

DRAFT

VEIA PRIVILEGE PERCENTAGE AGREEMENT

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Click here to enter Name of Park

Click here to enter Site

Click here to enter Service Types

PRIVILEGE PERCENTAGE AGREEMENT NO. VA-NAMA003-25

[Name of Operator]

[Operator's address, email address, phone number]

Doing Business as [Trade name]

Covering the Period [Click here to enter the Effective date] through [Click here to enter the Expiration date]

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IDENTIFICATION OF THE PARTIES

[CORPORATION OR LIMITED LIABILITY COMPANY]

This Privilege Percentage Agreement [VA-NAMA003-25] (“Agreement”) is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service through the National Park Service Associate Director, Business Services (hereinafter referred to as the “Director”), and [Operator Name], a [type of entity] organized and existing under the laws of the State of [state name], (hereinafter referred to as the “Operator”).

[PARTNERSHIP]

This Privilege Percentage Agreement [VA-NAMA003-25] (“Agreement”) is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service through the National Park Service Associate Director, Business Services (hereinafter referred to as the “Director”), and [Operator Name], a partnership organized under the laws of the State of [state name], (hereinafter referred to as the “Operator”).

[SOLE PROPRIETORSHIP]

This Privilege Percentage Agreement [VA-NAMA003-25] (“Agreement”) is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the National Park Service Associate Director, Business Services, (hereinafter referred to as the “Director”), (hereinafter referred to as the “Director”), and [Operator Name], an individual, doing business as [trade name], (hereinafter referred to as the “Operator”).

RECITALS

THAT WHEREAS, the Director administers National Mall and Memorial Parks (“Park”) as a unit of the National Park System to conserve the scenery, natural and historic objects, and wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave the Park unimpaired for the enjoyment of future generations;

WHEREAS, the National Park Service is authorized to award and administer commercial services contracts and related professional services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System under the Visitor Experience Improvements Authority (“VEIA”), title VII of the National Park Centennial Act, codified as amended at 54 U.S.C. §§ 101931–101938;

WHEREAS, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Park and consistent with the preservation and conservation of the resources and values of the Park;

WHEREAS, the Director has determined that this Agreement will expand, modernize, and improve the condition of commercial visitor facilities and the services provided to visitors within the Park;

WHEREAS, the Director has determined that the Operator has the experience and financial ability to carry out the terms of this Agreement; and

WHEREAS, the Director desires that the Operator provide visitor services under this Agreement, subject to the oversight and administration of the Director.

NOW, THEREFORE, pursuant to the authority contained in the National Park Service Organic Act, codified as amended in scattered sections of title 54 of the U.S. Code, the VEIA, and other laws that supplement and amend those Acts, the Director and the Operator agree as follows:

SEC. 1. TERM OF AGREEMENT

This Agreement will be effective as of [Enter Effective date] ("Effective Date"), and will be for the term of [Enter term length in alpha form, e.g. ten] [Click here to enter term length in numeric form, e.g. 10] years until its expiration on [Enter Expiration date].

SEC. 2. DEFINITIONS

The following terms used in this Agreement and all its attachments will have the following meanings, which apply to both the singular and the plural forms of the defined terms. The words "include," "includes," and "including" are not limiting or restrictive and in all instances are to be read to include the phrase "without limitation."

- (a) "Applicable Laws" means the applicable federal, state, and local laws governing the Park, including the rules, regulations, requirements, and policies promulgated under those laws, whether now in force or amended, enacted, or promulgated in the future. This includes federal, state, and local laws, rules, regulations, requirements, and policies governing nondiscrimination, labor, protection of the environment, and protection of public health and safety.
- (b) "Approved Project" means a project the Operator undertakes to construct or install Real Property (Capital) Improvements or Trade Fixtures within the Premises as approved by Director in accordance with this Agreement, Applicable Laws, and National Park Service standards.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Operator to undertake and maintain a superior level of environmental and health and safety performance reasonable in light of the circumstances of the operations conducted under this Agreement. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Operator's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment, health, and safety.
- (d) "Capital Investment" means the costs incurred by the Operator (and not funded by the Director) that are necessary for an Approved Project and capitalized by the Operator in accordance with Generally Accepted Accounting Principles (GAAP). The Capital Investment for an Approved Project will be amortized daily using a straight-line method over the period beginning on the date of the Director's formal written acceptance of the related Approved Project and ending on the Expiration Date of the Agreement. All Capital Investment must be fully amortized by the Operator by the Expiration Date of the Agreement.
- (e) "Days" means calendar days.

