upon expiration or other termination of the Term to require that the Licensee remove or cause to be removed at the Licensee's cost all Licensehold Improvements and to restore the Licensed Premises and other parts of the Airport affected by the installation or removal thereof to base building standards; and (b) the Licensee may, immediately before expiry of the Term, if no Event of Default exists, remove its Trade Fixtures and repair at its cost any damage occasioned thereby.

**14.02 Licensee's Licensehold Improvements, Trade Fixtures and Personal Property**

After the expiration or in the event of default of the Term all of the Licensee's Licensehold Improvements, Trade Fixtures and personal property remaining in the Licensed Premises shall be deemed conclusively to have been abandoned by the Licensee and may be kept, sold, destroyed or otherwise disposed of by the Licensors without notice or obligation to compensate the Licensee or to account therefore, and the Licensee shall pay to the Licensors upon written demand all of the costs reasonably incurred by the Licensors in connection therewith.

**14.03 Continued Operations** – If the Licensee remains in the Licensed Premises or any part thereof after the expiration or other termination of the Term:

- a) without the consent of the Licensors, the Licensee shall be bound by the terms and provisions of this License except any options thereby granted to the Licensee and except that MAG and Percentage Fee shall be twice the amounts provided for herein plus the sum of One Thousand United States Dollars (\$1,000.00) daily and subject to such additional obligations and conditions as the Licensors may impose by notice to the Licensee; or
- b) with the consent of the Licensors and agreement as to the Fees payable, in which case the tenancy shall be month-to-month at the Fees agreed and otherwise on the terms and conditions of this License excluding any options thereby granted.

The Licensors may recover possession of the Licensed Premises during any period with respect to which the Licensee has prepaid the amounts payable under Subsection 14.03(a).

The Licensee shall promptly indemnify and hold the Licensors harmless from and against all Claims against the Licensors as a result of the Licensee remaining in possession of all or any part of the Licensed Premises after the expiry of the Term (including, without limitation, any compensation to any new Licensee or Licensees which the Licensors may elect to pay whether to offset the costs of overtime work or otherwise).

## **ARTICLE 15.00**

### **General**

**15.01 Estoppel Certificates** – The Licensee whenever requested by the Licensors, a prospective purchaser, assignee, sublicensee, agent or mortgagee (including any trustee under a deed of trust and mortgage, Government of Jamaica and or Airports Authority of Jamaica) promptly, and in any event within ten (10) days after request, execute and deliver to the Licensors, or to any party or parties designated by the Licensors, a certificate in writing. Such writing shall address the then status of this License, including certification as to whether this License is in full force effect, and is modified or unmodified, confirming the Fees payable hereunder and each element thereof and the then state of the accounts between the Licensors and the Licensee, the existence or non-existence of any Event of Default, and any other matters pertaining to this License in respect of which the Licensors shall request a certificate, and provide such other information as may reasonably be required. The party or parties to whom such certificates are addressed may reply upon them.

**15.02 Entire Agreement** – There is no promise, representation or undertaking by or binding upon the Licensors except such as are expressly set forth in this License; and this License including the Term Sheet, Riders and Schedules hereto, contains the entire agreement between the parties hereto. Riders, if any and Schedules form part of this License and the parties agree to perform and observe the covenants and agreements therein contained on their part respectively to be observed and performed. The Term Sheet forms part of this License.

**15.03 Registration** – The Licensee acknowledges the confidential nature of this License and agrees with the Licensors not to register or apply to register this License and waives any statutory obligation upon the Licensors to execute and deliver this License in registrable form. Notwithstanding the foregoing, if the Licensors in its absolute discretion does permit the Licensee to register a caveat or notice of this License, the same shall be in a form that is approved by the Licensors, and the Licensee shall bear the expense thereof. The Licensee shall, at its own cost, promptly on request, whether before or after the expiration or earlier termination of the Term, discharge any such caveat or notice as well as any other registration carried out contrary to this Section. Provided always, that this clause does not preclude stamp duty from being affixed to the License. In the event that Stamp Duty is assessed for this License the parties agree to pay the one half costs in order for the duty to be affixed to same

**15.04 Airport Name, Trademarks, etc.** –Licensee shall not refer to the Airport by any name other than that designated from time to time by the Licensors. Except as provided in Section 5.10, the Licensee will not use or permit to be used or engage in any promotion, sale or display bearing any trademarks or trade or business names or insignia, whether registered or otherwise, used by the Licensors in connection with Airport. The Licensee shall acquire no proprietary interest in any such trademark or trade or business name or insignia, and

shall promptly abandon the same or assign the same to the Licensor and shall promptly execute all documents required by the Licensor to give effect thereto.

**15.05 Unavoidable Delays** – If the Licensor or the Licensee (the “Delayed Party”) shall be delayed, hindered or prevented from performance of any of its covenants under this License by any cause not within the control of the Delayed Party (excluding lack of finances of the Delayed Party), the performance of the covenant shall be excused for the period during which performance is rendered impossible and the time for performance thereof shall be extended accordingly; but no such delay shall excuse the Licensee from the prompt payment of Fees or from any of its other obligations under this License.

**15.06 Limitation of Recourse** – Notwithstanding any other provision contained in this License, the obligations of, and rights against, the Licensor under this License shall be enforced against, and recourse hereunder shall be had only after judgment and only against, the right, title and interest of the Licensor from time to time in, and the Licensor's revenues accrued from, the Airport. No recourse shall be had, judgment issued or execution or other process levied against, the Licensor (except only to the extent necessary for enforcement under the first sentence of this Section) or against any other assets or revenues of the Licensor.

**15.07 Notice** – Any notice required or contemplated by any provision of this License shall be given in writing and may only be given if delivered, either personally or by courier service, or if sent by telecopy with confirmation of transmission and if to the Licensor, then given to the Chief Commercial Officer of the Licensor at the Licensor's Corporate Office as specified in Item 1 of the Term Sheet and to the Chief Executive Officer at the local address set out in Item 1 of the Term Sheet and if to the Licensee, then given to the Licensee personally (or to a partner or officer of the Licensee if the Licensee is a firm or corporation) or by leaving same at the address specified in Item 2 of the Term Sheet or left at the Licensed Premises (whether or not the Licensee has departed from, vacated or abandoned the same). Any notice shall be deemed to have been received on the business day following the date of delivery or sending. The Licensor or the Licensee may from time to time by notice in writing to the other designate another address or addresses in Jamaica to which notices are to be sent.

Notwithstanding the provision of any statute or law relating thereto, service by means of electronic mail of any notice(s) required to be given in writing by either party hereto pursuant to the License, shall not constitute good and effective service.

If two or more Persons are named as, or are bound to perform the obligations of, the Licensee hereunder, any notice given herein provided to any one of the Persons constituting the Licensee or so bound shall be deemed to be notice simultaneously to all Persons constituting the Licensee and to all Persons so bound. Any notice given to the Indemnifier or the Licensee shall be deemed to have been given simultaneously to the other of them and to all Persons bound by their obligations hereunder.

**15.08 No Offer** – The Licensor will not be deemed to have made an offer to the Licensee by furnishing an unexecuted copy of this License, notwithstanding that a deposit is paid to and accepted by the Licensor or its agent.

**15.09 Relationship of Parties** – Nothing contained in the License or the result of any acts of the parties hereto will be deemed to create any relationship between the parties other than that of the Licensor, Licensee and, if applicable, Indemnifier.

**15.10 Governing Law** – This License shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of Jamaica applicable therein, which shall be the venue of any proceedings if taken in respect of this License so long as that venue is permitted by law; and the Licensee and/or Indemnifier hereby consent to any application to change the venue of any proceedings taken elsewhere by the Licensee and/or Indemnifier.

**15.11 Amendment or Modification** – No amendment, modification or supplement to this License shall be valid or binding unless set out in writing and executed by the Licensor, the Licensee and Indemnifier as applicable.

**15.12 Legal and Administration Costs** – The Licensee shall indemnify the Licensor against all legal fees (on a attorney and client basis) and disbursements incurred by or for the Licensor in connection with any amendment, assignment, approval, or consent in connection with or under this License or in connection with or resulting from any Event of Default including the Licensor's reasonable administration charges. All such costs and charges shall be paid by the Licensee to the Licensor forthwith upon demand.

**15.13 Construction of License**

**Provisions** – All provisions of this License are to be construed as covenants and agreements.

**Consultants** – Any reference in this License to the Licensor's accountant, auditor, architect, surveyor or other consultant shall be deemed to be such duly qualified consultant appointed by the Licensor in its absolute discretion for the purposes of this License or of any provision hereof; and they will act in accordance with this License and the principles and standards of their respective profession. In determining any cost allocation the Licensor may rely on, and the parties shall be bound by, the Licensor's consultants.

**Interpretation** – Wherever necessary or appropriate in this License, the plural shall be interpreted as singular and vice-versa and the masculine gender as feminine or neuter and vice-versa. When there are two or more parties bound by the Licensee's covenants and agreements herein contained, their respective obligations shall be joint and several, and when there are two or more parties bound by the Indemnifier's covenants and agreements contained in the Indemnity Agreement, their respective obligations shall be joint and several. If the Licensor or the Licensee or Indemnifier shall consist of more than one legal entity, reference to the Licensor or the Licensee or Indemnifier herein shall include reference to each such entity.

**Exculpatory Provisions** – In all provisions of this License containing a release, indemnity or other exculpatory language in favour of the Licensor, reference to the Licensor includes reference also to the Licensor's Agents and the directors, officers and employees of the Licensor and the Licensor's Agents while acting in the ordinary course of their employment.



**Severance** – If any part of this License or the application of it in any circumstances is to any extent held or rendered invalid, unenforceable or illegal that part shall be deemed to be independent of the remainder of this License and severable from it and the invalidity, unenforceability or illegality of that part shall not affect, impair or invalidate the remainder of this License and continues to be applicable to and enforceable to the fullest extent permitted by law in all other circumstances.

**Captions and Headings** – The captions and headings contained in this License are for convenience of reference only and are not intended to limit, enlarge or otherwise affect the interpretation of the Article, Sections or parts thereof to which they apply.

**Counterparts** – This License may be executed in counterparts and the counterparts together shall constitute the one and the same agreement.

**15.14 Successors** – Subject to specific provisions contained in this License to the contrary, the License shall enure to the benefit of and be binding upon (and references to the parties shall include reference to) the successors and assigns of the Licensors and the heirs, executors and administrators of the Licensee and Indemnifier and the permitted successors and assigns of the Licensee. If there is more than one the licensee, or more than one Person comprising the Licensee, each is bound jointly and severally by this License.

