



**REQUEST FOR  
PROPOSALS**

for

**ATM CONCESSION**

**MANCHESTER-BOSTON REGIONAL AIRPORT**

**November, 2018**

**FY19-805-22**

**TABLE OF CONTENTS**

**REQUEST FOR PROPOSALS**

**ATM CONCESSION**

	<b>Page</b>
SECTION 1.00 – PROPOSALS REQUESTED .....	4
SECTION 2.00 - GENERAL INFORMATION .....	4
2.01    DEFINITIONS.....	4
2.02    INTRODUCTION AND BACKGROUND .....	4
SECTION 3.00 - INSTRUCTIONS.....	5
3.01    PROPOSAL CONTENT AND ORGANIZATION .....	5
3.02    MINIMUM QUALIFICATIONS .....	6
3.03    OPERATION REQUIREMENTS .....	6
3.04    PROPOSAL DEPOSIT .....	7
3.05    AIRPORT CONTACT .....	8
3.06    RESPONSIBILITY FOR PROPOSAL .....	8
3.07    PROPRIETARY DATA.....	8
3.08    SIGNATURE ON PROPOSAL FORM .....	8
3.09    PROPOSALS FROM DISADVANTAGED BUSINESS ENTERPRISES (DBE).....	9
3.10    PROPOSAL SUBMITTAL.....	9
3.11    PROPOSAL DEADLINE .....	9
3.12    TOUR & PRE-PROPOSAL MEETING.....	9
SECTION 4.00 - POST SUBMITTAL EVENTS.....	9
4.01    EVALUATION OF PROPOSALS.....	9
4.02    PROPOSAL SELECTION.....	10
4.03    DISQUALIFICATION .....	10
4.04    NOTICE OF ACCEPTANCE OF PROPOSAL.....	10
SECTION 5.00 - SCHEDULE .....	11
5.01    SCHEDULE OF EVENTS.....	11

**LIST OF EXHIBITS**  
**REQUEST FOR PROPOSALS**  
**ATM CONCESSION**

EXHIBIT 1	MAP OF AIRPORT SERVICE REGION
EXHIBIT 2	2017 PASSENGER STATISTICS
EXHIBIT 3	BAGGAGE CLAIM ATM LOCATION
EXHIBIT 4	SECURE SIDE GATE 11 ATM LOCATION
EXHIBIT 5	FORM OF CONCESSION AGREEMENT
EXHIBIT 6	PROPOSAL SUBMISSION FORM

## REQUEST FOR PROPOSALS

### NOTICE INVITING PROPOSALS FOR ATM CONCESSION Manchester-Boston Regional Airport

FY19-805-22

#### SECTION 1.00 - PROPOSALS REQUESTED

The CITY OF MANCHESTER, NEW HAMPSHIRE acting by and through its Department of Aviation (hereinafter called the "City"), being the duly and lawfully constituted municipal corporation owning and operating the Manchester-Boston Regional Airport, located in the City of Manchester and Town of Londonderry, New Hampshire (hereinafter called the Airport) hereby solicits proposals from qualified Financial Institutions (hereinafter called either the Company or Companies) interested in directly providing and maintaining two (2) ATM devices within the terminal of Manchester-Boston Regional Airport. The City which owns and operates the Airport through its Department of Aviation, will accept and review proposals from Companies and select one (1) Company to provide and maintain: one ATM device in the baggage claim area adjacent to the rental car counters (reference **Exhibit 3**) and a second ATM device along the terminal concourse at gate 11 (reference **Exhibit 4**). The successful Company shall enter into a three (3) year concession agreement with the Airport with three (3) 1-year options upon mutual agreement with renegotiated terms.

#### SECTION 2.00 - GENERAL INFORMATION

**2.01 DEFINITIONS** - the following terms and definitions will apply throughout this Request for Proposals.

"Company(s)"	refers to those Financial Institutions who respond to the Request for Proposals.
"Concessionaire"	means the successful company.
"Director"	refers to the Airport Director who has responsibility for the overall day-to-day management and administration of the Airport.
"Financial Institution"	means an institution (public or private) that collects funds (from the public or other institutions) and invests them in financial assets including, but not limited to deposits, loans and bonds, rather than tangible property".
"RFP"	means Request for Proposal.
"PROPOSAL(S)"	refers to responses to the RFP.

#### 2.02 INTRODUCTION AND BACKGROUND

Manchester-Boston Regional Airport is a small hub airport located in Manchester, New Hampshire (reference **Exhibit 1**). Total passengers for 2017 were 1,970,688 (reference **Exhibit 2**). We conservatively anticipate nominal passenger growth or no growth during the initial three year term of the proposed agreement based upon the instability in the airline industry and the increased competition for our customer base. This perspective could dramatically change with the introduction of a new carrier, the addition of new flights by existing airlines, or additional capacity resulting from an overall improvement of economics in the airline

industry. As a rule of thumb, we associate one (1) meeter/greeter for every two (2) passengers that are either enplaned or deplaned. On this basis, approximately 3.9 million customers will utilize the terminal facilities in calendar year 2018.

As another point of reference, the footprint of the terminal complex is approximately 326,000 square feet today including the passenger walkway connecting the parking garage to the terminal facility.

Based on our present level of activity, our Proposal specifications define the placement of two (2) ATM devices. Eastern Bank has provided this ATM Concession since February 2016.

As consideration in the development of the Proposal, obvious advertising value accrues to the Company providing ATM services. For visitors or newcomers to the state, Manchester-Boston Regional Airport is the gateway to New England. Due to the Company's presence at a gateway location, opportunities to develop new business evolve due to name recognition. In respect to frequent fliers, the signs reinforce a very positive image of the Company in the community - that the Company is a player of consequence at a prestigious location in New Hampshire. To capitalize on this aspect, the successful Company may place backlit blade signage (at their own expense with designs previously approved in writing by the Airport) at each ATM device using colors and logo that are easily identifiable. The advertising/promotional value of this signage and presence (comparable to signs and displays used by advertisers in the terminal engaged through our advertising agency) exceeds \$1,000 per unit per month.

## **SECTION 3.00 - INSTRUCTIONS**

### **3.01 PROPOSAL CONTENT AND ORGANIZATION**

- a. Information and instructions necessary for Companies to submit Proposals to the Airport regarding the ATM concession are contained within this Request for Proposals.
- b. Please read all of the following instructions and documents carefully and check your Proposal package immediately upon receipt to ensure that you have in your possession all the necessary documents.
- c. The Airport will not be responsible for any oral instructions or clarifications of the Proposal documents or the Proposal procedure.
- d. All costs associated with the preparation and submission of any Proposal shall be borne entirely by the Company.
- e. The RFP Package consists of the following elements:
  - RFP - this document
  - Exhibit 1 - Map of Airport Service Region
  - Exhibit 2 - 2017 Passenger Statistics
  - Exhibit 3 – Baggage Claim ATM Location
  - Exhibit 4 – Secure Side Gate 11 ATM Location
  - Exhibit 5 – Form of Concession Agreement
  - Exhibit 6 – Proposal Submission Form
- f. Proposal Submittals must be returned on the Proposal Submission Form provided by the Airport (i.e. **Exhibit 6**).
- g. All information requested in the Proposal document must be furnished by the Company. Statements must be complete, and in the form requested. Omission, inaccuracy, or misstatement shall be cause for rejection of the Proposal.

**3.02 MINIMUM QUALIFICATIONS** - In order for a Company's Proposal to be considered by the City, a Proposer must be a Financial Institution with experience operating ATMs in an off-premise environment for a minimum of three years.

### **3.03 OPERATION REQUIREMENTS**

1. The Company shall provide and maintain two (2) ATM devices located within the terminal at locations previously described in this document.
2. The devices shall support cash withdrawals and/or advances and may support additional banking services including, but not limited to: account balance inquiries, transfers and deposits. Any transactions other than electronic banking are not authorized. Features offered that drive incremental cost to the consumer must be pre-approved in writing by the Airport Director or his designee.
3. The ATMs shall offer the customer the following features/services:
  - a. Provide a placard in a clearly visible location on each ATM that displays a list of ATM transaction fees, transaction surcharges, or any other fees charged and to whom fees and/or surcharges apply.
  - b. Provide a receipt option.
  - c. Conduct transactions in United States currency.
  - d. Dispense denominations of ten and twenty dollars.
  - e. ATM devices should be operational and available for use 24-hours/day, 7 days/week (including holidays).
  - f. Post a 24-hour service number for customer use with procedures for reporting problems on each ATM.
  - g. On each ATM post directions for the locations of other Airport ATM devices in the event that an ATM becomes inoperable.
4. Cash replenishment of the devices shall occur at a minimum once weekly. Actual cash replenishment schedules established by the Company must ensure that the devices are not depleted of ten or twenty dollar denominations.
5. The Airport anticipates the prospective Company(s) shall offer new ATM devices that feature state-of-the-art technology in their proposal(s). This includes, but is not limited to the following:
  - a. Latest encryption – at minimum Triple DES encryption standard and TLS 1.2 or greater.
  - b. ADA compliant including, but not limited to voice guidance capability for the blind and closed captioning.
  - c. Real time systems with capabilities for monitoring, diagnostics, predicting, assisting and reporting maintenance and the need for cash replenishment.
  - d. Devices should be self-sufficient and not require the use of networking infrastructure or data services.
6. Cut sheets from the manufacturers must be included with the Proposal that reflect the model of the device, overall physical appearance of the ATM including color schemes, physical dimensions, foot print, display (color display and graphics), features, etc.
7. The Airport seeks broad credit/debit card acceptance and asks each Company to identify network affiliations in the Proposal document.
8. Each Proposal shall provide the Company's cleaning/maintenance schedule.
9. On-call maintenance must be available 24-hours per day and 7-days per week.

10. The Proposal document shall identify who accomplishes the necessary maintenance - bank, network or other contract employees.
11. The Proposal shall identify uptime availability of the ATM units based on the Company's experience.
12. The Concessionaire shall operate the ATM devices 24-hours per day, 365-days per year.
13. Highlights of the insurance requirements defined in the Form of Concession Agreement (reference **Exhibit 5**) include the following:
  - During the installation period, the Company and all subcontractors must maintain \$1,000,000 of insurance coverage for injury or death in any one occurrence and for damage to property in any one accident.
  - \$1,000,000 of comprehensive commercial general liability insurance is required throughout the term of the concession agreement.
  - Worker's compensation or employer's liability insurance is required throughout the term of the agreement, as applicable.
  - An indemnification of the City of Manchester and Manchester-Boston Regional Airport is required.
  - The City of Manchester and the Manchester-Boston Regional Airport must be named as additionally insured on all insurance certificates with cancellation notification.
14. Please note that the Form of Concession Agreement (i.e. **Exhibit 5**) is included in the RFP package to enable those interested parties to review the terms and conditions planned for the agreement. Neither this document, nor any negotiations, discussions, comments or writings, taken either separately or in conjunction with this or any other document, is or should be construed as an offer or intent to make an offer. The City expressly reserves the right to alter, amend, or modify the terms of this draft concession agreement without prior notice and the right to revoke its intent to enter into any legal agreements with prospective Companies.
15. The Company may impose a foreign transaction fee on customers using the ATM devices; the transaction fee shall not exceed \$3.00/foreign transaction for the duration of the initial three year term (the foreign transaction fee imposed by current Concessionaire is \$3.00).
16. For the privilege of operating an ATM concession at Manchester-Boston Regional Airport, the Company shall propose a monthly rental payment effective for the duration of the initial three year term (reference **Exhibit 6**).
17. The Company must fund all aspects of the ATM concession including any necessary construction related to the installation of the devices, all necessary equipment and furnishings and all recurring operating costs.
18. In order to operate the concession, the selected Company shall enter into a three (3) year agreement with the Airport with three (3), one (1) year renewal options upon mutual agreement within thirty (30) days of award by the Airport.
19. Electricity used to power the devices shall be provided by the Airport as well as all common use electricity, heat and air conditioning. Telephone/Data service shall be provided by the Company.

**3.04 PROPOSAL DEPOSIT** - No Proposal deposit is required to participate in this Request for Proposal.

**3.05 AIRPORT CONTACT** - Inquiries on all matters pertaining to this Request for Proposal or the process should be directed in writing to:

Thomas J. Malafronte  
Deputy Airport Director  
Manchester-Boston Regional Airport  
1 Airport Road, Suite 300  
Manchester, NH 03103

Email: [tmalafronte@flymanchester.com](mailto:tmalafronte@flymanchester.com)

Inquiries shall be limited to this Proposal package, or to questions related to clarification of the contents of this Proposal package. All clarifications will be supplied to all Proposers.

### **3.06 RESPONSIBILITY FOR PROPOSAL**

Each Company is responsible for carefully examining the terms and conditions set forth in this Request for Proposal, for making an inspection of the terminal facilities, and for otherwise judging for itself all the circumstances and conditions affecting the Company's Proposal. Submission of a Proposal shall be conclusive evidence that the Company has made such examinations and investigations.

Failure on the part of the Company to make such examination and to investigate fully and thoroughly shall not be grounds for any declaration that the Company did not understand the conditions of the Proposal. The Airport makes no warranties or guarantees of any type whatsoever concerning any conditions which may effect the ATM concession operation or any aspect of Company's Proposal.

**3.07 PROPRIETARY DATA** - The Airport does not anticipate the receipt of proprietary data/material related to this Request for Proposal. However, if the Company provides same, the Airport will handle in strictest confidence all material received in response to this Request for Proposals designated "proprietary". The Airport will, upon request of the Company, enter a confidentiality agreement with the Company that will pertain to the content of the Company's Proposal and will apply throughout the period during which the Airport is reviewing and evaluating Company's Proposal. Because contractual agreements of this nature may require the expenditure of public funds and/or use of public facilities, Companies shall understand that portions of their proposal not designated as proprietary (including any final contracts) will become public record after acceptance of the successful firm's proposal.