- (f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and their duly authorized representatives.
- (g) "Exhibits" means the various exhibits which are attached to this Agreement, each of which is hereby made a part of this Agreement.
- (h) "Gross Receipts" means the total amount received or realized by, or accruing to, the Operator from all sales made for cash or credit for food, beverages, merchandise, rentals, or any services rendered, and customer orders fulfilled at or arising from the Premises, regardless of when or where the customer order is placed (including outside the Premises), and the Gross Receipts of Suboperators as defined below. Gross Receipts also includes any other receipts, credits, rebates, allowances, internet sales or revenues of any type arising out of or in connection with Operator's or Suboperator's operations at the Premises, including commissions earned on contracts or agreements with other persons or companies operating in the Park, and gross receipts earned from electronic media sales, but excluding:
- (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
 - (2) Charges for employees' meals, lodgings, and transportation;
 - (3) Cash discounts on purchases;
 - (4) Cash discounts on sales;
 - (5) Returned sales and allowances;
 - (6) Interest on money loaned or in bank accounts;
 - (7) Income from investments;
 - (8) Income from subsidiary companies outside of the Park;
 - (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;
 - (10) Sales and excise taxes that are added as separate charges to sales prices, rental fees, and postage stamps, provided that the amount excluded does not exceed the amount actually due or paid government agencies; and Billed tips and gratuities paid directly to Operator's employees except to the extent that Operator may be entitled to a portion of the gratuities.
- All monies paid into coin operated devices, except telephones, whether provided by the Operator or by others, must be included in Gross Receipts. However, only revenues actually received by the Operator from coin-operated telephones must be included in Gross Receipts.
- (i) "Gross Receipts of Suboperators" means the total amount received or realized by, or accruing to, Suboperators from all sources, as a result of the exercise of the rights conferred by an approved subagreement to this Agreement. A Suboperator will report all of its Gross Receipts to the Operator without allowances, exclusions, or deductions of any kind or nature.
- (j) "Initial Capital Investment Program" means the program the Operator will undertake at the beginning of the Agreement to construct or install Real Property (Capital) Improvements and Trade Fixtures within the Premises.
- (k) "Park" means the property within the boundaries of National Mall and Memorial Parks.

- (l) "Premises" means all Park lands and real property improvements assigned to the Operator under this Agreement and all Real Property (Capital) Improvements assigned to or constructed by the Operator under this Agreement. The United States retains title and ownership to all Premises.
- (m) "Real Property (Capital) Improvement" means a permanent structural change to the Premises that enhance the real property's overall value, prolong its useful life, or adapt it to new uses. A Real Property (Capital) Improvement does not include any interest in land. Real Property (Capital) Improvements include all improvements, fixtures, and equipment that are structural in nature and affixed to the Premises such that they cannot be removed without material damage to the Premises, including mechanical, electrical, and plumbing work, floors, ceilings, demising walls, kiosk fronts and signage, lighting fixtures, and built-in shelving. A Real Property (Capital) Improvement does not include any furniture, Trade Fixtures, equipment, appliances, supplies, inventory, and any other movable things subject to ownership placed in or on the Premises that are neither permanently attached to nor form a part of the Premises.
- (n) "Suboperator" means a third party that, with the approval of the Director, has been granted by the Operator rights to operate under a subagreement pursuant to this Agreement (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.
- (o) "Superintendent" means the manager of the Park.
- (p) "Trade Fixtures" means all furniture, fixtures, and equipment placed within the Premises by the Operator for its use in its performance of the Visitor Services that are neither permanently attached to nor form a part of the Premises such that they may be removed without causing material damage to the Premises.
- (q) "Unamortized Investment" means the unamortized amount of the Operator's Capital Investment on the effective date of the withdrawal of all or the related portion(s) of the Premises.
- (r) "Visitor Services" means the accommodations, facilities, and services that the Operator is required or authorized to provide by Section 3(a) of this Agreement.