**15.15 Time of the Essence** – Time shall be of the essence hereof.

**15.16 Demolition/Substantial Renovation** – Notwithstanding any other provision of this License, the Licensors may terminate this License at any time upon giving the Licensee three (3) months' notice of such termination if it is the Licensors' intention to demolish, redevelop or substantially renovate all or part of the Building. The Licensors shall reimburse the Licensee for the unamortized portion of the Licensee's investment if the License is terminated. Where used in this Section 15.16 "Building" means the structure of which the Licensed Premises form a part.

**15.17 C.P.I. Adjustment ("Subsequent Adjustment")** – All amounts payable by the Licensee under Subsection 11(b) of the Term Sheet, 5.02(d) (1), Subsections 5.10(2) and 5.10(3)) shall be adjusted in accordance with increases in US C.P.I. from January 2019 "base year") until twelve (12) calendar months thereafter and henceforth shall be adjusted by the percentage increase in each subsequent twelve (12) month period in accordance with the Consumer Price Index (C.P.I.) for the United States of America.

**15.18 Use of Common Elements** – Rights granted to Licensee for the benefit of the Licensee, its invitees and others, or any of them are by way of license only and not by way of easement, and are non-exclusive, and may be exercised only in common with the exercise of the same or similar rights by the Licensors and others from time to time authorized by the Licensors.

**15.19 Brokerage Commissions** – The Licensee covenants that no act of the Licensee has given rise or shall give rise to any Claims against the Licensors for any brokerage commission, finder's fee or similar fee in respect of this License. The Licensee hereby indemnifies and agrees to hold the Licensors harmless from any Claims for such commission fees with respect to this License except any which were directly contracted for by the Licensors.

**15.20 Grant of Security Interest** – As a general and continuing security for the due payment of Fee and the performance of the Licensee's obligations hereunder the Licensee and Indemnifier mortgage and charge to and in favour of the Licensors and grant to the Licensors a security interest in:

- a) all inventory brought into the Licensed Premises before or during the Term by the Licensee or Indemnifier and all inventory accepted by the Licensee in the Licensed Premises by way of returns from customers unless and until sold at term's length for valuable consideration; and
- b) all furnishings brought into the Licensed Premises by the Licensee or Indemnifier respectively before or during the Term unless and until removed and replaced in accordance with the terms of this License; and
- c) the interest of the Licensee and Indemnifier respectively, both during and after the Term, in Trade Fixtures brought upon the Licensed Premises before or during the Term unless and until replaced in accordance with the provisions of this License; and
- d) the interest of the Licensee and Indemnifier respectively from time to time in other goods which are affixed to the Licensed Premises before or during the Term unless and until removed in accordance with the terms thereof including, without limitation, floor coverings, ceilings, equipment used for ventilating or air conditioning, doors, window coverings, built-in furnishing and shelves; and
- e) all other personal property of the Licensee and Indemnifier respectively from time to time brought upon the Licensed Premises, (collectively the "Collateral"). The Licensee represents and warrants that the Collateral is, and will ensure that the Collateral will at all times be, free of any charge or trust except the mortgages, charges and security interests granted hereby or pursuant to this License (collectively the "Security Interest") in favour of the Licensors or any mortgage, charge or security interest created with the Licensors's prior written consent which will be given only if the holder of the charge subordinate its charge to the Security Interest. The Licensee will pay and satisfy the amount secured by any other mortgage, charge or security interest upon the Collateral or any part thereof which is not so approved.

The Licensee and indemnifier will from time to time immediately upon request by the Licensors take such action (including, without limitation, the signing of further documents), as the Licensors may require in connection with the Collateral or as the Licensors may consider necessary to give effect to the Security Interest.

The Licensee will pay all costs of perfecting the Security Interest.

#### **15.21 No Landlord or Tenant Relationship**

The Licensors and Licensee hereby acknowledge that no tenant and landlord relationship exists between them in connection with this License, and each party covenants that they will not assert otherwise. The Licensee hereby further acknowledges the Airport is exempt from the operation of the Rent Restriction Act of Jamaica.

**15.22 Further Schedules** – The Licensee agrees with the Licensor to comply with the provisions of Schedule E which relates to additional covenants, agreements and conditions, if any, and any other Riders and Schedules, which are referred to herein.

**15.23 Survival of Covenants and Indemnities** – All obligations of the Licensee which arises pursuant to this License and which have not been satisfied at the end of the Term and all indemnities (including but not limited to the indemnities contained in Article 9.00) of the Licensee contained in this License shall survive the expiration or other termination of this License.

**15.24 Radiation** –Only if the Licensor believes on reasonable grounds that radiation is or has been used or created by the Licensee or any Person permitted by the Licensee to be in the Licensed Premises shall this Section 15.24 apply to the Licensee.

The Licensee agrees, if so requested by the Licensor, to conduct at its own expense a survey by an accredited firm of consultants acceptable to the Licensor to determine the level of radiation in Licensed Premises, and if such levels are in excess of those allowable under Environmental Laws and set by the applicable regulatory authorities governing radiation, the Licensee agrees, at its own cost and expense and on terms and conditions approved by the Licensor, to reduce the level of radiation to a level allowable under Environmental Laws and set by such applicable regulatory authorities.

**15.25 Independent Legal Advice** – The Licensee and Indemnifier each acknowledge that the Licensor hereby advises each of the Licensee and Indemnifier to obtain advice from independent legal counsel prior to signing this License and/or the Indemnifier Agreement. The Licensee and the Indemnifier further acknowledge that any information provided by the Licensor is not to be construed as legal, tax or any other expert advice and the Licensee and the Indemnifier are cautioned not to rely on such information without seeking legal, tax, or other expert advice.

The Licensor and the Licensee understand, acknowledge and agree that this License has been freely negotiated by both parties and that, in any dispute or contest over the meaning, interpretation, validity or enforceability of this License or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this License or any portion thereof.

Intentionally left blank

IN WITNESS WHEREOF the parties execute this License as at the date first set forth above and apply its seal.

**MBJ AIRPORTS LIMITED**

**LICENSOR:**

By: \_\_\_\_\_  
Name:  
Title: CHIEF EXECUTIVE OFFICER

By: \_\_\_\_\_  
Name: CHIEF COMMERCIAL OFFICER  
Title:

We have the authority to bind the Corporation

.....  
**WITNESS to Licensor's signature:**

**XXXXXXX LIMITED**  
**LICENSEE:**

C/S

By: \_\_\_\_\_  
NAME:  
TITLE: DIRECTOR

BY: \_\_\_\_\_  
NAME:  
Title: DIRECTOR

We have the authority to bind the Corporation.

.....  
**WITNESS to Licensee's signature:**

## **SCHEDULE A**

### **PLAN OF AIRPORT SHOWING THE LICENSED PREMISES**

Note: The purpose of this plan is to identify the approximate location of the Licensed Premises in the Airport. The Licenser reserves the right at any time to relocate, rearrange or alter the Building and other premises and Common Elements, and with the approval of the Licensee, in accordance with Section 6.07 of this License, the Licensed Premises from that shown on this floor plan.

## **SCHEDULE B**

### **DEFINITIONS**

**"Additional Fee "** means all amounts except MAG payable under the terms of this Licence, including without limitation any licensee co-ordination fee, contributions to the Promotion and Marketing Fund and Concessionaires' Association, as applicable.

**"Airport"** means the totality of all Land(s) and the Building(s) forming part of the Sangster International Airport complex including, without limitation, the Common Elements.

**"Building"** means the buildings, structures and improvements from time to time erected in, upon or under the Land and municipally identified in item 3 of the Term Sheet and all alternations, additions and replacements thereto.

**"C.P.I."** means either: (a) the Consumer Price Index (All Items for USA, base year (as in 15.17) = 100) for the United States of America; or (b) if that Consumer Price Index is no longer published, an index published in substitution therefore or any replacement index designated by the Licensor. If a substitution is required, or if the base year is changed, the Licensor will make the necessary conversions.

**"Capital Tax"** means an imputed amount now or in future imposed on the Licensor (or any corporation acting on behalf of the Licensor) on account of its ownership of or capital invested in the Airport. Capital Tax shall be computed as if the Airport were the only real property of the Licensor and includes the amount of any capital or place of business tax levied by the government or any other applicable taxing authority against the Licensor with respect to the Airport, whether or not known as "capital tax" or by any other name, and includes the capital tax now or in future imposed under the legislative provisions of any government jurisdiction and the Large Corporations Tax provided that the base amount on which any Capital Tax is imposed under this Licence shall not be increased except as a result of capital additions to the Airport.

**"Claims"** mean claims, losses, actions, suits, proceedings, causes, of action, demands, damages (direct, indirect, consequential or otherwise), judgments liabilities, responsibilities, costs, charges, payments and expenses including, without limitation, any professional, consultant and legal fees (on a attorney and client basis) and any associated disbursements.

**"Closure Line"** means the point at which the entrance to the Licensed Premises is situated and may be set back inside the License Line.

**"Commencement Date"** means the first day of the Term.

**"Common Areas"** mean the areas within the Airport, which from time to time, are not intended to be Licensed.

**"Common Elements"** mean:

the Common Areas; facilities, utilities and equipment within Licensable Area Premises that are intended for the benefit of licensees of the Airport; and

areas, facilities, utilities and equipment outside the Airport that serve the Airport, all as designated by the Licensor from time to time.

The Common Elements include, but are not limited to, day care facilities, smoking lounges and recreational facilities provided by the Licensor, the roof, exterior walls, exterior interior structural components and load bearing walls in the Building, furniture, furnishings and decorations; music, fire prevention, security and communication systems; columns; pipes; electrical, plumbing, drainage, mechanical, ventilating and air-conditioning systems and installations; sidewalks adjacent to the Land; open and enclosed malls; courts; public seating; corridors, escalators, elevators, washrooms, meter rooms, janitor rooms, parking areas and facilities; access roads, pedestrian walkways and easement areas whether above ground, at ground level or below ground, parks and other public facilities of which the Licensor is the owner or is from time to time subject to obligations in it's capacity as owner of the Airport.

"Control Area" means the area between the License Line and the Closure Line. The Control Area is included within the Licensed Premises.

"Environment Laws" shall include any domestic and foreign, federal, municipal, or local laws, statutes, regulations, ordinances, guidelines, policies, judge-made laws or common laws and any other orders of a court or governmental authority, relating in any way to the natural or human environment (including land, surface water, ground water, real, personal, moveable and immoveable property), public or occupational health and safety, and the manufacture, importation, handling, use, reuse, recycling, transportation, storage, disposal, elimination and treatment of a substance, hazardous or otherwise.

"Fees " mean the aggregate of all amounts payable by the Licensee to the Licensor under this Licence; provided that any and all such amounts which are collectible by the Licensor as agent of taxing authority and which are imposed by that authority on the Licensee including, without limitation, GCT, do not accrue to the Licensor as fee hereunder but are included in the definition of Fee only for convenience and so as to determine the Licensor's rights and remedies in the case of delay or failure to pay the same.