The Airport requires that the Company(s) handle in confidence any information or data received from the Airport which may be construed as proprietary to the City's ownership and management of Manchester-Boston Regional Airport.

### **3.08 SIGNATURE ON PROPOSAL FORM**

- a. An individual duly authorized to represent and lawfully act on behalf of the Company must date and sign, in ink, on the spaces provided for such signature at the end of the Proposal (i.e. Exhibit 7). The legal name of the Company must be typed above the signature of the representative.
- b. If the Company is a corporation, the Proposal must be signed by an authorized officer(s), the title of the officer(s) signing the Proposal must be shown, and the corporate seal must be affixed to the Proposal form. All signatures must be notarized.
- c. If the Company is a partnership, the Proposal must be signed by an authorized general partner(s), using the term "Member of Firm" or "Partner". Signature must be notarized.



d. If the Company is an individual, the Proposal must be signed by and in the full name of the Company, using the term "doing business as (insert appropriate business name)", or "sole owner". Signature must be notarized.

**3.09 PROPOSALS FROM DISADVANTAGED BUSINESS ENTERPRISES (DBE)** - The City of Manchester has developed a DBE Plan in accordance with regulations of the United States Department of Transportation (DOT) that specify goals for involvement of disadvantaged business enterprises. The City has received several grants for development at Manchester-Boston Regional Airport under DOT's Airport Improvement Program and as a condition of the grant agreement, the City signed an assurance that it will comply with the provisions of DOT's DBE program.

**3.10 PROPOSAL SUBMITTAL** - Companies shall abide by all the procedures set forth in the Request for Proposal in the preparation and submission of their Proposal. Each Company must include four (4) copies of **Exhibit 6** – Proposal Submission Form and supporting documentation. Mail or deliver this material to:

Thomas J. Malafronte  
Deputy Airport Director  
Manchester-Boston Regional Airport  
1 Airport Road, Suite 300  
Manchester, NH 03103

Proposals must be submitted on the forms included in **Exhibit 6** (Proposal Submission Form). Proposers may reproduce copies of the form in the Proposal exhibit and type their submittal or use word processing to reproduce the exhibit inserting additional pages as required and collating the results. The Proposal documents must be enclosed in a sealed envelope and state the Company's name and be clearly marked "**ATM Concession**" on the bottom right.

Proposals may be withdrawn by the Company prior to the deadline date and time established for receiving Proposals. After the Proposal receipt deadline, the Company shall be bound by the Proposal submitted until the earlier of 1) the execution of the concession agreement between the Airport and the selected Company, OR 2) January 4, 2019.

**3.11 PROPOSAL DEADLINE** - Proposals must be received at the address provided in Section 3.10 herein no later than 1:00 p.m. on Friday, December 14, 2018.

**3.12 TOUR & PRE-PROPOSAL MEETING** - A formal tour and pre-PROPOSAL meeting is not scheduled. Interested Company(s) should contact the Airport representative listed in Section 3.10 for an informal tour of the facilities.

## **SECTION 4.00 - POST SUBMITTAL EVENTS**

**4.01 EVALUATION OF PROPOSALS** - The Airport will use evaluation criteria it judges most appropriate to the review process and the relative importance of this criteria will be determined at the sole discretion of the Airport. Emphasis shall be placed on the value the Company proposes to return to the Airport in form of a fee structure for the privilege of securing the right to offer ATM services so described. In a more general sense, the Airport intends to select the Proposal which, in the Airport's sole judgment, is most advantageous to the Airport and to the users of Manchester-Boston Regional Airport. Specifically, beyond the fee structure proposed, criteria to be evaluated includes (in no particular order), but is not limited to: cleaning/maintenance service proposed, new equipment proposed, network affiliations, uptime availability, experience, operating plan, business philosophy, and competitive offerings. No Company shall have any cause of action against the City or its Department of Aviation arising out of a failure to secure an ATM concession agreement with the Airport, failure by Airport to consider a Company's Proposal, or the methods by which the Airport evaluated Proposals received. The selection of the prospective Company and the decision to engage in negotiations with that Company shall be at the sole discretion of the Airport.

**4.02 PROPOSAL SELECTION** - The Airport intends to select one (1) Proposal for the ATM concession, but reserves the right to accept none of the Proposals, to negotiate for modification of any Proposal with the mutual consent of the Company, to accept the Proposal which, in the judgment of the Airport, shall be deemed the most advantageous to the Airport, to waive any of the requirements of the Proposal procedures explained in this document, and/or to proceed in any other manner deemed to be in the Airport's best interest. Airport reserves the right to retain all copies of Proposals submitted by prospective Companies.

**4.03 DISQUALIFICATION** - Although not intended to be an inclusive list of causes for disqualification, any one or more of the following, among others, may be considered sufficient for disqualification of a Company and the rejection of the Proposal:

- a. Evidence of collusion among Companies.
- b. Submitting a Proposal that is incomplete, obscure or which contains irregularities, inaccuracies, or misstatements.
- c. Lack of business skills or financial resources necessary to successfully provide an ATM concession operation as revealed by either proposal statements or experience.
- d. Lack of responsibility as shown by past history, references, or other factors.
- e. Default or termination of other contracts or agreements.
- f. Other causes as the Airport deems appropriate at the Airport's sole and absolute discretion.

**4.04 NOTICE OF ACCEPTANCE OF PROPOSAL** - Upon the Airport's selection of a PROPOSAL, the selected Company will be notified not later than Friday, December 28, 2018, by e-mail and telephone. The selected Company will pick-up the finalized concession agreement, execute the document and return the contract with requisite insurance certificates by Friday, January 11, 2019. Should the selected Company fail or refuse to so perform, the Airport reserves the right and shall be free to revoke such selection and to select another Company.

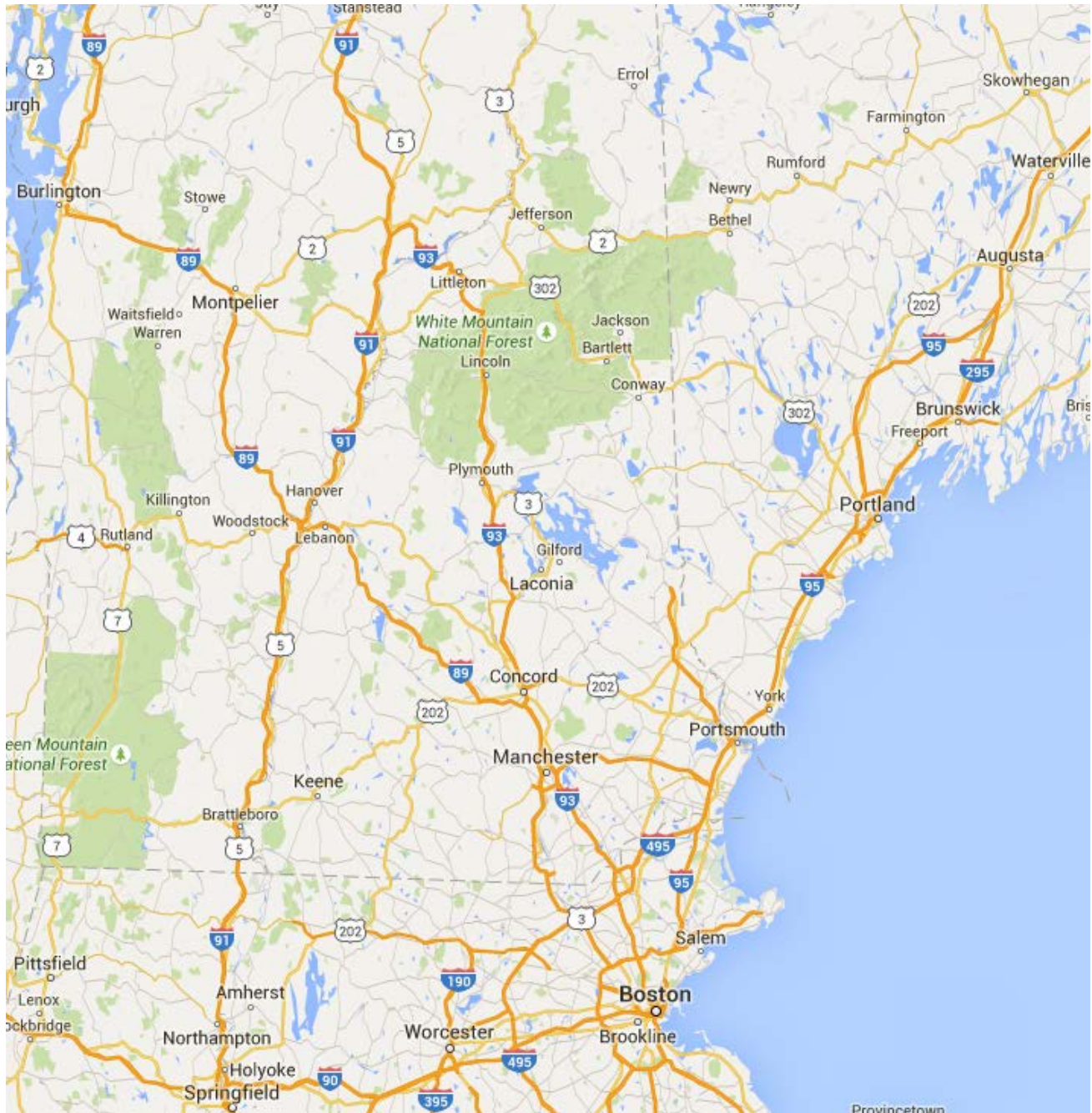
## **SECTION 5.00 - SCHEDULE**

### **5.01 SCHEDULE OF EVENTS**

Proposals Due	Friday, December 14, 2018, 1:00 p.m.
Selection of Company	Friday, December 28, 2018
Notify All Companies	Friday, December 28, 2018
Execution/Return of Agreements	Friday, January 11, 2019
Concession Available to Airport Customers	not later than Saturday, February 16, 2019, 12:01AM

## EXHIBIT 1

### MAP OF AIRPORT SERVICE REGION



**EXHIBIT 2****CY2017 PASSENGER STATISTICS****Manchester-Boston Regional Airport  
Passenger Activity  
Calendar Year 2017**

<b>MONTH</b>	<b>ENPLANEMENTS</b>	<b>DEPLANEMENTS</b>	<b>TOTAL PASSENGERS</b>
January	67,007	61,587	128,594
February	66,635	60,038	126,673
March	77,442	80,229	157,671
April	83,705	84,816	168,521
May	84,188	92,667	176,855
June	85,707	90,226	175,933
July	93,530	93,478	187,008
August	95,499	92,437	187,936
September	82,862	82,531	165,393
October	96,745	91,075	187,820
November	81,414	81,335	162,749
December	71,820	73,715	145,535
CY2017 Totals	986,554	984,134	1,970,688