SEC. 3. SERVICES AND OPERATIONS

(a) Visitor Services

During the term of this Agreement, the Director requires and authorizes the Operator to provide the following Visitor Services at the following Premises locations within the Park:

- (1) Mandatory Visitor Services: The Operator is required to provide the following mandatory Visitor Services at the following Premises locations during the term of this Agreement:

	Premises Location	Service
i.	Air and Space Kiosk	Quick Service Food and Beverage
ii.	American History Kiosk	Quick Service Food and Beverage
iii.	Arts and Industry (Carousel) Kiosk	Quick Service Food and Beverage
iv.	Constitution Gardens Kiosk	Quick Service Food and Beverage
v.	Thomas Jefferson Memorial Kiosk	Quick Service Food and Beverage
vi.	Lincoln Memorial North Kiosk	Quick Service Food and Beverage and Retail Sales
vii.	Lincoln Memorial South Kiosk	Quick Service Food and Beverage
viii.	Natural History Kiosk	Quick Service Food and Beverage
ix.	Designated locations (See Exhibit 3, Attachment A)	Temporary Mobile Food and Beverage

- (2) Optional Visitor Services. The Operator is authorized to provide the following optional Visitor Services at the following Premises locations during the term of this Agreement, with advance approval from the Director:

	Premises Location	Service
i.	Air and Space Kiosk	Retail Sales
ii.	American History Kiosk	Retail Sales
iii.	Arts and Industry (Carousel) Kiosk	Retail Sales
iv.	Constitution Gardens Kiosk	Retail Sales
v.	Thomas Jefferson Memorial Kiosk	Retail Sales
vi.	Lincoln Memorial South Kiosk	Retail Sales
vii.	Natural History Kiosk	Retail Sales
ix.	Additional special event locations as approved by the Director	Temporary Mobile Food and Beverage

(b) Operation and Quality of Operation

The Operator must provide, operate, and maintain the Visitor Services and the Premises in accordance with this Agreement to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Operator by the Director, the Operator must provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating, and maintaining the Visitor Services and the Premises in accordance with this Agreement. The Operator's authority to provide services under the terms of this Agreement is non-exclusive.

(c) Operating Requirements

The Director, acting through the Superintendent, will establish and revise, as necessary, specific requirements for the operations of the Operator under this Agreement (“Operating Requirements”). The minimum Operating Requirements are attached to this Agreement as Exhibit 3, which must be adhered to by the Operator and must be incorporated by the Operator into a written Operating Plan for the Premises. The Operator must develop and submit its Operating Plan to the Director for approval within 30 days of the Effective Date of the Agreement. The Operator may modify its Operating Plan from time to time with the written permission of the Director. The Director in their discretion, after consultation with the Operator, may make reasonable modifications to the Operating Requirements that must be incorporated in the Operating Plan that are in furtherance of the purposes of this Agreement and are not inconsistent with the terms of the main body of this Agreement.