"Fiscal Year" means a period from time to time determined by the Licensor all or part of which falls within the Term, at end of which the Licensor's accounts in respect to the Airport are balanced for auditing or bookkeeping purposes. Such period shall be twelve (12) months except when the Licensor designates a new date upon which the Fiscal Year shall end.

"Fixturing Period" means the period set out in item 9 of the Term Sheet within which the Licensee will be required by Section 3.04 to complete the Licensee's work, ending on the day immediately preceding the Commencement Date.

"General Consumption Tax" each means taxes payable pursuant to, as amended and re-enacted from time to time and other like taxes levied from time to time.

"Government" means the GOVERNMENT of JAMAICA, including as applicable any Minister, Ministry, Permanent Secretary, State, Agency, or other Body, Arm, Agent or Representative of the Government of Jamaica.

"Gross Sales": mean the total sum of the selling prices of all merchandise, food, beverages or services (including finance charges thereon) sold by the Licensee on or from the Licensed Premises, or on or from any other place of business where delivery of such merchandise, food, beverages or services is made at the Airport, or by personnel operating from the Licensed Premises, and whether at wholesale or retail, and whether for cash, partly cash, credit, gift certificates, merchandise certificates, and all other receipts whatsoever of all business

conducted at, on, in, about or from the Licensed Premises, or by personnel operating from the Licensed Premises, including all deposits not refunded to the purchaser, orders taken at, on, in, about or from the Licensed Premises or by personnel operating from the Licensed Premises (although such orders may be filled elsewhere), sales made by any sublicensee, concessionaire or Licensee on, at, in, about or from the Licensed Premises, or by personnel operating from the Licensed Premises or reporting to or under the supervision of any employee or agent of a sublicensee, concessionaire or Licensee on, at, in, about or from the Licensed Premises and the gross amount of any insurance proceeds which directly or indirectly represent reimbursement or recovery for sales, revenues, receipts, gross profits or net profits lost, or which otherwise normally would have been realized or earned by the Licensee or any sublicensee, concessionaire or Licensee because of the occurrence of business interruption covered by such insurance, regardless of whether those proceeds are identified as such reimbursement or recovery by the insurer or anyone acting on the insurer's behalf, or whether the proceeds are separated or segregated in connection with any insurance claim, payment or settlement and includes any revenues received by the Licensee in respect of advertising, grants or subsidies from suppliers or others, commissions, fees and rebates. Each sale upon installment shall be treated as a sale for the full installment sale price at the time of such sale, irrespective of the time when payment (whether full or partial) shall be received. Each Sale of merchandise shall be treated as a sale in the month in which the Licence was first contracted, for a price equal to the total amount of fee payable during the term of such Licence. In the determination of Gross Sales there may be deducted the amount of refunds upon merchandise sold on or from the Licensed Premises and returned, and sales taxes collected from customers (to the extent to which such taxes are included in Gross Sales) and actually paid to the relevant taxing authorities. For greater certainty, Gross Sales as above-described:

- I. shall be included even if the business or activity is not a permitted business or activity (but that shall not operate as an estoppel or a consent or waiver, implied or otherwise, by the licensor);
- II. relating to the promotion or advertisement of goods and services of a third party shall be included; and
- III. derived through the internet shall be included, if there is any connection to or with the Licensed Premises. If any person (including a firm, partnership, joint venture or body corporate) related to or associated in any way with the Licensee carries on any activity at the Airport (whether or not on the Licensed Premises) of the same kind as is permitted under this Licence or any similar or associated activity, then (unless fee or Licence fees are paid to the licensor in respect of such other activity pursuant to a Licence or any other written agreement with the Licensor and such other activity is expressly authorized and permitted pursuant to such other Licence or Licence or written agreement) all revenue in connection with such activity will be included in Gross Sales for all purposes of this License and in the calculation of Percentage Fee under this License, as fully as if such activity was being carried out by the Licensee on the Licensed Premises and the revenues therefrom were being received by the Licensee;
- IV. shall include the original price of all merchandise, food, beverages or services before any discounts, reductions and or deductions have been applied by the Licensee. In the determination of Percentage Fee payable on Gross Sales the Licensor may, in its sole discretion, apply the percentage rate at Item 10 of the Term Sheet to the discounted or reduced price of all merchandise, food, beverages having regard to all the circumstances



"Head Lease" means the Lease agreement between MBJ AIRPORTS LIMITED and the Government of Jamaica and the Airports Authority of Jamaica, and as may be further amended from time to time, setting forth the terms and conditions pursuant to which, MBJ AIRPORTS LIMITED, Leased the Airport the Airports Authority of Jamaica.

"VAC System" means the ventilating and air-conditioning system of the Airport, which is made up of the ventilating and air-conditioning equipment and facilities that are operated and maintained by the Licenser. It included the buildings or areas which house common ventilating or air-conditioning facilities the equipment, improvements, installations and utilities in them, rooftops or window and ventilating or air-conditioning units operated or maintained by the Licenser; the fuel and power facilities of the systems mentioned above; distribution piping, air handling units and common fan coil and ventilation units that form part of those systems; monitoring, energy saving and control systems, including the thermostat in each Licensable Area Premises supplied by the VAC System and those ventilation systems which service more than one licensee. The VAC System does not include: (a) self-contained ventilating and air-conditioning systems in a Licensable Area Premises that have systems which have been installed and are maintained by the occupants; (b) the distribution system within a Licensable Area Premises; and (c) any licensee-maintained ventilation ducts, make-up air facilities and booster units that are installed for individual Licensees, or a group of Licensees, to satisfy requirements that are in excess of the standard maximum sensible cooling load established by the Licenser or which result from the production of air which is not suitable for recirculation.

"Indemnifier" means the Person(s) so identified in item 17 of the Term Sheet who has executed or agreed to execute the agreement (the "Indemnity Agreement") attached as Schedule J.

"Lands" mean those lands legally described in Schedule A (1) together with lands designated by the Licenser from time to time as being added thereto and excluding any such lands designated by the Licenser from time to time as being excluded therefrom.

"Licensable Area" means the area of the Licensed Premises, the Building or any part thereof as determined by the Licenser and which may be adjusted from time to time to give effect to any structural or functional change and any change in the Licensing pattern in the Building, and shall be calculated as follows:

by measuring from exterior face of all exterior wall, doors and windows; from the exterior face of all interior walls, doors and windows separating the Licensed Premises from Common Elements; from the centre line of all interior walls separating the Licensed Premises from adjoining Licensable Area Premises; and from the exterior edge of any Mezzanine which is not bounded by a wall;

by including all interior space, whether or not occupied by projections, structures, stairs, elevators, escalators, or columns, structural or non-structural; and if a store-front is recessed from the License Line, the area of such recess is included for all purposes; and

in the case of a free-standing kiosk, all dimensions shall be determined by the Licenser in accordance with the formula applied by the Licenser from time to time to the Airport (which at the date hereof is to multiply the measured area of the kiosk by 2.5).

The Licensable Area of Storage Areas, parking, trucking, and public transportation areas and facilities, equipment and utilities areas and facilities Common Elements shall be zero.

"Licensable Area Premises" mean those Premises (including the Licensed Premises) in the Airport that are designated or intended by the Licensor from time to time to be used and occupied by businesses, which sell or License goods or service, or provide entertainment to the public.

"Licensor's Agent" means a company or Person, if any, retained by the Licensor from time to time to operate or manage the Airport. In sections that contain a release or other exculpatory provision or an indemnity in favour of the Licensor's Agent, "the Licensor's Agent" includes the officers, directors, employees and agents of the Licensor's Agent.

"License" means this License, the Term Sheet, and all Riders and Schedules attached hereto which are referred in this License and every properly executed instrument which by its terms amends, modifies or supplements this License, and includes the rights, obligations and interests arising hereunder and thereunder, but does not include any renewal of this License, any New License or any License pursuant to which this License has been entered into.

"License Line" means the boundary of the Licensed Premises adjoining either interior or exterior Common Elements.

"License Year" means each successive period of twelve (12) months during the Term commencing on the Commencement Date or on any other date specified by the Licensor from time to time; provided that if the first License Year commences on a day other than the first day of the month, it shall continue until twelve (12) months after the last day of the month in which it commences unless the License is sooner terminated as herein provided; and provided that if and whenever the Licensor deems it necessary for the Licensor's accounting purposes, the Licensor may by written notice to the Licensee specify the date upon which each subsequent License Year is to commence and in such event the then current License Year shall terminate on the day preceding the date specified in the notice and any appropriate adjustment shall be made in respect of any License Year which is as a result less than twelve (12) calendar months; and provided further that the last License Year shall end on the last day of the Term even if it is less than twelve (12) months.

"Licensed Premises" mean those premises in the Building which are described and identified in item 4 of the Term Sheet and which are hatched on the plan attached as Schedule A, from (i) the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Licensed Premises have no structural ceiling abutting the demising walls but rather are open to the ceiling or the bottom surface of the structural ceiling of the Building, the boundaries of the Licensed Premises extend from the top surface of the structural subfloor to the height of the demising walls as determined by the Licensor; and (ii) from the exterior face of all exterior walls, doors and windows separating the Licensed Premises from the exterior of the Building and if the store front is recessed in whole or in part including any space lying between the store front and the general building line or "License Line"; and (iii) from the centre line of all interior walls separating the Licensed Premises from adjoining Licensable Area Premises. The Licensor may make any use it desires of the exterior side or rear walls of the Licensed Premises if such use does not encroach upon the interior of the Licensed Premises.