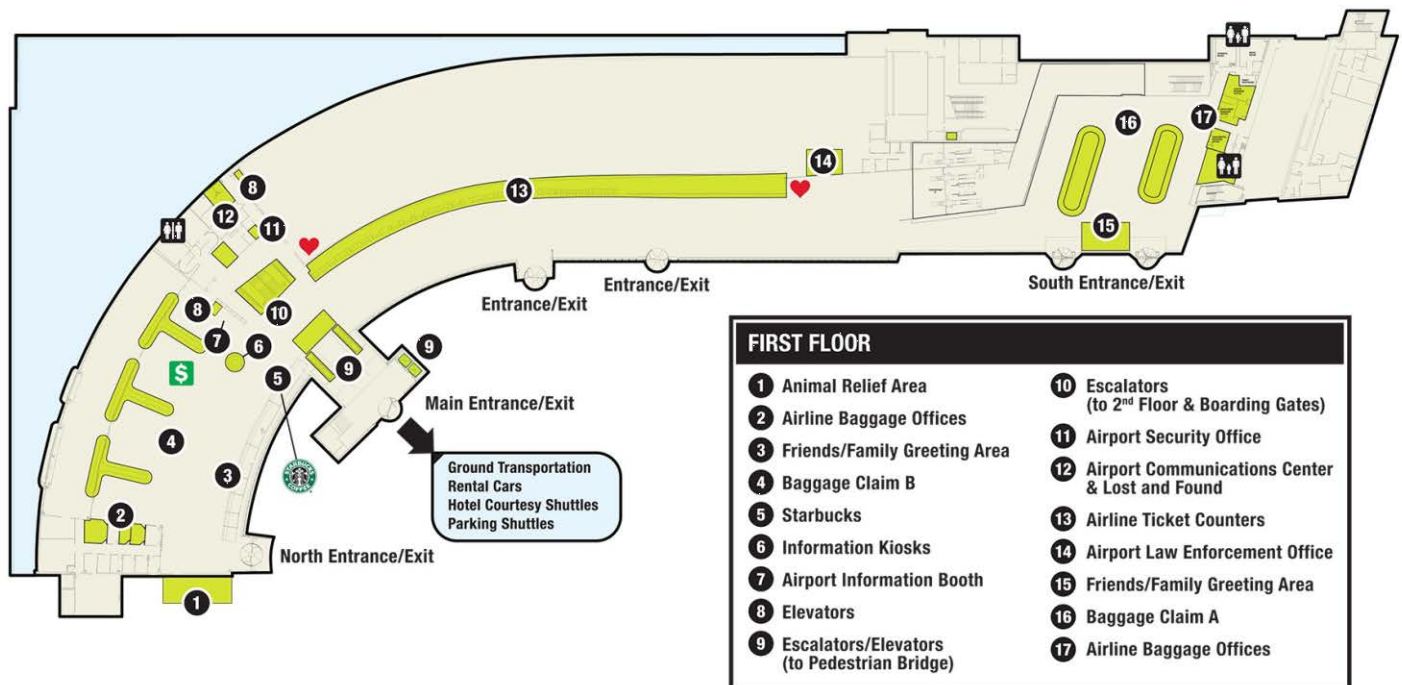
## EXHIBIT 3

### BAGGAGE CLAIM ATM LOCATION

#### ATM – BAGGAGE CLAIM



### Airport Directory First Floor



#### Legend



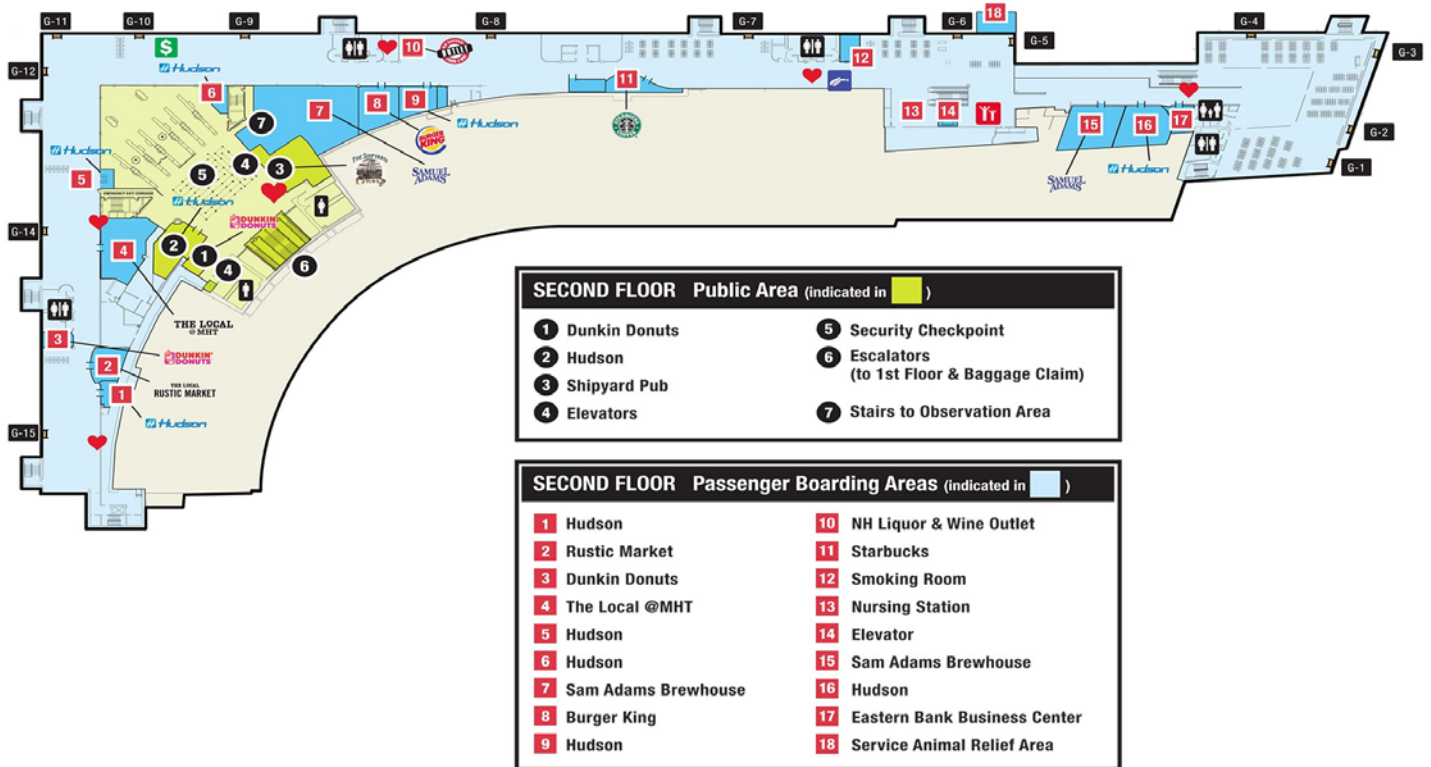
# EXHIBIT 4

## SECURE SIDE GATE 11 ATM LOCATION

ATM – GATE 11



Airport Directory  
Second Floor



Legend







# Automated Teller Machine CONCESSION AGREEMENT

between

City of Manchester  
Department of Aviation

and

Company

February, 2019



**TABLE OF CONTENTS**  
**ATM CONCESSION AGREEMENT**

ARTICLE I .....	4
1.01 Definitions.....	4
ARTICLE II .....	5
2.01 Representations by the CITY .....	5
2.02 Representations by CONCESSIONAIRE .....	5
ARTICLE III .....	5
3.01 Premises .....	5
3.02 Additional Space .....	5
3.03 Relocation .....	6
3.04 CITY's Right to Enter and Inspect.....	6
3.05 Encumbrances and CITY's Facility Systems .....	6
3.06 Ingress and Egress .....	6
3.07 Common Facilities.....	6
3.08 Employee Parking .....	6
3.09 Signs .....	7
3.10 Construction .....	7
3.11 Plans and Specifications, Approvals, Construction, Changes, Completion.....	7
3.12 Inspection During Construction .....	7
3.13 Acceptance.....	8
3.14 Title to Improvements.....	8
3.15 Furnishings, Trade Fixtures, and Equipment .....	8
3.16 Utilities.....	8
ARTICLE IV .....	8
4.01 Effective Date .....	8
4.02 Agreement Term .....	9
4.03 Option to Extend .....	9
4.04 Delivery and Acceptance of Possession.....	9
4.05 Holding Over .....	9
4.06 Concession Rights Granted .....	9
4.07 CITY's Responsibilities .....	9
ARTICLE V .....	9
5.01 Fees and Charges.....	10
5.02 Payment of Fees .....	10
5.03 Other Payments Provisions.....	11
5.04 Records and Audit.....	11
5.05 Impositions .....	11
ARTICLE VI .....	11
6.01 General.....	11
6.02 Services.....	12
6.03 Hours of Operation .....	12
6.04 Pricing .....	13
6.05 Account Representative .....	13
6.06 CONCESSIONAIRE's Employees .....	13
6.07 Prohibited Acts .....	13
6.08 Environmental Compliance, Recycling .....	13
6.09 Governmental Requirements, CITY Regulations.....	14
ARTICLE VII.....	14
7.01 Care, Maintenance and Repair .....	14
7.02 Alterations .....	15
7.03 Liens.....	15
ARTICLE VIII.....	15
ARTICLE IX.....	16
9.01 Indemnification .....	16

## Exhibit 5 – Form of Concession Agreement

9.02	Concessionaire's Insurance .....	16
9.03	Miscellaneous Insurance Covenants .....	17
ARTICLE X.....		18
10.01	Repair and Rebuilding.....	18
10.02	Abatement of Privilege Fee - Repair and Rebuilding.....	18
10.03	Exception for Fault of CONCESSIONAIRE .....	18
ARTICLE XI.....		18
11.01	Events of Default Defined .....	18
11.02	Waiver .....	19
11.03	Effect of Default.....	19
11.04	No Remedy Exclusive.....	19
ARTICLE XII.....		20
12.01	Termination by CONCESSIONAIRE.....	20
12.02	Waiver .....	20
12.03	Abatement of Privilege Fee.....	20
ARTICLE XIII.....		21
13.01	Assignments by CITY.....	21
13.02	Assignments and Subleases by Concessionaire .....	21
13.03	CONCESSIONAIRE to Maintain its Existence.....	21
ARTICLE XIV .....		21
14.01	Personal Liability of CITY Officials.....	21
14.02	Force Majeure .....	21
14.03	Memorandum of Agreement .....	21
14.04	Severability Clause .....	21
14.05	Notices .....	22
14.06	Subordination .....	22
14.07	Municipal Employees .....	22
14.08	Right to Develop or Improve .....	22
14.09	Entire Agreement .....	22
14.10	Parties .....	22
14.11	Captions .....	22
14.12	Consent Not Unreasonably Withheld.....	22
14.13	Governing Laws .....	22
14.14	Waiver of Claims .....	23
14.15	No Warranties of Inducements.....	23
14.16	Situs and Service of Process .....	23
14.17	CONCESSIONAIRE'S Dealings with CITY.....	23
14.18	Independent Contractor .....	23
14.19	Aerial Approaches.....	23
14.20	No Waiver.....	23
14.21	Time .....	23
14.22	Quiet Enjoyment.....	23
EXHIBIT A .....		28
EXHIBIT B .....		29

**ATM  
CONCESSION AGREEMENT**

THIS CONCESSION AGREEMENT made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF MANCHESTER, New Hampshire, acting by and through its Department of Aviation (hereinafter called "CITY"), being a duly and lawfully constituted municipal corporation owning and operating the Manchester-Boston Regional Airport, located in the CITY of Manchester and Town of Londonderry, New Hampshire (hereinafter called the "Airport"), and Company, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ and authorized to do business in the State of New Hampshire, with an office located in \_\_\_\_\_ (hereinafter called the "CONCESSIONAIRE").

**WITNESSETH:**

**WHEREAS**, the Automated Teller Machine concession (hereinafter referred to as ATM concession) is necessary for the proper accommodation of passengers arriving and departing from the Airport; and

**WHEREAS**, CITY desires to permit one (1) banking institution/ATM service provider the privilege of providing and maintaining an ATM concession consisting of two (2) ATM devices on a non-exclusive basis in the Airport Terminal. One ATM shall be located on the lower level of the Terminal within the baggage claim area and the second shall be located along the Terminal concourse near gate 11. The ATM concession will operate in accordance with the terms of this Agreement; and

**WHEREAS**, the CITY solicited proposals from ATM operators in the form of a Request for Proposal and the said Request for Proposal is made a part of this Agreement by reference and incorporated as if fully rewritten herein; and

**WHEREAS**, the CONCESSIONAIRE submitted a Proposal to operate the ATM concession; and

**WHEREAS**, the CONCESSIONAIRE's Proposal was selected by the CITY as the most responsive and responsible proposal and the said Proposal including supporting documentation are made a part of this Agreement by reference and incorporated as if fully rewritten herein.

**WHEREAS**, the CONCESSIONAIRE desires to make said services available, and the CONCESSIONAIRE is qualified, ready and able to perform or see to the performance of said services, and to furnish or see to the furnishing of proper equipment in connection therewith;

**NOW THEREFORE**, in recognition and reliance upon the foregoing recitals, and in consideration of the mutual covenants and promises hereinafter set forth, and in exchange for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged by the parties hereto, the CITY and CONCESSIONAIRE agree as follows:

**ARTICLE I  
DEFINITIONS AND AGREEMENT TERMS**

**1.01 Definitions.** In and throughout this Agreement, the following words shall have the following meanings, respectively, unless the context shall clearly appear otherwise, to wit:

**"Airport"** means the Manchester-Boston Regional Airport, as aforesaid.

**"Common Areas"** means any space in the Manchester-Boston Regional Airport that is used by the concession tenants in common as shared use.

**"Concession Facilities"** means improvements constructed by the CONCESSIONAIRE on the Premises for the purpose of operating the ATM concession.

## Exhibit 5 – Form of Concession Agreement

**"Director"** means the Director of the City of Manchester, New Hampshire, Department of Aviation, and Manager of the Airport, which term shall include any officer succeeding to the functions thereof.

**"Leasehold Improvements"** means all facilities that are affixed to the Premises. All non-affixed items, including cash registers, safes, office equipment, furnishings, and other display fixtures are referred to herein as "Trade Fixtures."

**"Public Areas"** means any space in the Manchester-Boston Regional Airport that is accessible to the public.

**"Terminal"** means the Passenger Terminal Building at the Airport as it exists on the date hereof, and any additions made thereto during the term of this Agreement.

### ARTICLE II REPRESENTATIONS

**2.01 Representations by the CITY.** The CITY makes the following representations as the basis for the undertakings on its part herein contained:

(a) The CITY is a duly and lawfully created, existing and organized municipal corporation owning and operating the Airport through its Department of Aviation, having the power to enter into the transaction contemplated by this Agreement and to carry out its obligations hereunder, and by proper action the CITY has duly authorized the execution and delivery of this Agreement.

(b) The CITY has full right and authority in and to the Premises (as defined below) and to the use of the said Premises by the CONCESSIONAIRE in accordance with the provisions of this Agreement.

**2.02 Representations by CONCESSIONAIRE.** The CONCESSIONAIRE makes the following representations as the basis for its undertakings herein contained:

(a) CONCESSIONAIRE is a \_\_\_\_\_ established under the laws of the State \_\_\_\_\_; it is in good standing under the laws of said state; has the power to enter into this Agreement; by proper corporate action has duly authorized the execution and delivery of this Agreement; and is in full compliance with all applicable New Hampshire laws relating to the conduct of its business in New Hampshire.

(b) CONCESSIONAIRE will occupy and use the Premises subject to the control and jurisdiction of the CITY in accordance with the terms hereof.

### ARTICLE III PREMISES AND CONSTRUCTION

**3.01 Premises.** The "Premises" consists of space described in this Section 3.01 used by the CONCESSIONAIRE for the purposes defined hereunder:

(a) Approximately fifteen (15) square feet of space on the lower level of the Terminal within the baggage claim area as depicted in the plan attached hereto as \_\_\_\_\_ for the operation and maintenance of one ATM device.

(b) Approximately fifteen (15) square feet of space near the convergence of the two concourses at Gate 11 as depicted in the plan attached hereto as \_\_\_\_\_ for the operation and maintenance of a second ATM device.

**3.02 Additional Space.** If space is available, and in the sole discretion of the CITY, CONCESSIONAIRE may rent from the CITY additional storage, office and other space identified by the CITY as available for such purposes, on terms to be negotiated by the CITY and CONCESSIONAIRE.