(d) Merchandise and Services

- (1) The Director reserves the right to determine and control the nature, type, and quality of the Visitor Services described in this Agreement, including the nature, type, and quality of merchandise to be sold or provided by the Operator within the Park.
- (2) All promotional material, regardless of media format (e.g., printed, electronic, and broadcast media), provided to the public by the Operator in connection with the Visitor Services provided under this Agreement must be approved in writing by the Director before use. All such material will identify the Operator as an authorized operator of the National Park Service, Department of the Interior.
- (3) The Operator, where applicable, will develop and implement a plan satisfactory to the Director that will assure that merchandise to be sold or provided reflects the purpose and significance of the Park, including merchandise that reflects the conservation of the Park's resources or the Park's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Operator for the Visitor Services must be reasonable and appropriate for the type and quality of the Premises and Visitor Services under this Agreement when compared to comparable operations within the District of Columbia.

(f) Impartiality as to Rates and Services

- (1) Subject to Section 3(f)(2), in providing the Visitor Services, the Operator must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Operator must comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public, including those set forth in Exhibit 7.
- (2) The Operator may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Agreement. However, the Director reserves the right to review and modify the Operator's complimentary or reduced rate policies and practices as part of a rate approval process.

SEC. 4. OPERATOR PERSONNEL

(a) Employees

- (1) The Operator must provide all personnel necessary to provide the Visitor Services under this Agreement.
- (2) The Operator must comply with all Applicable Laws relating to employment and employment conditions, including those set forth in Exhibit 7.
- (3) The Operator must ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Operator must have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Operator.
- (4) The Operator must establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing the Visitor Services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Operator must conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Operator.
- (5) The Operator must ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.
- (6) The Operator must review the conduct of any of its employees whose action or activities are considered by the Operator or the Director to be inconsistent with the proper administration of the Park and enjoyment and protection of visitors and must take such actions as are necessary to correct the situation.
- (7) The Operator must maintain, to the greatest extent possible, a drug free environment in the workplace and within the Park.
- (8) The Operator must publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Park, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Operator must establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Park, the availability of drug counseling, rehabilitation and employee assistance programs, and the Operator's policy of maintaining a drug-free environment both in the workplace and in the Park.
- (9) The Operator must take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE

(a) Legal, Regulatory and Policy Compliance

This Agreement, operations thereunder by the Operator and the administration of it by the Director, will be subject to all Applicable Laws. The Operator must comply with all Applicable Laws in fulfilling its obligations under this Agreement at the Operator's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Agreement. Certain Applicable Laws relating to nondiscrimination in employment, employee benefits, and providing accessible Premises and services to the public are further described in this Agreement and Exhibit 7.

(b) Notice

The Operator must give the Director immediate written notice of any violation of Applicable Laws by the Operator, including its employees, agents, or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where to Send Notice

All notices required by this Agreement must be in writing and must be served on the parties at the following addresses. The provision of a notice by registered or certified mail, return receipt requested, or delivered by email, will be sufficient service. Notices sent to the Director must be sent to the following mailing or email address:

Superintendent
National Mall and Memorial Parks
1100 Ohio Drive SW
Washington, DC 20242
Email: [Superintendent Email Address]
Attention: Superintendent

Notices sent to the Operator must be sent to the following mailing or email address:

[Operator name]
[Address]
[Email Address]
[Attention:]

SEC. 6. INDEMNIFICATION AND COST RECOVERY FOR ENVIRONMENTAL ACTIVITIES

- (a)** The Operator must indemnify the United States in accordance with Section 12 of this Agreement from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including fines and penalties) and expenses (including attorney's fees and experts' fees) arising out of the activities of the Operator and its employees, agents, and contractors pursuant to this section. Such indemnification will survive termination or expiration of this Agreement.
- (b)** If the Operator does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Operator, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full

compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Operator, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Operator will be liable for and must pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section will preclude the Operator from seeking to recover costs from a responsible third party.

SEC. 7. PREMISES AND PERSONAL PROPERTY USED IN OPERATION BY THE OPERATOR

(a) Designation of Premises

- (1) The Director hereby assigns the following Premises to the Operator for the purposes of this Agreement:
 - a. certain parcels of Park land as described in Exhibit 1; and
 - b. certain real property improvements described in Exhibit 1 in existence as of the Effective Date, as may be modified from time to time to include additional Real Property (Capital) Improvements in accordance with the terms of this Agreement.
- (2) The Director may from time to time amend Exhibit 1 to reflect changes in the Premises assigned to the Operator, including to reflect the withdrawal of all or a portion of the Premises as set forth in Section 7(b) below.