"Licensee's Occupancy Costs" mean for each Fiscal Year that fraction of the total of all costs, expenses and amounts, incurred or accrued in that Fiscal Year for or with respect to ownership, management, operation, maintenance, repair, upkeep, insurance, supervision, decoration, cleaning and upgrading of the Airport and the determination and allocation of such costs, expenses and amounts whether incurred or accrued by or on behalf of the

Licensor or by or on behalf of any manager or agent of the Licensor including, without limitation and without duplication payable by the Licensee:

A. Inclusions: If provided by the Licensor (subject to certain deductions as hereinafter set out):

fees for Licensed equipment and signs and the cost of building supplies used in the maintenance, cleaning, repair and operation of the Airport;

accounting (including fees for the statements referred to in Section 4.10), legal and other professional and consulting fees and disbursements;

the cost of investigating and remedying air quality and moisture issues and issues related thereto, if any;

that part of the operating costs of the VAC System allocated to the Common Elements in accordance with Schedule G;

the cost of all equipment acquired for operation or maintenance of the Airport if expensed fully in the Fiscal Year in which such equipment is acquired;

if expensed fully in the Fiscal Year in which the expense is incurred, the cost of any improvement, replacement, repair or alteration whether with respect to buildings, improvements, equipment, fixtures or otherwise and whether on-site or off-site which, in the opinion of the Licensor, is necessary to reduce or limit increases in Operating Cost or is required by the Licensor's insurance carriers or by any changes in the laws, rules, regulations or orders of any governmental authority having jurisdiction, including those necessary to comply with energy conservation, pollution and environmental control standards and the costs of any procedures required with respect thereto;

the cost of investigating, testing, monitoring, removing, enclosing, encapsulating or abating any Pollutant which is in or about the Airport or any part thereof or which has entered the environment from the Airport, if the Licensor is required to do so or if, in the Licensor's opinion, it is harmful or hazardous to any Person or to the Airport or any part thereof to the environment;

the cost of all insurance taken out and maintained by the Licensor under Article 9.00 including the cost of any deductible amount paid by the Licensor in connection with a claim under its insurance;

at the Licensor's election (such election to be evidence by the method of calculating operating costs for each Fiscal Year), either amortization, in an amount determined by the Licensor's accountant, of the cost (whether incurred before or during the Term and whether or not incurred by the party constituting the Licensor at any time or its predecessor in title or interest) of any repair, replacement, decoration or improvement of the Airport not expensed within the Fiscal Year in which the expenditure was incurred and all equipment required for the operation and maintenance of the Airport not included within Licensor's operating costs for the Fiscal Year in which the expenditure occurred in accordance with Subsections (f) and (g) above, or depreciation in an amount determined by the Licensor's accountant based on the cost (whether incurred before or during the Term and whether or not incurred by the party constituting the Licensor at any time or its predecessor in title or interest) of any of those items which the

Licensor in its absolute discretion has elected to treat as capital in nature together with, in each case, an amount equal to interest at the Prime Rate plus 1.5% per annum on the undepreciated or unamortized amount thereof;

the amount of salaries, wages and fringe benefits paid to or for the benefit of employees and others engaged exclusively in matters relating to the Airport and proportionate part thereof, estimated by the Licensor, paid to or for the benefit of employees and others engaged in part only in such matters;

the fair fee or license value of space in the Airport occupied by the Licensor's staff or managers engaged in matters relating to the Airport;

the cost of energy audits and conversation studies;

lighting, electricity, fuel, steam, water, public utilities, loudspeakers, public address and musical broadcasting systems; the net cost of operating and replacing public telephones used in or serving the Common Elements;

the costs of cleaning the Common Elements, garbage and waste collection and removal, landscaping, policing, security, supervision, traffic control and fire, life and safety inspections in respect of the Airport;

pursuant to Article 8:00 hereof, all Taxes, from time to time payable by the Licensor with respect to the Airport; and Capital Tax:

a management fee equal to fifteen percent (15%) of the Common Area Costs for the Airport.

B. Exclusions: Licensee's Occupancy Costs shall exclude, without duplication and without limiting the generality of the foregoing, except to the extent expressly included above:

the Licensor's costs of acquiring the Airport, whether paid as debt service or ground fee s;

Repair of inherent structural defects;

Licensee improvement allowances, Licensing commissions and Licensing costs;

the Licensor's contribution to the Promotion and Marketing Fund pursuant to Item 13 of the Term Sheet and Sub-section 5.10(2).

C. Deductions: There shall be deducted from Licensee's Occupancy Costs, without duplication, but only to the extent that related expenses were actually included therein for the Fiscal Year:

the proceeds of insurance recovered by the Licensor applicable to damage, the cost of repair of which was included in the calculation of Licensee's Occupancy Costs;

amounts recovered as a result of direct charges to the Licensee and other Licensees, in each case to the extent the cost thereof was included; and

All amounts taken into account in determining Licensee's Occupancy Costs shall be determined on the basis of payments made during the Fiscal Year with respect to which the calculation is

made except as the Licensor may from time to time reasonably require or as otherwise provided in this License. Amounts not finally determined may be estimated by the Licensor, acting reasonably.

"Licensehold Improvements" mean:

all additions and changes to the base building standards in the Licensed Premises; and

all alterations, improvements and equipment made or installed for the exclusive benefit of the Licensee elsewhere in the Airport;

whether or not installed during the Term including, without limitation, all Trade Fixtures.

"MAG " refers to the Minimum Annual Guaranteed amount payable by the Licensee to the Licensor set out in item 10 of the Term Sheet throughout the Term

"Mezzanine" means those parts of the Licensable Area Premises so designated from time to time by the Licensor.

"Percentage Fee" means the amount calculated in accordance with item 10 of the Term Sheet.

"Person" means any person, partnership, corporate entity or any combination of them.

"Pollutants" mean any substance, which is hazardous to persons or property and includes, without limiting the generality of the foregoing;

radioactive materials;

explosives;

any substance that, if added to water, land and/or air, would degrade or alter or form part of a process of degradation or alteration of the quality of that water, land and/or air, to the extent that it is detrimental to its use by human beings or by any animal, fish or plant;

any solid, liquid, gas, micro-organism, sound, vibration, ray, heat, radiation, odour or combinations of any of them that is likely to alter the quality of the environment (including air, land and water) in any way and that is present in the environment in a quantity or concentration in excess of regulatory standards, or the presence of which in the environment is prohibited by regulation or is likely to affect the life, health, safety, welfare or comfort of human beings or animals or to cause damage to or otherwise impair the quality of the soil, vegetation, wildlife property;

toxic substances;

substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Licensor, the Licensee, the Licensed Premises or the Airport of which the Licensed Premises form a part;

any substance the use or transportation of which or the release of which into the environment is prohibited, regulated, controlled or licensed under environmental legislation;

anything contaminated by any other Pollutant; and

Bio-Medical Waste.

"Prime Rate" means the rate of interest per annum established from time to time by The Bank of Nova Scotia (or such other bank being a class A chartered bank as the Licensor may designate from time to time) at its head office in Montego Bay, Jamaica as the reference rate of interest to determine interest rates it will charge on United States of America Dollars loans to its Jamaican customers and which it refers to as its "prime rate".

"Prohibited Activity" means the terms outlined in 5.01 (1) of the agreement herein.

"Rules and Regulations" mean the rules slated in Schedule D and any and all other rules and regulations promulgated by the Licensor from time to time for the regulation of the Airport, the licensees therein and their invitees.

"Security Deposit" means the amount thereof stated in item 11(a)) of the Term Sheet and referred to in Section 4.02(2) of the License.

"Service(s)" means those activities, personnel, facilities, systems and supplies required for the complete decoration, repair, administration, replacement, maintenance, improvement and operation of the Airport.

"Storage Areas" mean those areas so designated by the Licensor from time to time.

"Taxes" when used refer comprehensively to all various classes and types of taxes, rates, levies, fees, duties, charges and assessments from whatever source arising and levied, rates, imposed, assessed, conferred or chargeable against the Airport, the Licensed Premises or in respect of the occupancy and activity carried on therein or on account of the Licensor's ownership of or interest in the Airport or on account of fees payable with respect thereof and includes Business Taxes or any like tax or other amount levied or assessed in lieu of, in addition to, or in substitution thereof, whether or not similar to or of the foregoing character and whether or not in existence on the date hereof. Taxes include all legal and other professional fees and interest and penalties on deferred payments incurred by the Licensor in appealing or verifying or contesting the validity or amount thereof.

"Term" means the term of the Licensehold interest hereby granted being the period of time set out in item 6 of the Term Sheet together with any period added to the Term under Section 3.01, unless sooner terminated.

"Term Sheet" means the page(s) so titled and attached to this License and which forms part of this License.

"Trade Fixtures" mean Licensehold Improvements:

which have been installed only upon and against surfaces which are finished in a manner compatible with adjacent finished surfaces;

which consist of equipment or are otherwise capable of being removed and installed in other premises of the Licensee without damage or alteration; and

which the Licensee intends to install in other premises of the Licensee.

"Transfer" means:

an assignment, sublicense or other disposition by the Licensee of this License or any interest therein or any interest in the Licensed Premise or in a licensee under this License, or a mortgage, or charge (floating or otherwise) or other encumbrance of or upon this License by the Licensee except a Transfer that occurs on the death of the Transferor;

a parting with or sharing of possession of all or part of the Licensed Premises; and

a change in the effective voting control of the Licensee (unless the Licensee is corporation whose shares are traded on a stock exchange in Canada or the United States or is subsidiary of such a corporation).

"Transferor" and "Transferee" have meanings corresponding to the definition of "Transfer". In the case of a Transfer described in item (c) of the definition of Transfer, the Transferor is the Person that has or would have effective voting control before the Transfer and the Transferee is the Person that has or would have effective voting control after the Transfer.

The singular and plural form of the defined words and phrases shall have corresponding meanings.

## **SCHEDULE C**

### **LICENSOR'S AND LICENSEE'S WORK**

#### **PART I –GENERAL PROVISIONS**

**1. Outline Drawings and Design Criteria by the Licensor** - Within a reasonable time the Licensor shall supply to the Licensee "Outline Drawings" and Design Criteria" for the Licensed Premises showing (where appropriate) dimensions, cross sections, location of rear door, if any, entry points for air-conditioning, water sewers, electricity and sprinklers, and outlining the storefront signing and design criteria together with local work regulations.

**2. Complete Drawing by Licensee** - The Licensee shall submit to the Licensor complete drawings and specifications for the finishing of the Licensed Premises, prepared by qualified designers and conforming to each of good engineering practice, the Outline Drawings, the Design Criteria and the provisions herein. One (1) electronic copy and one(1) print set of drawings and specifications are to be submitted to the Licensor. The Licensor shall advise the Licensee if additional sets are required to be provided by the Licensee to the Licensor.

Such complete drawings and specifications shall provide for the following as a minimum requirement:

- a) any underfloor electrical or plumbing;
- b) floor plan;
- c) reflected ceiling plan;
- d) electrical and total load requirement of Licensee;
- e) ductwork and diffuser layout for VAC and location of room thermostat;
- f) sprinkler head layout;
- g) storefront, including emergency exit and signs, in compliance with the Licensor's Outline Drawings and Design Criteria;
- h) interior finishing schedules;
- i) any other special facilities or installations in respect of the Licensee's work or which affect the Licensor's facilities;
- j) a dimensional location plan of all openings required for and other particulars of any Licensee roof-mounted equipment;
- k) LPG gas piping routed from the termination point.

All required drawings and specifications shall be submitted in writing by the Licensee for review by the Licensor within twenty (20) days after the receipt by the Licensee of the Outline Drawings and the Criteria. (The Licensee's work may not proceed prior to, receiving the Licensor's written authorization of work based on the said drawings and specifications.)