## Exhibit 5 – Form of Concession Agreement

**3.03 Relocation.** The CITY reserves the right to change the location of the Premises to another location in the Airport with reasonably equivalent customer visibility and accessibility as well as income generation potential. In the event the CITY chooses to make such relocation, this Agreement shall be amended to reflect the substitute location and any cost related to said relocation shall be the responsibility of the CITY.

**3.04 CITY's Right to Enter and Inspect.**

(a) The CITY shall have the right to enter any part of the Premises at reasonable or necessary times for the purposes of inspection, protection or exercising any rights under this Agreement. CITY shall also have the right to show the Premises to potential proposers on a concession at any time within six (6) months prior to the termination or expiration of this Agreement.

(b) The CITY may remedy or cure any condition, act or situation which in CITY's judgment contributes to, or is responsible for, such emergency condition or threat to the public safety. CITY's rights hereunder shall include, without limitation, the right to remove any improvements or other physical or radio emanating obstructions posed to aircraft passing above the Premises or to their communications systems.

**3.05 Encumbrances and CITY's Facility Systems.** The Premises shall be accepted by the CONCESSIONAIRE subject to any and all then existing easements or other encumbrances. Also, the CITY reserves the right itself, or to permit its employees, servants, contractors, engineers and architects, and utility companies to enter upon the Premises upon prior notice and at reasonable times and without unreasonable interference with CONCESSIONAIRE's use of the Premises for the purpose of laying, constructing, installing, operating and/or maintaining such electricity, sewer, drains, storm water sewers, pipelines, manholes, connections, water, oil or gas pipelines, and telephone and telegraph power lines and such other appliances and appurtenances necessary or convenient in connection therewith (Facility Systems), over, in, upon, through, across and along the Premises, or any part thereof. In the event of emergencies relating to the Facility Systems, the CITY may enter upon the Premises whenever necessary. The CITY shall repair and restore the Premises upon completion of its work thereon.

**3.06 Ingress and Egress.**

(a) The CONCESSIONAIRE and its officers, employees, invitees, guests, and suppliers of materials and furnishers of services, shall have the right of ingress and egress between the Premises and any public street or roadway outside the Airport by means of the roadways leading to and from the Airport, and such other points as may be designated by the Director, all as the same exist from time to time and all of the same to be used in common with others having rights of passage within the Airport, all without any further or additional fees or charges other than the fees and charges described in Article V. The use of such roadways shall be subject to reasonable rules and regulations of the CITY now in effect or which may hereafter be promulgated for the safe and efficient operation of the Airport. The CITY will uniformly apply said rules and regulations to all tenants of the Airport.

(b) The CITY, at any time, may temporarily or permanently close or consent to or request the closing of any such roadway and any other area at the Airport presently or hereafter used for ingress and egress, so long as a reasonably equivalent means of ingress and egress, as provided above, remains available to CONCESSIONAIRE.

(c) The CITY intends, through the design, construction, and management of the Airport, to provide CONCESSIONAIRE adequate access, including reasonable use of services and public corridors, shared receiving areas, and shared trash removal areas. To avoid damage to floors and walls, the Director reserves the right to approve in advance the design and type carts, moving and delivery equipment to be used by the CONCESSIONAIRE across such areas described in this Section 3.06(c).

**3.07 Common Facilities.** The CONCESSIONAIRE (which shall extend to employees, patrons, guests, invitees) shall have the right, in common with others, to use common and public portions of the Airport.

**3.08 Employee Parking.** The CITY will provide at no cost to the CONCESSIONAIRE a reasonable number of designated exterior parking spaces for CONCESSIONAIRE's employees and contractors working on the ATM devices in the Airport Terminal. CONCESSIONAIRE's employees and contractors will use parking areas: 1) designated by the Director, and 2) only when said employees or contractors are on duty at the Airport.

**3.09 Signs.**

(a) The CONCESSIONAIRE shall have the right to install on the Premises signs or other corporate or trade name identification. The size, type, design and location of such signs or other identification shall, however, be subject to the prior written approval of the Director, which approval will not be unreasonably delayed, conditioned or withheld, and unless the CITY shall have provided such signs as part of the overall Airport sign program, and in all events, such signs shall conform to any overall sign program of the Airport. If such prior written approval is not obtained from the Director or, if obtained, is not complied with, then CITY shall have the right, upon reasonable notice and opportunity to cure, to enter the Premises and remove such signs or corporate identifications, restore the Premises to their former condition and charge CONCESSIONAIRE or its subtenants, as the case may be, for all costs incurred in so doing. Any amount due from CONCESSIONAIRE to CITY under this subparagraph shall constitute additional fees and charges hereunder.

(b) CONCESSIONAIRE may install backlit blade signage (at their expense with designs previously approved in writing by the Airport) at each ATM device using colors and designs that are easily identifiable.

**3.10 Construction.**

(a) The CITY will provide the CONCESSIONAIRE with: exterior and interior walls to prime finish, flooring, electrical and communication conduits, ceiling, heating-ventilation-air conditioning (HVAC), electrical service, and fire sprinkler system as specified in the CITY's Airport construction drawings.

(b) The CONCESSIONAIRE will provide necessary electrical wiring and outlets and telephone/data connections for the operation of the ATM devices and signs pursuant to the CITY's Airport standards and finish out and furnish the Premises for use of the ATMs.

(c) The CONCESSIONAIRE, at its own expense and with the prior written approval of the CITY, may modify and upgrade the Premises.

**3.11 Plans and Specifications, Approvals, Construction, Changes, Completion.**

(a) All Concession Facilities, leasehold improvements, and modifications and upgrades by the CONCESSIONAIRE, including but not limited to equipment replacement, upgrades or alterations to leasehold improvements over the term of this agreement, and changes in signage or lighting, shall be in accordance with plans and specifications approved in advance in writing by the Director. Said plans and specifications may be altered or modified with the prior written approval of the Director, the consent for which will not be unreasonably delayed, conditioned or withheld.

(b) All necessary approvals from governmental agencies shall be obtained by CONCESSIONAIRE prior to beginning the work described in Section 3.11 herein. Equipment, trade fixtures, and said work shall comply with all Federal, State and local laws, ordinances and regulations applicable thereto. Upon completion of said work all required permits and authorizations from appropriate authorities authorizing the occupancy, possession and use of the Premises for the purposes contemplated by CONCESSIONAIRE shall also be obtained by CONCESSIONAIRE and submitted by the CONCESSIONAIRE to the Director.

(c) CONCESSIONAIRE, at its sole cost and expense and in accordance with plans and specifications approved by the Director, agrees to furnish and equip the Premises with two (2) ATM devices as described in CONCESSIONAIRE'S Proposal. Said facility shall be completed and open for business as an ATM concession by **Insert Date Here**. Any subsequent improvements or installations will be processed and approved in accordance with this Section 3.11. CONCESSIONAIRE shall be provided access to the premises for purposes of improving the space, following execution of this agreement by both parties.

(d) Equipment replacement, upgrades or alterations to leasehold improvements over the term of this agreement, and changes in signage or lighting shall be made by the CONCESSIONAIRE without cost to the CITY.

**3.12 Inspection During Construction.** The parties hereto and their authorized representatives shall have full rights of inspection during the furnishing, finishing, fitting up, construction, fabrication, equipping and installation of the Leasehold Improvements and Concession Facilities.

## Exhibit 5 – Form of Concession Agreement

**3.13 Acceptance.** Formal acceptance of the Concession Facilities shall be evidenced by a written certification of acceptance by the Director.

**3.14 Title to Improvements.** On the completion of construction, title to the Leasehold Improvements and Concession Facilities constructed by CONCESSIONAIRE on the Premises (other than trade fixtures, signs, other property and installations which may be removed by CONCESSIONAIRE in accordance with provisions hereof) shall revert to the CITY without further action of any kind on the part of the CITY or CONCESSIONAIRE. Notwithstanding the foregoing, the CITY and the CONCESSIONAIRE hereby agree and acknowledge that each of the ATM devices is not and shall not become a part of the Leasehold Improvements or the Concession Facilities and shall be removed by and remain the property of the CONCESSIONAIRE upon termination of this Agreement, regardless of the reason for termination. Except as hereinbefore provided in Section 3.03, the CITY shall not be obligated to reimburse the CONCESSIONAIRE for its investment in the Premises should this Agreement be terminated before the end of the full Agreement term. The CONCESSIONAIRE may, under these circumstances, arrange the sale and transfer of equipment, furnishings, and other usable improvements to its successor.

**3.15 Furnishings, Trade Fixtures, and Equipment.** CONCESSIONAIRE shall provide for its own use and at its own expense all materials, supplies, and non-stationary furnishings, trade fixtures, and equipment necessary for the efficient operation of the concession business herein authorized, which shall be in accordance with the highest standards as well as the CONCESSIONAIRE's standards for its other locations in the Greater Manchester area and shall be safe, fire-resistant and compatible in appearance, quality, and quantity with the design scheme and the appearance of the Airport as determined by the Director in the exercise of his/her reasonable discretion. Equipment shall include: two (model) cash dispensers (ATMs) and associated communications, alarm and camera equipment.

### **3.16 Utilities.**

(a) In consideration of the Privilege Fee payable pursuant to Section 5.02 of this Agreement:

(i) CITY will provide, at no direct charge to CONCESSIONAIRE, such heat, air conditioning, light, and power that may be basically and reasonably required for the operation of CONCESSIONAIRE's ATM devices or as dictated by the function of the space, except as provided in Section 3.16(a)(ii) herein.

(ii) telephone service will be available to CONCESSIONAIRE's Premises but CONCESSIONAIRE will arrange for internal wiring and will absorb all costs related thereto as well as those associated with ongoing telephone service.

(b) No failure to furnish, or no delay or interruption in, any service or services, whether such service or services shall be supplied by the CITY or by others, shall relieve or be construed to relieve the CONCESSIONAIRE of any of its obligations hereunder, or shall be construed to be an eviction by the CITY, or shall constitute grounds for any diminution or abatement of the fees and charges payable under this Agreement, or grounds for any claim by the CONCESSIONAIRE for damages, consequential or otherwise, or considered an Event of Default under Section 11.01 herein.

(c) The CITY shall not guarantee the uninterrupted provision of utilities and their service to CONCESSIONAIRE's space but will ensure that all reasonable and diligent efforts are pursued in restoring interrupted service. The CITY shall not be liable for any damages to CONCESSIONAIRE arising from such interruptions in utility services, including, but not limited to, losses of revenue or profits.

## **ARTICLE IV AGREEMENT TERM, POSSESSION, USE**

**4.01 Effective Date.** This agreement shall become effective as of the date first above written upon the execution and delivery hereof by the CITY and by the CONCESSIONAIRE, and the rights of use and occupancy granted herein of the premises for construction of the concession facilities (and such occupancy of the area in and adjacent thereto as shall be necessary for CONCESSIONAIRE's construction thereof) shall commence on such date.

## Exhibit 5 – Form of Concession Agreement

**4.02 Agreement Term.** Subject to the other provisions hereof, the term of this three (3) year Agreement ("Agreement Term") shall commence on **Insert date here** (hereinafter referred to as the "Starting Date") and shall expire at 11:59 p.m. on **Insert date here**.

**4.03 Option to Extend.** Upon CONCESSIONAIRE's request and at the CITY's discretion, the Agreement Term may be extended for three (3) additional terms. Each additional term shall be for a period of one (1) year, shall be mutually agreed upon, and shall be subject to renegotiated terms and conditions. The CONCESSIONAIRE shall notify the CITY in writing of its interest in extending this Agreement at least one hundred and eighty (180) days prior to the expiration of the then current term. In the event the option is so requested and granted by the CITY, and provided that CONCESSIONAIRE is not in default under this Agreement on the last day of the then current term, the Agreement Term shall be extended subject, however, to renegotiated terms and conditions.

**4.04 Delivery and Acceptance of Possession.** The CONCESSIONAIRE shall have the right to possess, occupy and use the Premises on and after the date hereof and, subject to the other provisions hereof, throughout the Agreement Term.

**4.05 Holding Over.** Should CONCESSIONAIRE hold over in any part of the Premises with respect to which this Agreement has terminated, such holding over shall be deemed merely a tenancy at will with terms and conditions determined by CITY.

**4.06 Concession Rights Granted.** The CONCESSIONAIRE shall enjoy the following uses, privileges and obligations in connection with its use of the Premises:

(a) The right, privilege and obligation to provide and operate within the limits of the Premises described herein a first class free-standing cash dispensing ATM device as specified in CONCESSIONAIRE'S Proposal. CONCESSIONAIRE shall offer network affiliations as described in CONCESSIONAIRE'S Proposal. While the privileges granted herein are not exclusive, the Concessionaire will have the first right of refusal in the Common Areas during the initial term, if additional ATMs are requested.

(b) The CONCESSIONAIRE agrees it will not cause or permit the Premises to be used for any other purposes unless approved in advance in writing by the Director. The Premises may not be used to sell or offer to sell, or otherwise provide services, merchandise or products including vending devices other than those permitted in this Agreement, and that breach of this restriction will place CONCESSIONAIRE in default hereunder.

**4.07 CITY's Responsibilities.** The CITY shall, at its expense, assume the following responsibilities with respect to concession spaces:

(a) maintain and repair the building structures in the areas abutting the Premises including maintenance of water, sewer, and electrical lines; ventilation, heating, and air conditioning duct work and mechanical systems; and structural elements including ceilings, columns, walls, and floor substrate;

(b) maintain finishes (floor, wall, and ceiling surfaces), equipment, and furnishings in all common and public areas of the Terminal building;

(c) make such improvements and/or alterations to the common and public areas of the Airport Building as it deems necessary or desirable;

(d) use its best efforts reasonably necessary for the safe, convenient and proper use of the Airport by those who are authorized to use the same and, in particular, to maintain and operate the Airport in accordance with all applicable standards, rules and regulations of the Federal Aviation Administration and any other regulatory authority having jurisdiction.