(b) Premises Withdrawals

The Director may withdraw all or portions of the Premises assigned at any time during the term of this Agreement if the Director determines in their sole discretion that:

- (1) The withdrawal is necessary for the purpose of conserving, preserving, or protecting Park resources or visitor enjoyment or safety;
- (2) The withdrawal is necessary to facilitate operation of the Park; or
- (3) All or a portion of the Premises are no longer necessary for the operations.

(c) Effect of Withdrawal

Any permanent withdrawal of all or a portion of the Premises that the Director considers or the parties agree are essential for the Operator to provide the Visitor Services required by this Agreement will be treated as a termination or partial termination of this Agreement pursuant to Section 16. Subject to the availability of funds in the revolving fund established under the VEIA and Section 21(l), the Director may, in their sole discretion, pay the Operator an amount equal to any Unamortized Investment associated with the related portion(s) of the Premises being withdrawn. The amount paid to the Operator will be reduced by any amount of the Unamortized Investment attributable to Trade Fixtures redeployed within any remaining portions of the Premises, and the salvage or sale value, if any, of other Trade Fixtures. The Operator is not entitled to payment or relief of any nature in these circumstances.

(d) Right of Entry

The Director will have the right at any time to enter upon or into the Premises assigned to the Operator under this Agreement for any purpose they may deem necessary for the administration of the Park.

(e) Personal Property

The Operator will be fully responsible for the use, operation, maintenance, repair, upkeep and replacement of all personal property used in or on the Premises during the term of the Agreement.

- (1) Personal Property Provided by the Operator. The Operator must provide all personal property, including removable equipment, furniture, and goods, necessary for its operations under this Agreement, unless such personal property is provided by the Director as set forth in subsection (e)(2). No later than the Effective Date, the Operator must purchase from the concessioner ("Concessioner") under NPS Concession Contract No. CC-NACC003-86 ("Concession Contract") the personal property, including merchandise inventory, that the Concessioner used or held for use in connection with its operations under the Concession Contract related to the Premises assigned to the Operator under this Agreement and pay the Concessioner the fair value thereof in accordance with the terms of the Concession Contract.
- (2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including removable equipment, furniture, and goods, for the Operator's use in the performance of this Agreement. The Director hereby assigns government personal property listed in Exhibit 2 to the Operator as of the Effective Date. Exhibit 2 will be modified from time to time by the Director as items may be withdrawn or additional items added. The Operator must be accountable to the Director for the government personal property assigned to it and be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, or becomes unnecessary for the operation of the Premises, it must be returned to the Director for disposition.

(f) Condition of Premises

The Operator has inspected the Premises and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Premises, and any assigned government personal property, "as is."

(h) Utilities Not Provided by the Director

The Operator must, with the written approval of the Director and under any requirements that the Director prescribes, secure necessary utilities at its own expense from sources outside the Park.

SEC. 9. CONSTRUCTION, INSTALLATION, OR REMOVAL OF REAL PROPERTY IMPROVEMENTS AND TRADE FIXTURES

(a) Construction or Installation of Real Property (Capital) Improvements and Trade Fixtures

- (1) The Operator may only construct or install Real Property (Capital) Improvements after the written approval by the Director of their location, plans, and specifications. The Operator

must make no changes, including installing Trade Fixtures, to the exterior of the Premises without the prior written approval of the Director. The form and content of the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit 5. The Operator may install Trade Fixtures within the interior of the Premises without the prior written approval of the Director.