The Licensor shall notify the Licensee either of the Licensor's authorization thereof or of all the specific changes reasonably required by the Licensor and the Licensee shall then prepare and submit to the Licensor within ten (10) days next following, complete drawings and specifications so amended. If the Licensee fails to submit complete drawings and specifications, within the times hereinbefore provided, the Licensor, at its option, exercised by notice in writing, may terminate the Agreement to License and the License and of the entire Licensee's rights hereunder and thereunder without necessity of any legal proceedings. Such termination shall be without prejudice to any the Licensor's rights to damages and all monies paid hereunder by the Licensee shall be forfeited.

If the drawings and specifications required by the Licensor from the Licensee in order to complete the Licensor's work are not received within the period above stated for the receipt of such drawings and specifications, and if the Licensor does not elect to cancel the Agreement to License, and if the License is executed then, notwithstanding clause 7 of this Schedule C, part I, the Licensor's work as described in Schedule C, Part II will be deemed complete on the later of:

- (i) thirty-five (35) days after the due date for such drawings and specifications; or
- (ii) five (5) days after the date upon which the Licensor's work, which is independent of the Licensee's plans, has been completed as verified by the Licensor's architect. Notwithstanding the foregoing, it is acknowledged that the Licensor's



work with regard to the ventilating and-conditioning systems and main electrical service to the Licensed Premises cannot be completed without the Licensee's specifications.

- 3. Designers and Qualified Contractors** – The Licensee's work shall be carried out under the supervision of designers and contractors who are, in the Licensor's reasonable opinion, suitably qualified with respect to the work to be undertaken.

The Licensee agrees to require that the contractor(s) and subcontractor(s) retained for the completion of all or any portion of Licensee's work employ only labour satisfactory to the Licensor. If there is an actual or threatened objection to, or grievance by or on behalf of, any labour employed in connection with Licensee's work, the Licensee shall cause its contractor(s) or subcontractor(s) to make such arrangements and take such action as may be necessary in the opinion of the Licensor to prevent any strikes, slow-downs or similar delays and to prevent any loss, injury or damage to the Licensor and shall in any event remove from the Airport any contractor(s), subcontractor(s) or individual(s) causing any labour dispute or conflict within the Airport.

- 4. Fire-proof Standards** –Where the Licensee's occupancy requires fire rated construction, the Licensee must satisfy, at its cost, the applicable governing laws, codes and/or regulations.

- 5. Access to Licensed Premises** – Subject to the Licensor's approval, each of the Licensor and/or public utility companies shall have the right to install utility lines, roof drainage and other pipes, conduits, wires, or ductwork where necessary through the Licensee's ceiling space, column space or other parts of the Licensed Premises and to maintain, inspect, and repair same. During construction, the Licensee shall provide the Licensor's contractors with free and uninterrupted access for such purposes at the points designated by the Licensor when reasonably required by the Licensor.

- 6. Insurance** – The Licensee shall be required to keep in force at its own expense throughout the period of the Licensee's work general liability insurance in an amount not less than One Million Dollars United States Dollars (\$1,000,000.00) in respect of any injury to or death of one or more persons and loss or damage to property of others, which insurance shall show the Licensor and its agent as additional named insurers.

All insurance required under this clause will be on terms and conditions satisfactory to the Licensor. The Licensee agrees to deliver to the Licensor, on or before the commencement of the Licensee's work, proof of the above required insurance in force at such date, such proof to be in the form of current policies or certificates of insurance. The Licensee also agrees to deliver to the Licensor an endorsement or endorsements to the Licensor describing the above noted insurance, wherein the Licensee's insurer or insures agree to give prior written notice to the Licensor of any material change in, cancellation of, or termination of such insurance, and the Licensee further agrees to deliver to the Licensor copies of renewal policies or certificates together with endorsements including the above noted information. If the Licensee fails to insure or file satisfactory proof of insurance, the Licensor may without notice to the Licensee, effect such insurance and recover any premiums paid thereon from the Licensee on demand. The Licensee shall promptly pay all premiums due on the insurance required to be effected by it hereunder, shall not have any goods nor do anything upon the Licensed Premises which would impair or invalidate the obligation of any insurer, whether of the Licensor or of the Licensee outside its normal course of business in the Licensed Premises, the amount of increase shall be paid by the Licensee to the Licensor on demand. The Licensor agrees to notify the Licensee

promptly after the Licenser becomes aware that insurance premiums are to be increased as a result of the Licensee's activity.

If the breach or non-performance of any of the covenants or agreements herein contained on the part of the Licensee shall immediately endanger the Licensed Premises or any other Buildings or property in or on the Airport or result in the voiding, cancellation or threatened cancellation of any insurance policy affecting such Buildings or property or part thereof the Licenser may, without limitation, removing the Licensee and any persons or property from the Airport as is reasonably required to remove or abate the cause of the danger or the voiding or cancellation of the policy, and the Licenser shall not be liable for any damages of any kind arising out of such action.

**7. Licensed Premises Inspection and Turnover Procedure**- the Licenser shall give notice to the Licensee when the Licenser's work is, in its opinion, substantially completed setting forth a date not less than five (5) days from the date of such notice, upon which the Licensee may inspect the Licensed Premises with a representative of the Licenser. The Licensee shall give notice to the Licenser no later than five (5) business days after the inspection referred to in such notice shall have been made, setting forth any defects or faults on or in respect of Licensed Premises as a result of failure of the Licenser to perform the Licenser's work. Failing the giving of such notice, the Licensee shall be deemed for all purposes to have accepted the Licensed Premises in the then existing condition, and the Licenser shall not have any further obligations to the Licensee with respect to any such defects or faults except such latent defects as would not be apparent after careful inspection of the Licensed Premises.

**8. Commencement of Construction by Licensee**- If the Licensee fails to start construction within the times provided in the Agreement to License, the License and this Schedule C, the Licenser, at its option, exercised by notice in writing, may terminate the Agreement to License and the License, and all of the Licensee's rights hereunder and thereunder without necessity of any legal proceedings. Such termination shall be without prejudice to any of the Licenser's rights to damages and all monies paid under the Agreement to License by the Licensee shall be forfeited.

**9. Failure to Open**

(a) the Licensee shall construct, finish and fully stock the Licensed Premises so as to be open for business on the Commencement Date of the Term of the License;

(b) in the event that the Licensee fails to open for business by the Commencement Date, the Licenser shall have the right, without prejudice to any other rights which it may have under the Agreement to License, the License or at law, to recover from the Licensee as liquidated damages and not as a penalty, the greater of the sum of Five Hundred United States Dollars (\$500.00) or \$0.05 per square foot per day of the Licensable Area of the Licensed Premises for each day on which the Licensee fails to open for business, as set forth above, in addition to all Fees charges due from the Commencement Date.

**10. Limitations of the Licenser's Liability**- the Licenser shall not be liable in respect of any loss, injury or damage suffered by the Licensee or others in respect of:

the property of the Licensee or others from theft, accident or any other cause whatsoever, except to the extent caused by the Licensor's negligent acts;

to Persons suffering injury or damage to property resulting from fire, falling plaster, escaping steam or gas, electricity, water (including sewer back-up) rain, or leaks from any part of the Licensed Premises or from pipes, appliances or plumbing work therein, or from dampness except to the extent caused by the licensor's negligent acts;

damage caused by other licensees, occupants or by the construction of any private or public work; or

loss or damage which is indirect or consequential or caused other than by the direct fault and privity of the Licensor.

**11. Indemnity** –The Licensee shall indemnify and hold harmless the Licensor from all costs, liability, claims, damages or expenses due to or arising out of any work done by, or act, neglect or omission of the Licensee or its servants, employees, agents, contractors, invitees, concessionaires or Licensees in and about the Airport, or due to or arising out of any breach by the Licensee of any provision of this Schedule C.

## **SCHEDULE C - EXPANSION**

### **LICENSOR'S AND LICENSEE'S WORK**

#### **PART II – The Licensor's WORK**

Items enumerated below will be provided at the Licensor's expense unless otherwise specified:

1. **Building Shell**

structural steel or concrete frame;

finished roof;

concrete floor;

party walls of dry-wall on steel studs; dry-wall will be taped and sanded by the Licensor. Walls dividing the Licensed Premises from a common area space, rear or exterior walls to be exposed block and/or dry-wall;

where applicable a rear exit door in accordance with applicable building codes (location to be shown on cutsheet Drawings).

2. **Electrical Service** – The Licensor shall provide a metered source of main power supply (415V) to an electrical distribution board within the Licensed Premises. The Licensee shall provide a certified copy of their electrical reticulation design for the Licensed Premises to the Licensor. The electrical reticulation design shall be from a licensed Electrician or Electrical Engineer. The Licensee shall provide a certified copy of the final as built electrical documentation to the Licensor. The Licensee shall provide circuit breakers and blanking panels as required for any electrical reticulation. All circuit breakers shall be correctly rated for the supply voltage and expected fault current. All cable connections to the electrical distribution board shall be correctly rated for the supply voltage and total current draw. All general purpose outlets shall have earth pins and they shall be bonded to the earth bar in the electrical distribution board. All electrical works shall be signed off by a qualified electrical inspector. The Licensee shall supply a certified copy of the Electrical Inspection Certificate to the Licensor. The Licensee shall provide all materials, fittings and labour for the electrical reticulation works within the Licensed Premises.

3. **Telephone Services** – A conduit for telephone service shall be brought to a point of connection as shown on the Outline Drawings. This work will be at Licensee's cost and payable on demand.

4. **Air-Conditioning Equipment**

a) At the Licensor's discretion, a chilled water line may be installed with a valve at the Licensor's designated location for the Licensee to connect its electrically operated fan coil unit, (See Schedule C, Part III – Licensee's Work, Item 4(c).

5. **Plumbing**

a) Where applicable, the Licensee shall install a check water meter at the Licensee's sole cost and expense;

**6. Sprinklers and Fire Protection**

- a) the Licensor will provide a connection to a distributed sprinkler system installed to code for a shell space;
- b) any modifications or additions as may be required by the Licensee to the Licensor's sprinkler system shall be performed by a contractor (works designed and coordinated by the Licensee) approved by the Licensor at the Licensee's cost payable on demand.

**7. LPG** –The Licensee will be responsible following authorization from the Licensor, to make arrangements directly for the supply of LPG Bottled Gas. All extensions, alternations and final approved connections shall be performed by the Licensee all at the cost of the Licensee.

**8. Recoveries** – the Licensor shall be entitled to charge a fifteen percent (15%) administration fee calculated upon the total cost of all items identified as recoveries or backcharges under the Licensor's and Licensee's Work.