### ARTICLE V FEES AND CHARGES

**5.01 Fees and Charges.** As consideration for the privilege of operating the concessions hereunder, CONCESSIONAIRE shall pay to the CITY each year, for the initial three year term of this Agreement, a monthly privilege fee.



## Exhibit 5 – Form of Concession Agreement

- (a) The Monthly Privilege Fee shall be \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_) per month.
- (b) Percentage Fee: Not applicable.
- (c) ATM Surcharge Fees to customers:
  - (I) ATM Surcharge Fees are not applicable to holders of a ( bank name ) ATM, Debit or Credit card as well as any cardholders who participate in any of the Surcharge Free networks in which ( bank name ) participates.
  - (II) The ATM Surcharge Fee of \$\_\_\_\_\_ shall apply during the initial term of the Agreement. The Surcharge Fee applicable during any option term exercised is subject to negotiation between CITY and CONCESSIONAIRE prior to the start of said option term.

Except as otherwise provided in this Agreement, CONCESSIONAIRE is not obligated to pay any other rates, fees or charges to the CITY.

### 5.02 Payment of Fees.

- (a) **The Monthly Privilege Fee** shall be payable in advance and without demand, on the first day of each calendar month throughout the initial three year term of this Agreement. For any period of less than one calendar month that this Agreement shall be in effect, said Monthly Privilege Fee shall be calculated on a pro-rata basis.
- (b) **The Percentage Fee:** Not applicable.

### 5.03 Other Payments Provisions.

- (a) No acceptance by CITY of fees, charges, or other payments in whole or in part for any period or periods after a default in any of the terms, covenants, or conditions of this Agreement to be performed, kept or observed by CONCESSIONAIRE shall be deemed a waiver of any right or remedy of CITY under this Agreement.
- (b) No payment by CONCESSIONAIRE or receipt by CITY of a lesser fee, charge or other amount than that which is due and payable under the provisions of this Agreement at the time of such payment shall be deemed to be other than a payment on account of the earliest fee, charge or other amount then due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment be deemed in accordance and satisfaction and CITY may accept said check or payment without prejudicing in any way its right to recover the balance of such fee, charge or other amount due or to pursue any other remedy provided under this Agreement or by law.
- (c) All payments to CITY by CONCESSIONAIRE made in accordance with this Agreement shall be in lawful money of the United States of America and, at the option of CONCESSIONAIRE, be in the form of check, money order or cashier's check or certified check made payable to CITY, and delivered or mailed to CITY's address specified in Section 14.05, or such other address as CITY may specify by written notice to CONCESSIONAIRE. In the event that checks drawn on accounts of CONCESSIONAIRE are returned to CITY unpaid because of insufficient funds or are otherwise dishonored for any reason on two (2) or more occasions during any year, CITY may, by notice to CONCESSIONAIRE, require CONCESSIONAIRE to pay CITY by certified check, money order or cashier's check. In no event shall any sum be tendered in cash by CONCESSIONAIRE.
- (d) In the event that any fee, charge or payment required under this Agreement is not paid by CONCESSIONAIRE within fifteen (15) days of the due date as set forth herein, CITY may assess a charge of one percent (1%) per month against the amount due until payment is made by CONCESSIONAIRE. In no event shall the failure or omission of CITY to notify the CONCESSIONAIRE of any overdue or past due fee, charge or payment payable under this Agreement constitute a waiver or remedy by CITY against said fee, charge or payment.

## Exhibit 5 – Form of Concession Agreement

**5.04 Records and Audit.** CONCESSIONAIRE shall maintain true and complete records and accounts of all transactions related to their ATM operations at the Airport. CONCESSIONAIRE shall maintain controls insuring that the transaction receipts accurately reflect all Surcharge Fee income of CONCESSIONAIRE. Annually, within ninety (90) days after the end of each Agreement Year, CONCESSIONAIRE shall furnish a true and accurate statement for the preceding Agreement Year of all such Surcharge Fee transactions during such preceding year (showing authorized deductions or exclusions made in computing the amount of such transactions), which statement shall be certified to be correct by an authorized representative of CONCESSIONAIRE. The CITY shall have the right at any time and from time to time to audit all of the records of CONCESSIONAIRE relating to business transacted at the Airport including, but not limited to, Surcharge Fee transactions, and the CONCESSIONAIRE, upon reasonable advance written request, shall make all information available for such examination at CONCESSIONAIRE's principal place of business during CONCESSIONAIRE'S regular business hours. Any request for specific audit-related information submitted in writing to CONCESSIONAIRE shall be provided within 15 days. If CONCESSIONAIRE is unable to provide such information within said 15 days, CONCESSIONAIRE shall provide, within that same timeframe, either a request for clarification from the CITY or a valid explanation of why the requested information will be delayed beyond the original 15-day period as well as an explanation of when the documentation will become available. CITY reserves the right to impose a fine of \$30 per day for failure to provide requested documentation or explanation after the 15-day period. Lack of requested documentation after 30 days constitutes contract default. If, as a result of audit, it is established that CONCESSIONAIRE or any subconcessionaire has understated Surcharge Fee transactions or business transacted for any year by five percent (5%) or more (after the deductions and exclusions provided for herein), the entire expense of said audit shall be borne by CONCESSIONAIRE. Any additional Fees due as a result of such audit shall forthwith be paid by CONCESSIONAIRE to CITY with interest thereon at the rate of twelve percent (12%) per annum from the end of the month in which the discrepancy occurred.

**5.05 Impositions.** CONCESSIONAIRE shall pay, when due, or cause to be paid all levies, taxes, payments in lieu of taxes, assessments and all other like charges, imposts or burdens of whatsoever kind and nature, whether general or special, ordinary or extraordinary, foreseen and unforeseen (collectively "impositions") which at any time during the term of this Agreement may be created, levied, assessed, imposed or charged upon or with respect to the Premises or any part thereof, or for any public improvements or utility services, by any federal, state, municipal or other authority; provided, however, that the CONCESSIONAIRE shall not be obliged to pay impositions created, levied, assessed, imposed or charged by the CITY except as contemplated by the terms of this Agreement. In the event CONCESSIONAIRE shall deem any such imposition, or any aspect thereof, to be paid by CONCESSIONAIRE to be excessive or illegal, CONCESSIONAIRE shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this section shall require CONCESSIONAIRE to pay any such imposition as long as the amount or validity thereof shall be contested in good faith and if, in the opinion of counsel for the CITY, the Premises shall not thereby be in danger of being forfeited nor the CITY exposed to any threat of criminal violation.

### ARTICLE VI OPERATING COVENANTS OF CONCESSIONAIRE

#### 6.01 General.

(a) CONCESSIONAIRE shall conduct its ATM concession business at the Airport herein authorized in accordance with CONCESSIONAIRE's standard operating procedures and in a reasonable and safe manner consistent with the overall image and atmosphere of a first class public facility. The said standard operating procedures are made a part of this Agreement by reference and incorporated as if fully rewritten herein. In striving to serve the public, the CONCESSIONAIRE shall charge reasonable, non-discriminatory prices for ATM services; maintain a high degree and high standard of quality of products; furnish prompt, courteous and efficient, non-discriminatory service adequate to meet all reasonable requests therefor; and insure polite and inoffensive conduct and demeanor on the part of representatives, agents, servants and employees.

(b) The CONCESSIONAIRE will at no time, and under no circumstances, occupy or clutter with supplies, equipment or other material, any area outside of the Premises for the operation of the Concession Facilities and the nearby facilities operated by the CONCESSIONAIRE, nor allow any debris or litter, resulting from the sale of items or services to the public and their subsequent disposal, in common and public areas of the Terminal.

## Exhibit 5 – Form of Concession Agreement

(c) The CONCESSIONAIRE will direct all deliveries to the Premises to be made at times and in a manner which will not materially interfere with the use of the Airport by the traveling public and other authorized persons. Deliveries shall be made only at times and locations acceptable to the Director which right will not be unreasonably exercised or imposed by the Director.

### 6.02 Services.

(a) The CONCESSIONAIRE's responsibility to excel as to service including on-call maintenance and related down time of devices, cash replenishment, cleaning and maintenance, security, and safety will be subject to service audits which the Director may undertake from time to time to assure that standards, including but not limited to the following, are satisfied:

1. CONCESSIONAIRE shall operate and monitor the ATM devices 24 hours each day and 365 days a year.
2. On-site response time to problems related to inoperative ATM devices which cannot be resolved remotely shall be less than \_\_\_\_\_ hours from notification, 7 days per week. CONCESSIONAIRE shall place customer-friendly signage on each ATM device indicating service hours / live agent information as well as options for additional service if desired. All signage placed on ATM device shall be pre-approved in writing by Airport, which approval will not be unreasonably withheld, conditioned or delayed.
3. ATM standard of availability shall exceed 95% for each calendar month during the Term.
4. Cash replenishment of ATM devices shall occur a minimum of once per week, or more often as needed to ensure no ATM device is depleted of cash (i.e. if ATM runs out of cash, CONCESSIONAIRE needs to replenish immediately and not wait until the normal once-per-week scheduled replenishment day).
5. The devices shall dispense in denominations of ten and twenty dollars.
6. General cleaning of the devices will be done \_\_\_\_\_, and \_\_\_\_\_ will perform preventative maintenance on their machines on an annual basis.

Compliance with this requirement shall be determined by ratings resulting from any service audit as defined herein or from inspections conducted by the Director, or at the Director's request. The sufficiency of such ratings shall be determined by the Director.

(b) Any questions or complaints regarding safety, products and services provided by the CONCESSIONAIRE which arise as a result of the service audit or inspection reports, shall be subject to review by the Director. The Director may take such action as the Director deems appropriate in his/her discretion after negotiation with the CONCESSIONAIRE to determine possible remedies or cures of the problem so identified including termination of this Agreement in the particular circumstances but only after failure on the CONCESSIONAIRE's part to cure such problem within thirty (30) days of receipt of written notice thereof from the Director. The Director may only exercise his/her discretion in a reasonable manner reflecting the seriousness of the problem so identified and may base his/her discretion on such factors as public safety, services or lack thereof, public conduct of the CONCESSIONAIRE or its agents and/or employees and any continued history of such problems. The Director may find that the circumstances warrant termination of this Agreement, or may find that other action is appropriate. As used in this document, service audit shall mean a sampling, test, survey or other procedure conducted by an employee of the CITY, or by a contractor or consultant engaged by the CITY or the CONCESSIONAIRE, to test and report on the services and products supplied to the patrons and to the traveling public and other persons at the Airport.

(c) Continuing or repeated failure to meet the obligations to provide quality products and services sold and operated by the CONCESSIONAIRE on the Premises at the Airport and to operate the Concession Facilities in the manner described in Article VI herein, especially in the area of safe operation, but not limited thereto, shall be a default in a covenant of this Agreement and such default shall be sufficient cause for termination of this Agreement.

**6.03 Hours of Operation.** The CONCESSIONAIRE will operate the Concession Facilities 365 days per year and 24 hours per day. The CONCESSIONAIRE will observe prescribed hours and will not deviate from said hours without the

## Exhibit 5 – Form of Concession Agreement

Director's prior written approval. The CONCESSIONAIRE shall be responsible for advising the Director in writing if any deviation from the prescribed operating hours is desired or recommended.

**6.04 Pricing.** Initial pricing for the services available from the ATM units will reflect the Surcharge Fee from CONCESSIONAIRE'S Proposal as agreed upon by CITY for the term of the Agreement. The \$\_\_\_\_\_ Surcharge Fee will apply only to the transactions of customers not affiliated with CONCESSIONAIRE'S bank group.

**6.05 Account Representative.** The CONCESSIONAIRE, during its normal business hours, shall retain a full-time, active, qualified, competent account representative to supervise operations of the concession facilities operated by the CONCESSIONAIRE at the Airport, and to represent CONCESSIONAIRE should any contract issues or unresolvable maintenance/operational issues arise. The CONCESSIONAIRE shall notify the Director of the name of its representative and shall advise the Director of the identity of the representative's successor in the event that account representative is temporarily or permanently replaced.

**6.06 CONCESSIONAIRE's Employees.**

(a) The CONCESSIONAIRE's employees and contractors engaged in replenishing supplies, maintenance and cleaning shall be clean, courteous, efficient, and neat in appearance at all times. Each employee shall wear a badge or other form of identification. The CONCESSIONAIRE shall not employ any person or persons in or about the Premises who shall use improper language or act in a loud or boisterous or otherwise offensive manner. The CONCESSIONAIRE agrees to ensure that all employees act in a responsible and courteous manner in conformance with standard business practice. The CONCESSIONAIRE further agrees to investigate any complaints made by the public or by the CITY concerning such improper conduct on the part of its employees and to take appropriate action to put a stop to such conduct without delay.

(b) CONCESSIONAIRE acknowledges and agrees that public interest demands particular attention and deference to the public by the CONCESSIONAIRE and its employees, especially as to vehicular traffic and pedestrians on the Airport premises, and agrees that there will not be any policy of the CONCESSIONAIRE promoting or requiring excessive speed and unsafe driving by its employees in operating motor vehicles on the Airport.

(c) CONCESSIONAIRE agrees that it is an independent business and an employing unit subject as an employer to all applicable unemployment compensation, occupational safety and health, or similar statutes. The CITY shall have no responsibility to or liability for treating CONCESSIONAIRE's employees as employees of the CITY, their safety, or keeping records, making reports, or paying any payroll taxes or contributions.