- (2) All Real Property (Capital) Improvements constructed or installed by the Operator will immediately become the property of the United States and be considered Premises. The Operator will not obtain any compensable interest in Real Property (Capital) Improvements or Trade Fixtures constructed or installed under this Agreement.
- (3) In the event that any Real Property (Capital) Improvement or Trade Fixture is constructed or installed without the Director's approval in violation of this Agreement or in a manner other than as approved, the Director may, at their discretion, (i) terminate this Agreement in accordance with Section 16(b); (ii) require the Operator to remove the same at the Operator's expense; or (iii) require the Operator to modify the unapproved change to the satisfaction of Director, at the Operator's expense.
- (4) The Director may, at their discretion, transfer funding to the Operator to cause the Operator to construct or install Real Property (Capital) Improvements on or to the Premises. For Director-funded Real Property (Capital) Improvements, the Operator will provide "Project Services," which means the direction and administration of the construction or installation of Real Property (Capital) Improvements, including planning, design, and implementation; management of information systems; accounting services; and project management and technical services related to the Director-funded Real Property (Capital) Improvements. The procedures in Exhibit 5 also apply to Director-funded Real Property (Capital) Improvements. When the Operator furnishes Project Services for Director-funded Real Property (Capital) Improvements, the Director will pay to the Operator an additional fee of [__%_] of the hard costs (those being any costs directly related to the physical construction) of such Director-funded Real Property (Capital) Improvements. The Operator may use the services of subcontractors to perform Project Services.
- (5) The Operator must, and must include terms in all contracts and subcontracts it executes in furtherance of this Agreement that require contractors and subcontractors to, assign to the Director all rights, titles, and interests, including all copyright, trademark, trade secret, or other intellectual property, in all design and construction documents and other drawings, plans, specifications, and studies related to the Premises, whether pre-existing or arising from activities under this Agreement, or, at minimum, grant to the Director an irrevocable, royalty-free, universal, perpetual, sublicensable, non-exclusive license to use, reproduce, modify, and distribute such documents for any purpose. The Operator must, and must include terms in all contracts and subcontracts it executes in furtherance of this Agreement that require contractors and subcontractors to, fully cooperate with the Director in the protection and enforcement of any intellectual property rights resulting from activities and services performed in connection with this Agreement. This obligation includes timely execution, acknowledgment, and delivery to the Director of all documents and papers that may be necessary to enable the Director to utilize in any manner any copyrights, patents, trademarks, trade secrets, and other intellectual property and proprietary rights.

(b) Removal of Real Property Improvements

- (1) The Operator may not remove, dismantle, or demolish any real property improvements in the Park without the prior approval of the Director.
- (2) Any salvage resulting from the authorized removal, severance, or demolition of a real property improvement within the Park must be completed in accordance with National Park Service procedures. The salvage or any proceeds from the sale of such salvage if such sale is authorized by the Director is the property of the United States.
- (3) In the event that an assigned real property improvement is substantially destroyed, and no other improvement is constructed on the site, the Operator, at its expense, must promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

(c) Initial Capital Investment Program

- (1) The Operator must undertake an Initial Capital Investment Program, as summarized in Addendum A ("Initial Capital Investment Program") attached to the Agreement, to provide for the initial construction, remodeling, furnishing, fixturing, and equipping of the Premises. The Operator must complete the Initial Capital Investment Program within the first two years of the Agreement. The procedures in Exhibit 5 also apply to the Initial Capital Investment Program.
- (2) No later than 30 days after the Effective Date or at such later date as the Director may agree, the Operator will submit to the Director for review and written approval a detailed plan for the Initial Capital Investment Program. The detailed plan for the Initial Capital Investment Program will include for each Premises location, a retail or food and beverage concept; project description; renderings; justification; scope of work; total estimated project price; proposed schedule; design review milestones; third-party project inspection and certification dates; and anticipated completion date. The Operator may submit individual plans for each Premises location. The Operator may not commence construction until it receives the Director's written approval of plans and specifications in accordance with Exhibit 5. Once the Director has issued a written approval, the project at each location of the Premises may be considered a separate Approved Project.
- (3) The Initial Capital Investment Program must be phased to maintain the Visitor Services in the Park throughout the construction period. During the construction period, the Operator must provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Initial Capital Investment Program is being executed in a timely and expeditious manner.
- (4) The Operator must complete the Initial Capital Investment Program and have all Premises locations available for public use on or before two years from the Effective Date. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Operator.
- (5) The Operator must not expend less than the minimum amount for each Premises location set forth in Addendum A. Notwithstanding the foregoing, if the Operator's actual Initial Capital