**9. Work Outside Licensed Area** – Any works required by the Licensee outside the Licensed Area will be at the cost and expense of the Licensee. This includes but is not limited to conduit/tray installation for low voltage systems. At no time will the Licensee be allowed to perform works outside the Licensed Area, unless approved by the Licensor

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## **SCHEDULE C - EXPANSION**

### **LICENSOR'S AND LICENSEE'S WORK**

#### **PART III –THE LICENSEE'S WORK**

The Licensee agrees to comply with and provide, at its sole expense, the items enumerated below in accordance with the procedures set forth in Part I of this Schedule C and will provide all other work required for the finishing of the Licensed Premises for their intended use (all in accordance with the Licensee's drawings and specification approved by the Licensor);

1. **Storefront and Signage** –The Storefront (including emergency exit and signs) in accordance with the provisions of the Outline Drawings and Design Criteria.

2. **Electrical and Data**

- a) lighting panels, underfloor conduits (if any), branch wiring outlets and receptacles;
- b) lighting fixtures, lamps and related equipment (only LED lighting is permitted);
- c) wiring for all washroom equipment, as required by the Licensee, including hot water heater, baseboard heater, and lighting;
- d) emergency lighting and exit lights;
- e) all internal wiring for data and telecommunication
- f) immediately upon taking occupancy of the Licensed Premises for the purpose of finishing, the Licensee shall arrange to have the electrical service to the Licensed Premises energized and shall sign all required documentation and make all required deposits when required. If the Licensee utilizes the electrical power of the Licensor for the purpose of finishing the Licensed Premises, the Licensee shall be charged for the cost of such electrical power as reasonably determined by the Licensor.

3. **Ceiling** – The ceiling membrane, fire rated if required, may be constructed of acoustic tile, dry-wall, plaster, or other approved materials. There may be no combustible materials in the ceiling space. Ceiling design shall incorporate suitable access to all ceiling-mounted the Licensor equipment requiring inspection and maintenance. The required access points shall be determined by the Licensor or the Licensor's consultants.

4. **Ductwork and Diffusers**

- a) supply air, return air and sanitary exhaust distribution ductwork, ceiling diffusers, registers, grilles and ceiling firestop flaps within the Licensed Premises for the air-conditioning system;
- b) where additional ventilation is required due to specific zoning as for exterior walls, the ventilation and the supply installation and wiring shall be at the Licensee's expense;
- c) the thermostat location in each Licensee's area must be clearly identified on the drawings submitted by the Licensee to the Licensor for review. Any on-site revisions to the approved location shall be at the Licensee's expense.

- (i) Proportional control thermostat with a normally open, spring return modulating 24 volt motor.
- d) the Licensee will pay the cost of the supply and installation of the Licensee washroom exhaust roof opening. See Schedule C, Part III – THE LICENSEE'S Work, Item 4(b);
- e) in addition to the provisions contained in section 4(c) hereof, the Licensee shall supply and install at the Licensee's sole cost and expense, an operating Griswold threaded mini automatic control valve on the chilled water return line. The flow setting be as required for the specific cooling coil in the air-conditioning unit;
- f) if Licensee requires the fan coil unit to be relocated, the work will be done by the Licensee, at the Licensee's expense.

## **5. Exhaust and Odours**

- a) objectionable odours shall be exhausted in such a manner so as to prevent their release into the Airport areas or Licensable Areas, or short circuiting into any fresh air vents. Where deemed necessary by the Licensor, such exhaust systems shall incorporate activated charcoal filter(s), fully and properly maintained;
- b) if the Licensee requires roof-mounted equipment, then roof cuts, curb and related work to be performed by the Licensor, at the Licensee's expense. Where exhaust fans are to be provided by the Licensee, the capacity of such fans shall not exceed the amount of fresh air supplied by the Licensor to the Licensed Premises; otherwise a separate make-up system shall be provided by the Licensee;
- c) air-handling equipment may not under any circumstances draw air from the Airport mall or exhaust into it;
- d) garbage compaction or refrigeration equipment must be installed in the Licensed Premises by the Licensee if perishable items are handled or if required by applicable governing laws, codes and/or regulations.

## **6. Sprinkler and Fire Protection**

The Licensee, utilizing the Licensor's designated contractor, shall make all necessary adjustments and additions to the Licensor's sprinkler system, at the Licensee's sole cost and expense, to provide for approved sprinkler protection within the Licensee's finished Licensed Premises. All changes to the sprinkler system must be engineered and authorized by the Licensor;

sprinkler heads with attached piping shall be located so as to provide complete protection in accordance with all authorities, including the Insurer's Advisory Organization;

Licensee shall arrange with the Licensor to enable the Licensor's contractor to shut off and de-activate the Licensor's sprinkler system to permit piping changes within the Licensed Premises to proceed at the sole expense of the Licensee in the amount of Two Hundred and Fifty Dollars (US\$250.00) per shutdown. The timing of such shutdown to be in sole and absolute discretion of the Licensor;

the entire costs of all work involved in making sprinkler changes shall be the Licensee's account;

the Licensee shall provide fire extinguishers and other devices or equipment required within the Licensed Premises and as requested by the local fire department and other authorities having jurisdiction.

**7. Plumbing**

- a) the Licensee shall provide facilities for distribution of supply and waste plumbing lines and fixtures required by the Licensee to serve its Licensed Premises, except for sub-clause (e) of this clause 7;
- b) where applicable, the Licensee will install a check water meter, at the Licensee's sole and expense;
- c) a typical washroom in accordance with sub-clause (e) of this clause 7, at the Licensee's expenses;
- d) the Licensee shall provide an approved interruption system to any waste or sewage that is detrimental to the effective desired use of the Licensor's system, at the Licensee's cost;
- e) if approved by the Licensor, the Licensee may provide a standard licensee washroom at the location designated on the Outline Drawings, including:
  - (i) partition to ceiling height, and a door and frame with passage set hardware;
  - (ii) water closet, lavatory, floor drain, and 6-gallon hot water heater, complete with plumbing and vent piping as required;
  - (iii) suspended ceiling of dry-wall or acoustic tile;
  - (iv) LED lighting fixture and switch;
  - (v) 500 watt baseboard heater, provided only at washrooms on exterior walls;such work shall be done at the expense of the Licensee;
- (f) all domestic water lines installed by the Licensee are to be insulated with a minimum of 2" fiberglass insulation and a vapour barrier.

**8. Interior Finishes** – The Licensee shall provide and pay for painting and decorating partitions, floor coverings, and new store fixtures and furnishings. The Licensee, at their sole cost and expenses, shall have the Licensor's tile installed by the Licensor's designated contractor.

**9. Addition Requirements** – The Licensee shall provide any requirement of the Licensee in addition to those specified herein and in Schedule C, Part II –the Licensor's Work.

**10. Licensee's Extra Requirements** – If the Licensee's requirements for electrical service capacity and air-conditioning capacity exceed the standards outlined in Items 2 and 4 of the Licensor's Work (Schedule C, Part II), the Licensor shall supply a quotation to the Licensee for



such extra work and that amount shall be reimbursed by the Licensee to the Licensor on demand following completion of the work.

**11. Performance of Licensee's Work** – The following provisions are in addition to, and do not waive, the provisions, if any, contained in the Agreement to License and the License:

- a) Permits and Insurance - Before doing any items of the Licensee's work:
  - (i) the Licensee shall secure, and demonstrate to the Licensor on demand, all necessary permits and must satisfy the requirements of all applicable statutes, by-laws, codes and regulations; and
  - (ii) the Licensee shall provide to the Licensor satisfactory proof of insurance in effect throughout the finishing of the Licensed Premises as required in Schedule C, Part I – General Provisions and as may be further required in the Agreement to License and the License. The Licensee shall not be permitted to enter the Licensed Premises to commence construction until such proof of insurance has been provided.
- b) Occupancy Certificate and Statutory Declaration Confirming No Liens -The Licensee shall, upon completion of the Licensee's work, secure all applicable completion and occupancy certificates, and provide the Licensor with a statutory declaration confirming that there are no encumbrances affecting the Licensed Premises or the Airport with respect to work, services or materials and equipment relating to the Licensee's work and that all accounts for work, services or materials and equipment have been paid in full with respect to all of the Licensee's work.
- c) New Material, Workmanship and Damage - All work by the Licensee within the Licensed Premises shall be completed with new materials. Materials and workmanship shall be of a uniformly high quality and used and/or performed in accordance with the very best standards of practice and shall not be in contravention of any applicable governing laws, codes or regulations and shall be subject to the Licensee or any of its employees, contractors or workmen shall be repaired forthwith by and at the expense of the Licensee. Materials and installation shall be at least to the standards imposed on the Licensor's contractor.
- d) Roof - Except as provided in Section 7.07 of the License, neither the Licensee, nor its employees, nor its contractor(s) or its contractors' employees shall enter onto any roof of the Airport or make any openings in the roof. Any penetration of the roof for any purpose shall be performed by the Licensor, at the Licensee's cost. No roof-mounted antenna or satellite receiving dish or other facility antenna is permitted unless approved in writing by the Licensor with respect to location and detail. Any roof structure work to be performed by the Licensor at the cost of the Licensee requires fifteen (15) days prior written confirmation and authorization from the Licensee. Delays incurred in the installation of the roof work shall not be caused nor claim for extension of the Fixturing Period.
- e) Loads and Drilling -The Licensee and its contractor(s) shall not impose a greater load on any concrete floor than the design live load of 100 pounds per square foot uniformly distributed. No unusual loads may be suspended from the underside of the structure. Under no circumstances shall the Licensee or its contractor(s) at any time be permitted to drill or cut conduit or pipe sleeves or chases or duct equipment openings in the floor, columns or walls of the structure without the prior written approval of the Licensor. The

Licensor may require that work of this type be performed by the Licensor, at the Licensee's expense.

- f) Underfloor Wiring – Any underfloor electrical wiring must be rigid conduit.
- g) Water-cooled Equipment – The Licensee shall not provide nor install any water-cooled equipment of any kind, without the prior written permission of the Licensor.
- h) Rubbish -The Licensee and/or its contractor(s) shall maintain the Licensed Premises in a reasonably clean and orderly manner, and SHALL REMOVE DAILY all excess material, trash and cartons resulting from the work of the Licensee's contractor(s) and the Licensee deliveries and removal of garbage identified herein, and Licensee shall pay on demand to the Licensor a "Service Fee" of One Thousand United States Dollars (US\$1000.00) as a contribution towards the cost of the Licensor providing the Licensee the Services and Facilities identified in this paragraph.

**12. Security** – Store security is the responsibility of the Licensee, who shall take all necessary steps to secure the Licensed Premises. The Licensor shall have no liability for any loss or damage including theft of building materials, equipment or supplies. If in the Licensor's sole opinion, the Licensee requires security, such security shall be by the Licensor's security company and the sole cost and expense of the Licensee.