**6.07 Prohibited Acts.** The CONCESSIONAIRE shall:

- (a) conduct its operations in an orderly and proper manner and so as not to annoy, disturb or be offensive to others.
- (b) commit no nuisances on the Premises, and shall not do or permit to be done anything which may result in the creation or commission or maintenance of a nuisance thereon.
- (c) not conduct its operations in a manner that deprives the public of its rightful, equal and uniform use of Airport property.
- (d) not conduct its operations so as to interfere with reasonable use by others of common facilities on the Airport.
- (e) not conduct its operations in such a way as to hinder police, fire fighting or other emergency personnel in the discharge of their duties or so as to constitute a hazardous condition that would increase the risks normally attendant upon the operations contemplated under this Agreement.

**6.08 Environmental Compliance, Recycling.**

(a) CONCESSIONAIRE will comply, and will cause its employees, agents, invitees, licensees and subtenants (collectively, the "CONCESSIONAIRE's Agents") to comply, with all Environmental Laws (as hereinafter defined) in its and their operations, processes, use and occupation of the Premises. CONCESSIONAIRE will promptly take all such actions as

## Exhibit 5 – Form of Concession Agreement

may be necessary to abate, remove and clean up, or otherwise cure any violation of Environmental Laws caused by any Hazardous Materials originated, generated or disposed of on the Premises by CONCESSIONAIRE or any of CONCESSIONAIRE's Agents, including any damage caused to other premises at the Airport as a result of such violation. CONCESSIONAIRE will indemnify and hold the CITY harmless from any failure to comply with the foregoing provisions of this Paragraph (a).

(b) For purposes of this Section 6.08, "Hazardous Materials" are defined as any chemical, material, or substance which is regulated as toxic or hazardous or exposure to which, or disposition of which, is prohibited, limited or regulated by any federal, state, county, regional, local or other governmental authority. The federal, state, county, regional and local laws, ordinances and regulations pertaining to or regulating "Hazardous Materials" are defined as "Environmental Laws".

(c) The CONCESSIONAIRE agrees to observe and participate in the Lessor's recycling program now in effect or as such recycling program may be amended by the CITY in the future. The CITY will identify collection points in the Terminal building where CONCESSIONAIRE may deposit recyclable materials. The CITY will arrange removal of these materials from the building.

### **6.09 Governmental Requirements, CITY Regulations.**

(a) The CONCESSIONAIRE shall comply with any applicable Federal Aviation Administration Regulations, as the same may be amended from time to time (including without limitation such rules and regulations of the Federal Aviation Administration as may be in effect from time to time with respect to airport security), and any other present or future laws, rules, regulations, orders or directions of the United States of America or the State of New Hampshire which from time to time may be applicable to the CONCESSIONAIRE's operations hereunder.

(b) The CONCESSIONAIRE shall procure from all governmental authorities having jurisdiction over the operations of the CONCESSIONAIRE hereunder, all licenses, franchises, certificates, permits or other authorizations which may be necessary for the conduct of such operations, and it shall comply with all laws and lawful ordinances, and governmental rules, regulations and orders during the term of this Agreement which from time to time may be applicable to the CONCESSIONAIRE's operations hereunder.

(c) The CONCESSIONAIRE covenants and agrees to observe and obey (and to require its officers and employees to observe and obey and to exercise its best efforts to require guests and invitees and those doing business with it to observe and obey) the rules and regulations of the CITY (including amendments and supplements thereto) governing the conduct and operations of the CONCESSIONAIRE and others on the Premises, Terminal and the Airport and such future reasonable rules and regulations as, from time to time during the term hereof, may be promulgated by the CITY for reasons of safety, health, sanitation and good order, including such requirements as may be reasonably imposed from time to time by CITY with respect to the Airport Security and security of the Premises and the prevention of uncontrolled access to the Airport and the Premises; provided that any such rules and regulations shall not be inconsistent with the provisions of this Agreement or with the rules and regulations of the Federal Aviation Administration. The obligation of the CONCESSIONAIRE to exercise its best efforts to require such observance on the part of its guests, invitees and business visitors shall apply only while such persons are on the Premises.

## **ARTICLE VII MAINTENANCE, REPAIR, ALTERATIONS & LIENS**

### **7.01 Care, Maintenance and Repair.**

(a) The CITY shall be responsible for the structural maintenance, repair and upkeep of the Terminal. The CONCESSIONAIRE shall at all times, without cost to the CITY, maintain the Premises in a neat and clean condition, including but not limited to signs and lights within the Premises. CONCESSIONAIRE shall make all necessary repairs to the Premises. The CITY assumes no responsibility for the repair or maintenance of equipment, trade fixtures, finishes or furnishings within the Premises. The CONCESSIONAIRE shall ensure that the appearance of the Premises complies with the standards observed for all common and public areas of the Terminal Building. All repairs and replacements by the CONCESSIONAIRE

## Exhibit 5 – Form of Concession Agreement

shall be the same quality and class of the original material and workmanship; and CONCESSIONAIRE shall promptly pay the costs and expenses of such repairs, replacements and maintenance.

(b) The CITY shall be the sole judge of the quality of maintenance. The CITY may at reasonable times, without notice, enter the Premises to determine if satisfactory maintenance is being performed. If CITY determines that maintenance is not satisfactory, CITY shall so notify CONCESSIONAIRE in writing. If said maintenance is not performed by CONCESSIONAIRE within fifteen (15) days after receipt of written notice, CITY or its agents shall have the right to enter upon the Premises and perform the maintenance therefor and CONCESSIONAIRE agrees to promptly reimburse CITY for the direct cost thereof, plus twenty percent (20%) thereof for administrative overhead.

(c) All personal property and installations (including trade fixtures) removable without material damage to the Premises, which are installed by CONCESSIONAIRE (or its subtenants) in or on the Premises, shall be deemed to be and remain the property of the CONCESSIONAIRE. All such property and installations may at CONCESSIONAIRE's option be removed by CONCESSIONAIRE from the Premises at any time during the Agreement Term, and, unless otherwise agreed in writing by the parties hereto, shall be removed by CONCESSIONAIRE at or before the expiration or other termination of the Agreement Term. Upon the expiration or termination of this Agreement, CONCESSIONAIRE shall deliver the Premises to CITY, together with all improvements and additions thereto (other than property and installations which may be removed by CONCESSIONAIRE in accordance with this Section), free and clear of any lien or encumbrance incurred by CONCESSIONAIRE, and in as good order and condition as the same exists at the Starting Date of this Agreement, reasonable wear and tear excepted and uninsurable casualty excepted. Any such property remaining on the Premises beyond thirty (30) days thereafter shall be deemed to be abandoned by CONCESSIONAIRE and shall revert to the CITY without further action of any kind on the part of the CITY or CONCESSIONAIRE.

(d) The CITY assumes no responsibility under any circumstances for loss or damage to Tenant's stored supplies, materials, merchandise, or equipment, or for any of the CONCESSIONAIRE's employees' personal belongings brought onto the Premises.

**7.02 Alterations.** Except as provided in Section 3.09(b) herein, CONCESSIONAIRE shall not erect any improvements, or do any other construction work on the Premises or alter, modify or make additions to or replacements of the Concession Facilities or install any fixtures in the Premises (other than trade fixtures, removable without injury to the Concession Facilities) without the prior written approval of the Director. This pertains to any decorative or structural change that will be visible to customers including signage; lighting; wall, ceiling, or floor finishes; counters; furniture; and decor items. The requirement of Director's approval shall not apply to any additions, improvements, repairs or replacements reasonably necessary due to an emergency. Once the CONCESSIONAIRE's Premises is operational, the CONCESSIONAIRE shall make all provisions to maintain sales and service capabilities throughout the Agreement Term. Should alterations to the Premises be approved at any time, it is the CONCESSIONAIRE's responsibility to ensure that no disruption of normal sales and service activities occurs that would be detrimental to the Airport's users.

**7.03 Liens.** The CONCESSIONAIRE shall not permit a lien or liens to become attached to the remainder interests of the CITY in the Premises, or upon the interest of the CONCESSIONAIRE, without the prior written consent of the CITY, or suffer or permit a lien or liens for taxes to be imposed or attached thereto, unless CONCESSIONAIRE is contesting in good faith the tax or claim that is the basis of the lien, in which event CONCESSIONAIRE shall dissolve the lien or stay or prevent its foreclosure by bond or other appropriate legal procedure.

### ARTICLE VIII EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION & PARTICIPATION IN CITY'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Without limiting the generality of any of the provisions of this Agreement, CONCESSIONAIRE, in its operations at the Airport, and also as a part of the consideration hereof, agrees:

(a) to maintain and operate its Concession and Concession Facilities and provide its services in compliance with and pursuant to Title 49, Part 21, Code of Federal Regulations, Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be

## Exhibit 5 – Form of Concession Agreement

amended; and shall not on the grounds of race, creed, color or national origin discriminate or permit discrimination against any person or group of persons in any manner whatsoever.

(b) to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The CONCESSIONAIRE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The CONCESSIONAIRE assures that it will require that its covered suborganizations provide assurances to the CONCESSIONAIRE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(c) that this Agreement is subject to the requirements of the United States Department of Transportation's regulations, 49 CFR Part 23. The CONCESSIONAIRE agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(d) to make a good faith effort to participate in and to assist the CITY in reaching the goals of the CITY'S Disadvantage Business Program.

(e) to include the statements contained in Article VIII, Paragraph (c) above in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

### ARTICLE IX INDEMNIFICATION AND INSURANCE

**9.01 Indemnification.** The CONCESSIONAIRE covenants and agrees to indemnify and hold harmless the CITY, its directors, officers, agents and employees, from and against any and all claims for damages or injuries, including death, to persons or property arising out of or incident to (i) CONCESSIONAIRE's construction, or (ii) the use and occupancy of, the Premises during the term of this Agreement, by CONCESSIONAIRE, its contractors, agents, invitees, servants, subtenants or employees. The CITY shall give to CONCESSIONAIRE prompt written notice of any such claim or action and CONCESSIONAIRE shall have the right to investigate, compromise and defend the same. This section shall not apply, however, to the negligent or willful acts or omissions of the parties indemnified hereunder.

#### **9.02 Concessionaire's Insurance.**

(a) During the construction, fabrication and installation period of the Concession Facilities, the CONCESSIONAIRE shall maintain in force, or cause its contractors or suppliers to maintain in force, insurance with responsible insurers licensed to do business in the State of New Hampshire that provides coverage of not less than \$1,000,000 for injury to or death of a person or persons in any one occurrence and for damage to property in any one accident.

(b) Beginning with the Starting Date, the CONCESSIONAIRE shall maintain or cause to be maintained in force, with respect to the Premises, with responsible insurers licensed to do business in the State of New Hampshire the following kinds and the following amounts of insurance, with such variations as shall reasonably be required to conform to applicable standard or customary New Hampshire insurance provisions, to wit:

(i) public and other comprehensive commercial general liability insurance of such character and amount as shall be reasonably adequate to insure the CITY and the CONCESSIONAIRE against risks to which the CITY and/or the CONCESSIONAIRE may reasonably be or become subject in the concession operation, construction or reconstruction of the Premises. Initially, such insurance shall provide coverage of not less than \$1,000,000 for injury to or death of a person or persons in any one occurrence as well as for damage to property in any one accident, and a \$2,000,000 products-completed operations aggregate for:

Exhibit 5 – Form of Concession Agreement

- (1) Premises and operations
- (2) Products and completed operations
- (3) Contractual liability for the liability assumed by CONCESSIONAIRE
- (4) Employer's Liability

(ii) Commercial Umbrella Policy in the amount of \$2,000,000, to extend over the General Liability, Commercial Auto Liability and Employers Liability policies and provide additional insured coverage in the same manner as the underlying coverages.

(iii) Worker's compensation or employer's liability insurance in the following amounts:

Coverage A - Statutory Requirement - \$500,000

Coverage B - \$500,000 per Occurrence

Coverage C - \$500,000/500,000 Accident and/or Disease

All States Endorsement

(iv) Comprehensive Automobile Liability Insurance with a \$1,000,000 combined single limit bodily injury and property damage for each occurrence for all owned, non-owned, and hired vehicles used by the CONCESSIONAIRE while performing operations in connection with this Agreement.

(c) All policies evidencing insurance maintained or caused to be maintained in force by the CONCESSIONAIRE with respect to the Premises and this Agreement shall be issued by the home office of the insurer(s) or by a duly authorized agent of the insurer(s) and shall name the CITY of Manchester, New Hampshire, and Manchester-Boston Regional Airport as additional insureds, as their interests shall appear, and shall be deposited with the CONCESSIONAIRE or its subtenants but subject to inspection and examination by the CITY. The CITY shall have the right and is hereby authorized in its own name to demand and sue, collect and receipt for claims monies hereunder if CONCESSIONAIRE fails to do so.

**9.03 Miscellaneous Insurance Covenants.**

(a) The CONCESSIONAIRE at the commencement of this Agreement and not later than the first day of January in each year during the term hereof, nor later than thirty (30) days prior to the expiration of current policies, whichever is earlier, shall file or cause to be filed with the CITY a certificate of insurance with respect to the Premises and this Agreement then in effect pursuant to the requirements of Section 9.02 hereof. Such certificate will certify that the CITY will be given thirty (30) prior written notice of non-renewal, cancellation, or other material change.

(b) CONCESSIONAIRE's obligation under Section 9.02 shall not affect its right to carry additional insurance solely for its own account provided such additional insurance does not impair the insurance required to be maintained by this Agreement.

(c) In the event the CONCESSIONAIRE fails to maintain or cause to be maintained the full insurance coverage required by this Agreement, the CITY may (but shall be under no obligation to) obtain the required insurance coverage and pay the premiums for the same; and all amounts so advanced therefor by the CITY shall become additional fees and charges payable by the CONCESSIONAIRE to the CITY, which amounts the CONCESSIONAIRE agrees to pay upon demand. It shall not be a default under this subsection (c) if the CITY at the request of CONCESSIONAIRE agrees to provide in a separate instrument a portion of the insurance required pursuant to Section 9.02 under its blanket coverage policy at the Airport.