Investment Program expenditures, as certified by the Operator, are less than the amounts set forth in Addendum A, the difference between the actual expenditures and the amounts set forth in Addendum A must be remitted by the Operator to the Director as an additional privilege fee or other monetary consideration due to the Director for the privileges granted to the Operator under this Agreement within thirty (30) days of such determination by the Director.

SEC. 10. MAINTENANCE

(a) Maintenance Obligation

The Operator is solely responsible for maintenance, repairs, cleaning, and groundskeeping for all Premises to the satisfaction of the Director. The Operator must maintain the Premises in good repair and in a neat, clean, safe, sanitary, and orderly condition at all times.

(b) Maintenance Requirements

The Director, acting through the Superintendent, will undertake appropriate inspections, and will establish and revise, as necessary, specific requirements for the maintenance of the Premises ("Maintenance Requirements"). The minimum Maintenance Requirements are set forth in Exhibit 4, which must be adhered to by the Operator and incorporated by the Operator into a written Maintenance Plan. The Operator must develop and submit its Maintenance Plan to the Director for approval within 30 days of the Effective Date of the Agreement. The Operator may modify its Maintenance Plan from time to time with the written permission of the Director. The Director in their discretion, after consultation with the Operator, may make reasonable modifications to the Maintenance Requirements that must be incorporated in the Maintenance Plan that are in furtherance of the purposes of this Agreement and are not inconsistent with the terms of the main body of this Agreement.

On an annual basis, representatives of the National Park Service and Operator will tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in first-class condition. If the Operator and National Park Service cannot jointly agree upon the type and extent of refurbishment, the Director may determine, in the Director's sole discretion, the refurbishment required, and Operator must promptly undertake such refurbishment at its sole cost and expense. For purposes of this Section 10(b), refurbishment means the routine repainting or redecoration of public areas within the Premises, including the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes. In addition to routine refurbishment, at least once during the term of the Agreement, Operator must complete a mid-term refurbishment as detailed in Section 10(c), at the Operator's expense.

(c) Mid-Term Refurbishment

Without limiting the requirement for the Operator to maintain the Premises to the satisfaction of the Director throughout the Agreement term, the Operator will be required to refurbish and redecorate the interior and exterior of the public area of the Premises within six months of the fifth (5th) anniversary of the completion of the Initial Capital Investment Program to maintain the appearance of the Premises in customer-facing areas. To carry out this obligation, the Operator must provide a refurbishment plan to the Service for approval 90 days before the fifth (5th) anniversary of the of the

completion of the Initial Capital Investment Program and must invest a minimum of seven percent (7.0%) of the total cost of the Initial Capital Investment Program unless a lesser amount is otherwise agreed upon with the Director. The difference between seven percent (7.0%) of the total cost of the Initial Capital Investment Program and any lesser amount agreed upon with the Director will be added to the Capital Renovation Account and subject to the provisions of Section 10(d) of this Agreement.

(d) Capital Renovation Account

(1) The Operator must establish and manage a Capital Renovation Account. The funds in this account must be used to execute, on a project basis in accordance with Exhibit 5, major renovation and refurbishment projects within the Premises that are outside the routine, operational maintenance of the Premises described in Section 10(a) and (b) and the mid-term refurbishment described in Section 10(c). Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement, and similar projects. Projects may be proposed by either the Operator or the Director based on inspections or operating needs. Capital Renovation Account projects must be approved in writing by the Director in advance of any expenditure from the account. With the exception of emergency repairs, no projects may be commenced until the Operator receives written approval from the Director.