**13. Licensee Coordination Fees** – Licensee shall pay the Licensee Coordination Fee, as may be determined by the Licensor in accordance with the provisions of the Agreement to License for coordination by the Licensor in respect of the fees payable by the Licensor to the Licensor's architect, electrical and mechanical engineers, and other consultants in respect of examination of the Licensee's plans and specifications (including, in particular, electrical and mechanical details), which fees shall be payable to the Licensor within thirty (30) days of receipts of invoice.

**14. Licensee Authorized Work** – Work performed by the Licensor on behalf of the Licensee not provided for in Part II of this Schedule C shall require the Licensee to sign a "Licensee Authorization Form" prior to any work commencing. Forms are available from the Licensor's project manager. An administration fee of fifteen (15%) percent shall be charged based on the cost of the work so performed.

**15. Hoarding** –The Licensee shall install and finish hoarding to suit its needs the Licensed Premises.

### **SUMMARY OF STANDARD LICENSEE BACKCHARGES**

The following is a summary of all the standard backcharges in accordance with the provisions of this Schedule C, Part III – Licensee's Work:

- a) electrical check meter – Part II, Item 2
- b) electrically operated fan coil unit –Part II, Item 4(a)
- c) PG – work through demising walls, roof structure –Part II, Item 7
- d) 15% administration fee on all recoveries –Part II, Item 8
- e) rear door signage & mall directory strips – Part III, Item 1
- f) structural outriggers –Part III, Item 1
- g) electrical power used during fixturing –Part III, Item 2(e)
- h) additional electrical heater installation & wiring –Part III, Item 4(b)

- i) 2-way control valve –Part III, Item 4(c)
- j) thermostat –Part III, Item 4(c)
- k) on-site revisions to location of thermostat –Part III, Item 4(c)
- l) washroom exhaust roof opening – Part III, Item 4(d)
- m) Griswold –Part III, Item 4(e)
- n) Relocation of fan coil unit –Part III, Item 4(f)
- o) Roof cuts, curb & red work –Part III,
- p) Sprinkler modification – Part III, Item 6(a) & (d)
- q) Sprinkler draindowns – Part III, Item 6(c)
- r) Check water meter – Part III, Item 7(b)
- s) Tile –Part III, Item 8
- t) Licensee services & facilities – Part III, Item 11(h)
- u) Security –Part III, Item 12
- v) Licensee coordination fee – Part III, Item 13

## **SCHEDULE D**

### **RULES AND REGULATIONS**

1. The Licensee shall not perform any acts or carry on any practice, which may damage the Common Elements or be a nuisance to any other licensee in the Airport.
2. Any Person entering and leaving the Building at any time other than during normal business hours shall register in the books kept by the Licensor and the Licensor will have the right to prevent any Person from entering or leaving the Building unless provided with a key to the Licensed Premises or pass in a form to be approved by the Licensor. The Licensor shall be under no responsibility for failure to enforce this rule.
3. In regard to the use and occupancy of the Licensed Premises and Common Elements, the Licensee shall:
  - keep the inside and outside of all glass in the doors and windows of the Licensed Premises clean;
  - keep all exterior storefront surfaces of the Licensed Premises clean;
  - replace promptly, at its expense, any cracked or broken window glass of the Licensed Premises with glass of like kind and quality;
  - maintain the Licensed Premises, at its expense, in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pest, and the Licensee shall use at the cost of the Licensee such pest extermination contractor as the Licensor may direct and such intervals as the Licensor may require;
  - keep any garbage, trash, rubbish or refuse in containers as approved by the Licensor within the interior of the Licensed Premises until removed as herein provided;
  - have such garbage, trash, rubbish and refuse removed at its expense on a regular basis as prescribed by the Licensor;
  - keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Licensed Premises;
  - light the show windows of the Licensed Premises and exterior sign, if any, each night of the year to the extent required by the Licensor or during such hours and on such days as are designated from time to time by the Licensor;
  - ensure that all loading and unloading of goods shall be done only at such times, in the areas, and through the entrances designated for such purposes by the Licensor. The delivery or shipping of merchandise, supplies and fixtures to and from the Licensed Premises shall be subject to such controls in the judgment of the Licensor are necessary for the proper operation of the Licensed Premises and/or the Airport;
  - permit window cleaners to clean the windows of the Licensed Premises only during those hours when the Airport shall not be open for business.

4. In regard to the use and occupancy of the Licensed Premises and the Common Elements, the Licensee shall not:

place or maintain any merchandise or other articles in any vestibule or entry of the Licensed Premises, on the footwalks adjacent thereto or elsewhere on the exterior of the Licensed Premises or Common Elements;

use trading stamps;

use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio, broadcast or television apparatus within the Airport which is in any manner audible or visible outside the Licensed Premises;

permit undue accumulations of garbage, trash, rubbish or other refuse in the Licensed Premises or elsewhere in or adjacent to the Airport;

cause, suffer or permit odours to emanate or be dispelled from the Licensed Premises, and upon direction of the Licensor shall forthwith, at the Licensee's expense, remedy any situation resulting in a breach of this provision;

solicit business in the Common Elements;

distribute handbills or other advertising matter to, in or upon any automobiles parked in the Common Elements;

permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking area, mall or other Common Elements in the Airport;

mount or place an antenna of any nature on the exterior of the Licensed Premises;

use the plumbing facilities for any other purposes than that for which they are constructed, and no foreign substance of any kind shall put therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by the Licensee;

use any part of the Licensed Premises for lodging, sleeping or any illegal purpose;

cause, permit or suffer any machines selling merchandise, rendering services or providing, however operated, entertainment, including vending machines, to be present on the Licensed Premises unless consented to in advance in writing by the Licensor;

place or cause to be placed any additional locks upon any doors of the Licensed Premises without the approval of the Licensor and subject to any conditions imposed by the Licensor;

bring in and take out, position, construct, install or remove any safe or other heavy equipment or furniture without first obtaining the consent in writing of the Licensor. In giving consent, the Licensor shall have the rights in its sole discretion, to prescribe the weight permitted and the position thereof. All damage done to

the Building by moving or using any such safe, heavy equipment or furniture shall occur only during those hours when the Airport shall not be open for business or any other time consented to by the Licensor, and any Person employed to move the same in and out of the Licensed Premises shall be acceptable to the Licensor.

5. When required by a governmental authority having jurisdiction, the Licensee will provide within the Licensed Premises facilities or accommodation for garbage and waste and its disposal and pick-up as required.
6. Any hand trucks, carryalls, or similar appliances used any building in the Airport shall be equipped with rubber tires, side guards and such other safeguards as the Licensor shall require.
7. No animals or birds shall be brought into the Licensed Premises except as permitted by this License.

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## **SCHEDULE E**

### **ADDITIONAL COVENANTS, AGREEMENTS AND CONDITIONS**

1. The Licensed Premises are delivered to the Licensee from the Licensor on an "as is" basis and all items and/ or improvements in the Licensed Premises on this date remain the property of the Licensor and may not be removed by the Licensee at any time during or after the Term.

**SCHEDULE F**

DELETED



## **SCHEDULE G**

### **CHARGES FOR VENTILATING AND AIR-CONDITIONING SERVICES**

#### **A. The Operating Charge**

In each Fiscal year, the Licensor will allocate between the Common Elements and the Licensable Area Premises, based on the advice of the Licensor's engineer, the total costs (the "VAC Operating Costs") of the following services (the "Service"): operating, maintaining, repairing and replacing components of the VAC System. The VAC Operating Costs include but are not limited to the following: costs for labour including fringe benefits, power, fuel, domestic water, chemicals, lubricants, filters, and outside maintenance contracts, if any, the costs incurred by the Licensor in determining the allocation mentioned above, and a fee of fifteen percent (15%) of the total of the VAC Operating Costs allocated to the Licensable Area Premises, for the Licensor's overhead. If a repair or replacement cost is not charged in full in the Fiscal Year in which it is performed or purchased, the Licensor will charge in each Fiscal Year, depreciation or amortization on the depreciated or amortized costs (together with a fee of fifteen percent (15%) of the depreciation or amortization) and interest of two (2) percentage points above the Prime Rate on the undepreciated or unamortized part.

The VAC Operating Costs allocated to Common Elements will be included in Licensee's Occupancy Costs.

Licensee will pay, in each License Year, the "Licensee's Operating Charge". The "Licensee's Operating Charge" is the total of: (i) those VAC Operating Costs allocated to any basement areas of the Licensed Premises; and (ii) the product of (1) the VAC Operating Costs allocated to Licensable Area Premises after deducting any operating costs allocated to basement area of Licensable Area Premises, and (2) a fraction which has as its numerator the Licensable Area of the Licensed Premises, excluding basement areas, and as its denominator the total Licensable Area of those Licensable Area Premises (including the Licensed Premises), excluding basement areas, that are occupied throughout the Fiscal Year and are served by the VAC System. The allocations mentioned in this subparagraph will be made by the Licensor's engineer.

If Licensable Area Premises are occupied by licensees who are solely responsible for providing a Service, Licensee's Operating Charge as applied to that Service will be adjusted by excluding the Licensable Area of those Licensable Area Premises from the denominator referred to in subparagraph (c) above.

For the purpose of Licensee's Occupancy Costs, the amounts payable under subparagraph (c) above will be considered as amounts payable under Licensee's Occupancy Costs of the License with references to "Licensee's share" being substituted, for the purposes of subparagraph (c) above, by references to "Licensee's Operating Charge".

## SCHEDULE H

## CONTENTS OF LICENSED PREMISES

The following Schedule H is referred to in Section 9.06, Environmental Issues, in the License.

All contents and materials, other than standard office furnishing and supplies, stored in the Licensed Premises are as follows:

(Licensee include, in detail, all materials, Pollutants, including but not limited to, chemicals and related items that are used and /or stored in the Licensed Premises.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

**SCHEDULE I**

**FORM OF INDEMNITY AGREEMENT (if applicable)**

**INDEMNITY AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**BETWEEN:**

(hereinafter called the "Indemnifier")

OF THE FIRST PART

-and-

(hereinafter called "the Licensors")

OF THE SECOND PART

1. **FOR VALUE RECEIVED** and in consideration of and as an inducement to the Licensors entering into the License dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "License") and made between the Licensors and \_\_\_\_\_ as Licensee of certain premises located in the Licensors' building or complex known as \_\_\_\_\_ in the City of \_\_\_\_\_ in the Parish of \_\_\_\_\_, which premises are more particularly described in the License (the "Licensed Premises") the undersigned indemnifier ("Indemnifier") covenants and agrees with the Licensors that the Indemnifier will:

make due and punctual payment during the term of the License [or during the \_\_\_\_\_ (\_\_\_\_) years of the term of the License] and any extension or renewal thereof, if any, (hereinafter referred to as the "Indemnification Period") of all amounts expressed to be payable under the License during the Indemnification Period whether as Fee or otherwise; and [to a maximum amount of \$\_\_\_\_\_ and ;]

observe and perform during the Indemnification Period all covenants and agreements in the License contained on the part of the Licensee to be observed and performed during the Indemnification Period; and

indemnify and save harmless the Licensors from any and all loss, costs or damages arising out of any failure to pay of the said amounts and/or any failure to observe and perform any of the said covenants and agreements.