## Exhibit 5 – Form of Concession Agreement

(d) All liability insurance policies shall include a severability of interest clause with respect to claims, demands, suits, judgments, costs, charges, and expenses arising out of, or in connection with any loss, damage, or injury resulting from the negligence or other fault of the CONCESSIONAIRE, CONCESSIONAIRE's agents, representatives, and employees.

(e) CONCESSIONAIRE understands that the CITY's insurance does not extend to cover injury or loss to CONCESSIONAIRE or its employees, servants, agents, or assigns, and Tenant expressly waives any claims against the CITY for such injury or loss.

(f) The CITY agrees to maintain in force during the term of this Agreement fire, extended coverage and vandalism/malicious damage insurance on the Terminal and any additions, alterations, or modifications thereto, and on all contents owned by the CITY and incidental to the Terminal for an amount not less than ninety percent (90%) of the full replacement cost thereof. CONCESSIONAIRE shall purchase similar insurance on any contents, furnishings, trade fixtures, equipment and improvements which have not assumed the nature of real estate improvements. The CITY and CONCESSIONAIRE hereby mutually release and discharge each other from all claims or liabilities arising from or caused by fire and other casualty covered by the aforementioned insurance on the Terminal, Premises, contents, and personal property. All such policies shall include a waiver of subrogation with respect to the provisions of this agreement.

### ARTICLE X DAMAGE TO OR DESTRUCTION OF PREMISES

**10.01 Repair and Rebuilding.** In the event of damage or casualty to any part of the Premises, unless a decision is made by the CITY that the Terminal will not continue to be used as a passenger Terminal by scheduled airlines, any such damage or destruction shall be repaired with reasonable dispatch by the parties in cooperation with each other, but with the CITY in charge. Both parties shall apply all insurance proceeds received by them as a result of any such damage or destruction under the provisions of Section 9.03(f) to such repair and rebuilding. Should the cost of such repair or rebuilding exceed the amount of such insurance proceeds, the CITY and CONCESSIONAIRE shall attempt to agree on a program to finance the extra cost. If such program cannot be agreed upon, the CITY shall reduce the scope of repairs and rebuilding so that the same may be accomplished with such proceeds. Should the CITY decide that the Airport will no longer be used as a passenger Terminal by scheduled airlines, all insurance proceeds paid to CITY under Section 9.03(f) with respect to property or improvements originally provided or paid by CONCESSIONAIRE shall belong to CONCESSIONAIRE, and all additional insurance proceeds shall belong to CITY.

**10.02 Abatement of Privilege Fee- Repair and Rebuilding.** During any period that the separate areas constituting a part or all of the Premises are unusable by reason of damage or destruction to any part of the Premises, the Privilege Fee requirement of Section 5.01 of this Agreement shall remain in full force and effect during the said period. If no fault of CONCESSIONAIRE, the CITY agrees to provide a new location to operate ATMs and will bear the cost of the relocation.

**10.03 Exception for Fault of CONCESSIONAIRE.** Notwithstanding the provisions of Section 10.02, if the Premises, or any part thereof, are damaged by the intentional or negligent act or omission of CONCESSIONAIRE, its subconcessionaires, their agents or employees, there shall be no abatement of the Privilege Fee.

### ARTICLE XI DEFAULT BY CONCESSIONAIRE

**11.01 Events of Default Defined.** The following shall be "Events of Default" as to the CONCESSIONAIRE under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) Failure by the CONCESSIONAIRE to pay or cause to be paid the rents, fees, charges or any other sum required to be paid to the CITY under this agreement within fourteen (14) days after written notice by the CITY that the same is due and payable.

## Exhibit 5 – Form of Concession Agreement

(b) Failure by the CONCESSIONAIRE to observe and perform any covenant, condition or agreement on its part to be observed or performed other than as referred to in Section 11.01(a), for a period of twenty (20) days after written notice specifying such failure and requesting that it be remedied, given to the CONCESSIONAIRE at its address set forth in Section 14.05 by the CITY (except where fulfillment of its obligation requires activity over a greater period of time, in which event the CONCESSIONAIRE shall commence to perform whatever may be required for fulfillment within twenty (20) days after the receipt of notice and shall diligently continue such performance to completion without interruption, except for causes beyond its control).

(c) If the Premises shall be abandoned, deserted or vacated by the CONCESSIONAIRE or failure of CONCESSIONAIRE to operate its ATM concession at the Airport for a period of five (5) days and CONCESSIONAIRE fails to resume full concession operations within five (5) days after receipt of written notice from the CITY, or if CONCESSIONAIRE removes its trade fixtures, signs, trademark items and identifying characteristics. Exceptions to this Section 11.01(c) are casualty loss or remodeling requiring in excess of five (5) days to complete and undertaken with the prior written approval of the Director which approval will not unreasonably be withheld, conditioned or delayed.

(d) The filing by, on behalf of, or against CONCESSIONAIRE of any petition or pleading to declare CONCESSIONAIRE bankrupt, voluntary or involuntary, under any bankruptcy act or law, which is not dismissed within ninety (90) days after the date of filing.

(e) The commencement in any court or tribunal of any proceedings, voluntary or involuntary, to declare CONCESSIONAIRE insolvent or unable to pay its debts, which is not dismissed within ninety (90) days after the date of filing.

(f) The appointment by any court or under any law of a receiver, trustee or other custodian of property assets of business of CONCESSIONAIRE.

(g) The sale or levy upon the CONCESSIONAIRE's real or personal property located on the Premises by any official legally entitled to do so.

(h) The assignment by CONCESSIONAIRE of all or any part of its property or assets for the benefit of creditors.

**11.02 Waiver.** No waiver by the CITY of default by CONCESSIONAIRE of any of the terms, covenants or conditions hereof by CONCESSIONAIRE shall be construed to be a waiver of any subsequent default. The acceptance of rental or payments or the performance of all or any part of this Agreement by the CITY for or during any period or periods after default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by CONCESSIONAIRE shall not be deemed a waiver of any right on the part of the CITY to declare a default or cancel this Agreement until CITY shall have expressly agreed in writing to waive said default.

**11.03 Effect of Default.** Upon the happening of any event of default as defined in Section 11.01 above and the failure of the CONCESSIONAIRE to cure such default in the time period set forth in said Section 11.01, the CITY shall have all the remedies available to it under law, including, but not limited to, the right to terminate the term of this Agreement without further notice to CONCESSIONAIRE. Upon termination of the term hereof, whether by lapse of time or otherwise, CONCESSIONAIRE shall promptly cease occupying the Premises and deliver possession thereof to the CITY. Except as otherwise expressly provided in this Agreement, CONCESSIONAIRE hereby expressly waives the service of demand for payment of rent for possession of the Premises or re-enter the Premises, including any and every form of demand and notice prescribed by any statute or other law. Further, CITY may recover reasonable attorney's fees in connection with any legal action taken to enforce its rights hereunder.

**11.04 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the CITY is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the CITY to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, unless such notice is herein expressly required or is required by law.

**ARTICLE XII**  
**TERMINATION BY CONCESSIONAIRE**  
**ABATEMENT OF PRIVILEGE FEE**

**12.01 Termination by CONCESSIONAIRE.** CONCESSIONAIRE may terminate this Agreement at any time that CONCESSIONAIRE is not in default in the payment of any rentals, fees or charges payable to the CITY hereunder following the occurrence of any one or more of the following events:

- (a) The inability of the CONCESSIONAIRE to use the Premises for a period in excess of ninety (90) days because of the issuance of any order, rule or regulation by the United States of America or an instrumentality thereof preventing the CONCESSIONAIRE from operating at the Premises for cause or causes not constituting a default under this agreement.
- (b) The issuance by any court of competent jurisdiction of an injunction restraining the use of the Airport or the Premises if said injunction shall remain in force for more than ninety (90) consecutive days.
- (c) The default by the CITY in the performance of any covenant, obligation or agreement herein required to be performed by the CITY and the failure of the CITY to remedy the same within sixty (60) days after written notice, unless such default cannot be cured within sixty (60) days and the CITY has in good faith commenced and is prosecuting the cure thereof, in which case the CITY shall have a reasonable extension of such period in order to cure such default; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if the CITY shall have remedied the default prior to receipt of the CONCESSIONAIRE's notice of cancellation.
- (d) The assumption of the United States of America or an instrumentality thereof of the operation, control or use of the Airport or any substantial part thereof in such a manner as to substantially restrict the CONCESSIONAIRE for a period of least ninety (90) days from the operation of its business at the Airport.
- (e) The withdrawal or cancellation by the United States of America or an authorized instrumentality thereof of the right of regularly scheduled airlines to operate at the Airport.

**12.02 Waiver.** The CONCESSIONAIRE's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants or conditions hereof to be performed, kept or observed by the CITY, or the occurrence of such other event as may excuse performance shall not be deemed a waiver of any right on the part of CONCESSIONAIRE (i) to cancel this Agreement for failure of the CITY so to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept or observed, or by reason of such occurrence, or (ii) to enforce any other right that the CONCESSIONAIRE may have by reason of such failure or occurrence. No waiver by the CONCESSIONAIRE of any of the terms, covenants or conditions hereof shall be construed to be or act as a waiver by CONCESSIONAIRE of any subsequent default or occurrence.

**12.03 Abatement of Privilege Fee.** Upon the occurrence of any of the following events, the CONCESSIONAIRE's obligation to pay the Privilege Fee shall be suspended for the period of time after which the condition continues to exist beyond a period of thirty (30) days or more:

- (a) In the event of any emergency situation wherein for a period of thirty (30) consecutive days or more there is material curtailment at the Airport of the use of airplanes, airplane travel by the general public resulting from either governmental action or a shortage of materials;
- (b) In the event that the number of enplaning passengers at the Airport processed through the Airport by airlines during any calendar quarter (3-month period), shall be less than eighty percent (80%) of the number of such enplaning passengers for the same period of time in the immediately preceding year.

**ARTICLE XIII  
ASSIGNMENTS, SUBLETTING**

**13.01 Assignments by CITY.** The CITY may transfer or assign this Agreement to any successor in interest to the CITY to whom the Airport may be sold or assigned, and shall thereupon be released from any further liability hereunder; provided, however, that the successor in interest shall execute and deliver to the CITY, with a copy to CONCESSIONAIRE, an instrument assuming the lawful obligations of CITY under this Agreement.

**13.02 Assignments and Subleases by Concessionaire.**

(a) Except as provided in Section 13.03 herein, CONCESSIONAIRE shall not sublease, assign, transfer, or delegate the Premises or CONCESSIONAIRE's role or responsibilities described under this Agreement, including any transfer by operation of law, without the prior written consent of the CITY, which consent will not be unreasonably withheld, conditioned or delayed. The CONCESSIONAIRE must submit to the CITY for its review and approval ample documentation substantiating the proposal to transfer the Premises or responsibilities related thereto to another party.

(b) No subcontract entered by the CONCESSIONAIRE shall relieve the CONCESSIONAIRE of any of its liabilities and obligations, including those assigned to a subconcessionaire.

**13.03 CONCESSIONAIRE to Maintain its Existence.** The CONCESSIONAIRE, from the effective date hereof and throughout the term hereof, shall maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, that the CONCESSIONAIRE may, without violating the agreement contained in this section, sell or otherwise transfer to another person, partnership or corporation, all or substantially all of its assets as an entirety and thereafter dissolve, provided the transferee (i) assumes in writing all of the obligations of the CONCESSIONAIRE herein, (ii) qualifies to do business in New Hampshire, and (iii) can demonstrate its capability, financial and otherwise, to perform CONCESSIONAIRE's obligations under this Agreement to the reasonable satisfaction of the CITY. In no event will a sale or transfer be permitted until the Concession Facilities are fully constructed and accepted by the CITY in accordance with the provisions of Article III hereof.

**ARTICLE XIV  
GENERAL PROVISIONS**

**14.01 Personal Liability of CITY Officials.** In carrying out any of the above provisions of this Agreement, or in exercising any power or authority granted to the CITY hereunder, there shall be no liability upon any officer of the Manchester Airport Authority and the CITY, or its authorized employees, either personally or as an official of the CITY, it being understood that in such matters each such person acts as an agent and representative of the CITY.

**14.02 Force Majeure.** Neither the CITY nor CONCESSIONAIRE shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control, and the time for performance shall be automatically extended by the period the party is prevented from performing its obligations hereunder.

**14.03 Memorandum of Agreement.** Either party, at the request of the other, shall execute, acknowledge and deliver, a memorandum or short form of agreement prepared by the requesting party; provided, however, that the relations between CONCESSIONAIRE and the CITY shall be governed solely by the provisions of this Agreement and not by any short form or memorandum which may be executed, delivered and recorded.

**14.04 Severability Clause.** If any word, phrase, clause, paragraph, section or other part of this Agreement shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to any other person or circumstances shall not be affected thereby.

## Exhibit 5 – Form of Concession Agreement

**14.05 Notices.** All notices provided for in this Agreement shall be in writing and shall be sufficient if sent by registered or certified mail, postage prepaid, properly addressed, and deposited in any United States post office:

If to the CITY: Office of Airport Director, Manchester-Boston Regional Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103; and

If to CONCESSIONAIRE: \_\_\_\_\_ or to such other address and person as CONCESSIONAIRE may direct in writing. Notices shall be deemed completed when mailed unless otherwise herein required.