2. This Agreement and the obligations of the Indemnifier hereunder shall not be terminated or impaired by reason of the granting by the Licensor of any indulgences to the Licensee or the assertion by the Licensor against the Licensee of any of the Licensor's rights or remedies under the License, or by the release of the Licensee from any of the Licensee's obligations under the License by operation of law or otherwise, whether or not the Indemnifier has received notice of same. The Indemnifier waives all surety ship defences and waives notice of any default by the Licensee in the payment of any amounts expressed to be payable under the License or in the observance and performance of any of the covenants and agreements therein contained. The obligations of the Indemnifier shall:

continue until all of the said amounts accruing during the Indemnification period have been paid and all of the said covenants and agreements have been observed and performed, or until the Licensor shall have delivered to the Indemnifier an instrument in writing discharging the Indemnifier from his obligations hereunder;

be independent of the obligations of the Licensee and be construed for all purposes as if the Indemnifier were a primary obligor and not merely a surety for the obligations of the Licensee under the License; and

be unaffected by any failure of the Licensor to enforce any of the covenants and agreements in the License.

3. This Agreement shall continue in full force and effect as to, and notwithstanding, any extension or renewal, amendment, modification, assignment or transfer of the License or any subletting of the Licensed Premises, whether or not the Indemnifier shall have received notice of or consented to the same. The Indemnifier further acknowledges and agrees that the Licensor shall be entitled, without prior notice or demand and without affecting the obligations of the Indemnifier hereunder, to:

change the time or manner of payment of any amounts expressed to be payable under the License;

modify or supplement any of the covenants and agreements in the License;

grant extensions of time, indulgences, releases or discharges in respect of the payment of any amounts or the observance and performance of any covenants and agreements;

renew the License pursuant to the renewal provisions therein contained, if any;

assign the License or the benefit of any amounts expressed to be payable thereunder;

consent to changes in the Licensed Premises and to any License of additional space by way of amendment of the License;

consent to changes in the Licensed Premises and to any License of additional space by way of amendment of the License;

assign this Agreement in whole or in part; and

take or require security from the Licensee.

4. The liability of the Indemnifier under this Indemnity is primary and absolute, and in the event of a default under the License, the Indemnifier waives any right to require the Licenser to:

proceed against the Licensee or pursue any rights and remedies with respect to the License;

proceed against or exhaust any security of the Licensee held by the Licenser; or

pursue any other remedy whatsoever in the Licenser's power, before proceeding

against the Indemnifier under this Agreement. The Licenser shall have the right to enforce this Agreement regardless of the release or discharge of the Licensee by the Licenser or by others or by operation of law.

5. The Licenser's delay or failure to insist upon the strict performance or observance of any obligation of the Licensee under the License or to exercise any right or remedy available under the License or at law or in equity or to give the Indemnifier notice of the default, shall not be construed to be a waiver of the Licenser's right to insist upon such strict performance or observance or to exercise any such right or remedy. Receipt by the Licenser of fee or other payment with knowledge of a breach of any term or condition of the License shall not be construed to be a waiver of such breach.

6. The liability of Indemnifier hereunder shall not be deemed to have been waived, released, discharged, impaired, affected or limited by: (i) the release or discharge of Licensee in any, receivership, bankruptcy, winding-up or other creditors' proceedings; (ii) the impairment, limitation or modification of the liability of the Licensee or the estate of the Licensee in bankruptcy, or of any remedy for the enforcement of the Licensee's said liability under the License, resulting from the operation of any present or future provision of any bankruptcy laws or other statutes or from the decision in any court; (iii) the rejection, repudiation, disaffirmance or disclaimer of the License in any such proceedings; (iv) any disability or other defence of the Licensee; or (v) the cessation, from any cause whatsoever, of the liability of Licensee. The Liability of the Indemnifier shall not be affected by any repossession of the Licensed Premises by the Licenser provided, however, that the net payments received by the Licenser after deducting all costs and expenses of repossession and/or re-letting the same, shall be credited from time to time by the Licenser to the account of the Indemnifier, and the Indemnifier shall pay any balance owing to the Licenser from time to time immediately upon ascertainment.

7. Until all the terms, conditions and agreements of the License are fully performed and observed by the Licensee, the Indemnifier hereby waives the right to enforce any claim, right or remedy which the Indemnifier has or hereafter shall have against the Licensee by reason of any one or more payments or acts of performance in compliance with the obligations of the Indemnifier hereunder, and the Indemnifier hereby subordinates any liability or indebtedness of the Licensee now or hereafter held by the Indemnifier to the obligations of the Licensee to the Licenser under the License.

8. In the event of either the termination of the License (except by a surrender of the License by the Licensee accepted in writing by the Licenser) or a repudiation or disclaimer of the License pursuant to any statute, then in either case at the sole option of the Licenser exercisable at any time within six (6) months of such termination, repudiation or disclaimer, as the case may be, the Indemnifier agrees to execute and deliver a new License of the Licensed Premises between the Licenser and the Indemnifier as licensee for a term equal to the residue of the term of the License remaining unexpired at the time of such termination, repudiation or disclaimer. Such new License shall contain the same covenants, obligations, agreements, terms, and

conditions in all respects (including the proviso for re-entry) as are contained in the License save for the term which shall be as aforesaid.

9. No action or proceeding brought or instituted under this Agreement and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Agreement by reason of any further default under the License.

10. Any notice required or permitted hereunder shall be given in writing and delivered or, if there is no actual or apprehended interruption in mail service, mailed by prepaid registered mail, to the Licensor at the Licensor's Head Office:

MBJ Airports Limited  
Sangster International Airport  
Montego Bay, Jamaica

Attention: Chief Commercial Officer  
MBJ Airports Limited

And to the Indemnifier at:

Such notice shall be deemed to have been given on the day when delivered or if mailed, on the third business day after mailing. The parties hereto may from time to time by notice in writing designate another address in Jamaica as the address to which notices shall henceforth be given.

11. This Agreement shall be construed in accordance with the laws of Jamaica.

12. All the terms of this Agreement shall extend to and be binding upon the Indemnifier, his heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and shall ensure to the benefit of and may be forced by the Licensor, its successors and assigns, including the holder of any mortgage to which the License is subject and subordinate. If there is more than one Indemnifier or the Indemnifier is a male or female person or corporation, this Agreement shall be read with all grammatical changes appropriate by reason thereof; and all covenants, liabilities and obligations shall be joint and several.

13. This Indemnify is irrevocable and may not be changed, affected, discharged or terminated other than by an agreement in writing signed by the Indemnifier and the Licensor.

14. The Indemnifier acknowledges that the Licensor hereby advises the Indemnifier to obtain advice from independent legal counsel prior to signing this Indemnity Agreement. The Indemnifier further acknowledges that any information provided by the Licensor is not to be construed as legal, tax or any other expert advice and the Indemnifier is cautioned not to rely on any such information without seeking legal, tax or other advice.

15. The Indemnifier shall pay all costs and expenses paid or incurred by the Licensor in enforcing either the License or this Agreement, including court and legal fees on a attorney and client basis, whether counsel is employed or retained by the Licensor.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement.

**SIGNED, SEALED AND DELIVERED**  
**in the presence of:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**SIGNED, SEALED AND DELIVERED**  
**in the presence of:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**INDEMNIFIER:**

By: \_\_\_\_\_  
Name & Title:

By: \_\_\_\_\_  
Name & Title:

I/We have authority to bind the Corporation.

**LICENSOR:**

By: \_\_\_\_\_  
Name & Title:

By: \_\_\_\_\_  
Name & Title:

I/We have authority to bind the Corporation.

**SCHEDULE J**

### STATEMENT OF MONTHLY GROSS SALES AND THE PERCENTAGE FEES

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

**TO: MBJ AIRPORTS LIMITED**

**FROM:** \_\_\_\_\_

**LICENCE DATED:** \_\_\_\_\_

THE FOLLOWING IS A TRUE AND ACCURATE STATEMENT OF THE GROSS SALES (as defined on our License) for the stated month

GROSS SALES FOR THE MONTH OF \_\_\_\_\_, 20\_\_\_\_\_ 1) \$\_\_\_\_\_

PERCENTAGE FEES: AT \_\_\_\_% OF GROSS SALES FOR THE MONTH 2) \$\_\_\_\_\_

LESS MAG FOR THIS MONTH 3) \$\_\_\_\_\_

FEE REQUIRED TO BE PAID PER THIS STATEMENT – EXCESS (2 less 3) 4) \$\_\_\_\_\_

GENERAL CONSUMPTION TAX 5) \$\_\_\_\_\_

TOTAL (4 PLUS 5) 6) \$\_\_\_\_\_

**CERTIFIED CORRECT BY:** \_\_\_\_\_

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



**SCHEDULE K**

**STATEMENT OF GROSS SALES AND THE PERCENTAGE FEE EACH LICENSE YEAR**

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

**TO: MJB AIRPORTS LIMITED**

**FROM:** \_\_\_\_\_

**LICENSE DATED:** \_\_\_\_\_

**LICENSE NO:** \_\_\_\_\_

THE FOLLOWING IS A TRUE ACCURATE STATEMENT OF THE GROSS SALES (as defined on the License) FOR THE LICENSE YEAR

PERIOD	GROSS SALES	(1) PERCENTAGE FEES	(2) MAG	EXCESS	GCT	TOTAL TO PAY
		% OF GROSS SALES	MONTHLY FEE	(1) LESS (2)		
LICENSE MONTH 1						
LICENSE MONTH 2						
LICENSE MONTH 3						
LICENSE MONTH 4						
LICENSE MONTH 5						
LICENSE MONTH 6						
LICENSE MONTH 7						
LICENSE MONTH 8						
LICENSE MONTH 9						
LICENSE MONTH 10						
LICENSE MONTH 11						
LICENSE MONTH 12						

**CERTIFIED CORRECT BY:** \_\_\_\_\_

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

## **APPENDIX 1**

### **MBJ AIRPORTS LIMITED COMMERCIAL CONCESSIONAIRE HANDBOOK**