**14.06 Subordination.** This Agreement is subject and subordinate to: (i) easements, conditions and restrictions of record; (ii) the provisions of any existing or future agreement between the CITY and the United States of America, or any board, agency or commission thereof, relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport; (iii) the Intermunicipal Agreement between the CITY of Manchester and the Town of Londonderry, New Hampshire; and (iv) any license or permit of entry which may be granted by the United States Secretary of Defense. In the event the United States government or its agencies (including the Federal Aviation Administration or its successors) require modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, CONCESSIONAIRE hereby agrees to consent to such modifications or changes, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to obtain such funds; provided, however, that in no event will CONCESSIONAIRE be required pursuant to this Section 14.06 to agree to an increase in any fees and charges or a decrease in the Agreement Term provided for hereunder, to change the use of the Premises (provided that such use is permitted hereunder), to suffer any material interference with the operation of the Concession Facilities or suffer any material abridgement or impairment of the rights conferred on CONCESSIONAIRE by this Agreement.

**14.07 Municipal Employees.** CONCESSIONAIRE will not knowingly during the Agreement Term hire or employ, either on a full-time or part-time basis, any employees of CITY, regardless of whether such employees are full-time or part-time employees of CITY (i.e. no person shall be employed by the CONCESSIONAIRE and the CITY at the same time due to conflict of interest).

**14.08 Right to Develop or Improve.** CITY reserves the right to further develop or improve the Terminal area and all publicly owned air navigation facilities of the Airport as the CITY deems fit, regardless of the desires or views of CONCESSIONAIRE and without interference or hindrance from CONCESSIONAIRE, provided that, in exercising such rights, the CITY will not unreasonably interfere with the operation of the Concession Facilities or abridge the rights conferred on CONCESSIONAIRE by this Agreement.

**14.09 Entire Agreement.** This Agreement sets forth all of the promises, agreements, conditions and understandings between the CITY and the CONCESSIONAIRE relative to the Premises, concession operations and the transactions contemplated hereby, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Should a conflict arise between CONCESSIONAIRE'S Proposal and this Concession Agreement, this Agreement will govern the roles and responsibilities of the parties. Except as otherwise herein provided, no alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless agreed to in writing by CITY and CONCESSIONAIRE.

**14.10 Parties.** Except as otherwise herein expressly provided, the covenants, conditions and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of CITY and CONCESSIONAIRE and their respective successors and assigns.

**14.11 Captions.** The captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision hereof.

**14.12 Consent Not Unreasonably Withheld.** Wherever it is provided herein that the consent or approval of the CITY, the Director or CONCESSIONAIRE is required, such consent or approval shall not be unreasonably withheld or delayed, unless specifically otherwise provided herein.

**14.13 Governing Laws.** The laws of the State of New Hampshire shall govern this Agreement and any question arising hereunder.

## Exhibit 5 – Form of Concession Agreement

**14.14 Waiver of Claims.** CONCESSIONAIRE hereby waives any claim against the CITY and its elected officials, officers, agents or employees for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part hereof.

**14.15 No Warranties of Inducements.** By executing this Agreement, CONCESSIONAIRE acknowledges that CITY has not intended to provide or warrant any forecast of future passenger volumes, concession revenues, or maintenance and operation costs rates or totals; that such information as the CITY has furnished with respect to these and other matters has been intended merely as one source of information available for consideration by CONCESSIONAIRE, which CONCESSIONAIRE has been encouraged to verify through its own investigation; that in these negotiations, CONCESSIONAIRE has relied upon its own resources as to all of these matters; and that it has not relied upon any inducements or forecasts of the CITY.

**14.16 Situs and Service of Process.** CONCESSIONAIRE agrees all actions or proceedings arising directly or indirectly from this Agreement shall be litigated only in courts having situs within the State of New Hampshire and CONCESSIONAIRE hereby consents to the jurisdiction of any local, state or federal court located within the State of New Hampshire, and waives personal service of any and all process upon the CONCESSIONAIRE herein, and consents that all such service of process shall be made by certified mail, return receipt requested, directed to the CONCESSIONAIRE at the address stated in Section 14.05 herein, and service so made shall be complete three (3) days after the same shall have been posted as aforesaid.

**14.17 CONCESSIONAIRE'S Dealings with CITY.** Whenever in this Agreement, the CONCESSIONAIRE is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the CITY, the CONCESSIONAIRE shall deal with the CITY's authorized representative; and unless or until the CITY shall give CONCESSIONAIRE written notice to the contrary, the CITY's authorized representative shall be the Airport's Director.

**14.18 Independent Contractor.** The parties hereto agree that the CONCESSIONAIRE is an independent contractor and not subject to direction or control of the CITY, except as specified in this Agreement, and except by general rules and regulations adopted for the control and regulation of the Airport and its facilities.

**14.19 Aerial Approaches.** The CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction or interference, together with the right to prevent CONCESSIONAIRE from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport, the Terminal, and Premises, which in the opinion of the CITY, would limit the usefulness of the Airport or constitute a hazard to aircraft.

**14.20 No Waiver.** No delay or omission by the CITY in exercising any right, power or remedy hereunder or otherwise afforded by contract, law, in equity or by statute, shall constitute an acquiescence therein, impair any other right, power or remedy hereunder, or otherwise afforded by contract, law, in equity or by statute, or operate as a waiver of such right, power or remedy. No waiver by the CITY of any default by CONCESSIONAIRE hereunder shall operate as a waiver of any other default or the same default on a future occasion.

**14.21 Time.** Time is of the essence with regard to each and every provision of this Agreement.

**14.22 Quiet Enjoyment.** Upon and subject to the other terms and provisions hereof and unless an Event of Default shall have occurred hereunder, the CONCESSIONAIRE shall be suffered and permitted to have peaceful use and quiet enjoyment of the Premises from the effective date hereof for the purpose of operating the ATM concession, use of the Premises, constructing thereon the Concession Facilities and related improvements, during the Agreement Term.

Exhibit 5 – Form of Concession Agreement

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first above written, and executed in multiple counterparts by the respective officers of the parties hereto, thereunto duly authorized.

CITY OF MANCHESTER  
Department of Aviation

COMPANY

By \_\_\_\_\_  
Theodore S. Kitchens, A.A.E.  
Airport Director

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Exhibit 5 – Form of Concession Agreement

STATE OF NEW HAMPSHIRE

Hillsborough, ss. \_\_\_\_\_, 2019

Personally appeared Theodore S. Kitchens, Airport Director, who acknowledged the foregoing to be his voluntary act and deed.

Before Me,

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_

County Name, ss. \_\_\_\_\_, 2019

Personally appeared \_\_\_\_\_, \_\_\_\_\_, who acknowledged the foregoing to be his voluntary act and deed.

Before Me,

\_\_\_\_\_  
Notary Public



EXHIBIT "A"

BAGGAGE CLAIM ATM LOCATION

ATM – BAGGAGE CLAIM

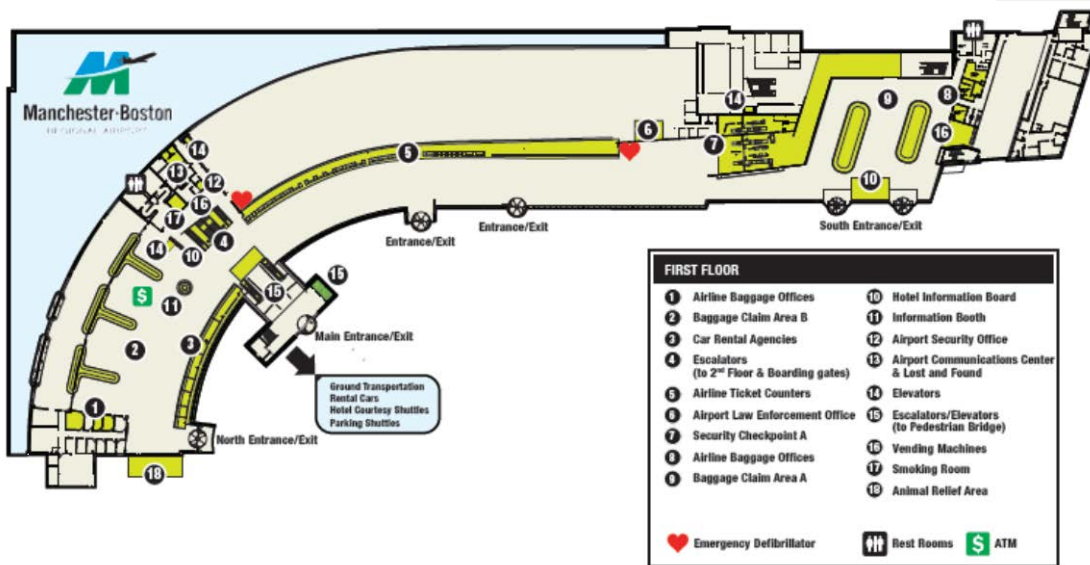


EXHIBIT "A"

BAGGAGE CLAIM ATM LOCATION

ATM – BAGGAGE CLAIM



Airport Directory  
First Floor



Legend



EXHIBIT "B"

SECURE SIDE GATE 11 ATM LOCATION

ATM – GATE 11



**Proposal Submission Form – NOVEMBER 2018  
ATM CONCESSION**

**Manchester-Boston Regional Airport**

**COMPANY**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No. \_\_\_\_\_

Email Address: \_\_\_\_\_

The undersigned (hereinafter referred to as the Company) submits this Proposal to the Manchester-Boston Regional Airport through the Department of Aviation of the City of Manchester (hereinafter referred to as the Airport) as an offer to provide and maintain ATM devices at the Airport based on the terms and conditions set forth in the Request for Proposal and the Form of Concession Agreement (i.e. Exhibit 6). Complete the Proposal Submission Form collating pages into the document, as necessary, if handwritten, or edit responses into this Word document with scanned attachments, as appropriate.

**A. PROPOSED NEW ATM DEVICES:**

Manufacturer \_\_\_\_\_

Model \_\_\_\_\_

Include copies of cut sheets from the manufacturer of the devices describing features and specifications of the units.

**B. NETWORK AFFILIATIONS:**

List current network affiliations:

Name of Network	Credit/Debit Cards Accepted
_____	_____
_____	_____
_____	_____
_____	_____

**C. CLEANING/MAINTENANCE SCHEDULE:**

The Company must maintain high standards for the exterior appearance of each ATM by providing necessary cleaning of all components visible to the public on a regular basis. Spare equipment and parts shall be maintained by the Company within the Manchester area to facilitate remedial action. The Airport reserves the right to demand a list of preventative maintenance activities.

Identify schedule for cleaning and maintenance \_\_\_\_\_visits/week  
or month

**D. ENTITY ACCOMPLISHING CLEANING/MAINTENANCE:**

Identify the entity that will accomplish cleaning/maintenance (i.e. the Company, contract service, network affiliation, etc.) What experience?

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**E. UPTIME AVAILABILITY:**

What percentage of time are the Company's units available to Airport customers based on recent experience?

Range of \_\_\_\_\_% to \_\_\_\_\_%

**F. FEE:**

For the right to operate the ATM concession, the Company shall pay the Airport a monthly rental fee. This flat rental fee shall be in lieu of a percentage of gross privilege fee related to foreign transactions; the flat rental fee shall remain the same for the duration of the initial three year term.

In the section below, please propose a flat rental fee for the right to operate ATM devices so described. Should the Company choose to impose a surcharge on foreign transactions, said surcharge to non-bank customers shall not exceed the current foreign transaction surcharge of \$3.00.

**For Two (2) ATM machines (Baggage Claim and Gate 11)**

<u>AGREEMENT YEARS</u>	<u>MONTHLY RENT</u>	<u>ANNUAL RENT</u>
1 through 3	\$ _____	\$ _____
<b>TOTAL RENT FOR INITIAL 3-YEAR TERM:</b>		<b>\$ _____</b>
<b>FOREIGN TRANSACTION SURCHARGE (e.g. \$3.00):</b>		<b>\$ _____</b>

**G. Operating Plan:**

Explain in narrative form your operating plan in respect to providing ATM services at Manchester-Boston Regional Airport including, but not limited to the following: cleaning, preventative maintenance, replenishment of cash, on-call maintenance, on-line monitoring of the functionality of the ATM units, activity reports available to the Airport, management of the ATM operation, contacts for the Airport for various problems, contacts for customers for ATM issues, etc.

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**H. Business Philosophy:**

Describe your business philosophy regarding ATM service and how these concepts relate to the Airport and current operations.

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**I. Experience:**

Describe experience and qualifications providing ATM services at comparably sized operations.

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**J. OTHER INFORMATION:**

Provide any other information which you feel will be helpful in evaluating your Proposal.

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**K. COMPETITION:**

What can you offer the Airport to enhance your proposal beyond the scope of required services as so described in the RFP?

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**Company understands, agrees, and warrants that:**

1. Company has carefully read and fully understands all requirements of the ATM concession detailed in the Request for Proposal document and the Form of Concession Agreement.
2. Company has full knowledge of the Airport terminal facilities related to the installation and maintenance of the ATM devices as explained in the Request for Proposal and Form of the Concession Agreement.
3. Company has the capability to successfully undertake and complete the responsibilities and obligations of services as stated in the RFP and Form of the Concession Agreement.
4. The Company affirms that its proposal will in no way be conditioned upon any predetermined level of aviation activity or passenger activity at the Airport – past, present or future. In this regard, the Company has not relied on any representations of the Airport, either orally or in writing, as to the level of concession business potential at the Airport during the term of any agreement, or of any factors that might bear on such business potential. The proposal submitted by the Company is based solely on the Proposer's own knowledge of the ATM concession business and its own assessment of the market potential at the Airport for such a concession.
4. After receipt of notification of the acceptance of this Proposal by the Airport, the Successful Company will execute and return the Airport's Concession Agreement on or before Friday, January 11, 2019.
5. Airport reserves the right to reject any and all proposals, to waive information in any proposal received, and to accept that proposal which will, in its opinion, best serve the public and Airport interest.

\_\_\_\_\_  
Company (Please Print)

\_\_\_\_\_  
By (Signature -Note: Signature must be notarized)

\_\_\_\_\_  
Title

Dated \_\_\_\_\_, 2018