(2) Capital Renovation Account funds will not be used to conduct the routine maintenance and repair of the Premises or housekeeping and groundskeeping responsibilities as required by this Agreement.

(3) The Operator must establish within its accounting system a Capital Renovation Account. The Operator must debit to this account, within fifteen (15) days after the last day of each month that the Operator operates a sum equal to: five percent (5.0%) of the Operator's Gross Receipts for the previous month. If the Operator fails to make timely debits to the Capital Renovation Account, the Director may terminate this Agreement for default or may require the Operator to post a bond in an amount equal to the estimated annual Capital Renovation Account allocation, based on the preceding year's Gross Receipts.

(4) The balance in the Capital Renovation Account will be available for projects in accordance with the account's purpose. For all expenditures made for each project from the Capital Renovation Account, the Operator must maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Capital Renovation Account funds when directed by the Director will be considered a material breach of this Agreement for which the Director may seek monetary damages and other legal relief, including termination of this Agreement. The Operator will obtain no ownership or other compensable interest as a consequence of the expenditure of Capital Renovation Account funds. The Operator's Capital Investment will not be increased by expenditures from the Capital Renovation Account.

(5) Any balance in the Capital Renovation Account not duly expended by the Operator as of the termination or expiration of this Agreement must be remitted by the Operator to the Director as an additional privilege fee or other monetary consideration due to the Director under this Agreement within fifteen (15) days after such termination or expiration. Interest on delayed payment will be due in accordance with section 11(c) of this Agreement. If any Capital Renovation Account funds have been obligated by the Operator but not expended as of the termination or expiration of this

Agreement, the Director and the Operator may enter into an agreement under which the Operator will expend such funds for their obligated purposes in lieu of a remittance of those funds to the Director.

SEC. 11. FEES

(a) Privilege Fee

(1) For the term of this Agreement, the Operator must pay to the Director for the privileges granted under this Agreement a privilege fee of [privilege fee alpha number] percent ([privilege fee numeric number]%) of the Operator's Gross Receipts for the preceding year or portion of a year.

(2) Neither the Operator nor the Director will have a right to an adjustment of the fees. The Operator has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The privilege fee will be due on a monthly basis at the end of each month and must be paid by the Operator in such a manner that the Director will receive payment within fifteen (15) days after the last of each month that the Operator operates. This monthly payment must include the privilege fee equal to the specified percentage of Gross Receipts for the preceding month.

(2) The Operator must pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Operator's Annual Financial Report. Overpayments will be offset against the following year's fees. In the event of termination or expiration of this Agreement, overpayments will first be offset against any amounts due and owing to the Director and the remainder will be paid to the Operator.

(3) All privilege fee payments must be deposited electronically by the Operator in accordance with Applicable Laws.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

SEC. 12. INDEMNIFICATION AND INSURANCE

(a) Indemnification

The Operator agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America and its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including penalties and fines), claims, actions, suits, costs and expenses (including attorneys' fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Operator, its employees, agents or

contractors under this Agreement. This indemnification will survive the termination or expiration of this Agreement.

(b) Insurance in General

(1) The Operator must obtain and maintain during the entire term of this Agreement at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Agreement as determined by the Director. The initial insurance requirements are set forth below and in Exhibit 6. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director will approve the types and amounts of insurance coverage purchased by the Operator.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Operator proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Operator must, at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Operator must provide the Director immediate written notice of any material change in the Operator's insurance program hereunder, including cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Operator must provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Operator or its employees, agents, or contractors, in carrying out the activities and operations required and authorized under this Agreement.

(2) This insurance must be in the amount commensurate with the degree of risk and the scope and size of the activities required and authorized under this Agreement, as more specifically set forth in Exhibit 6. Furthermore, the commercial general liability package must provide no less than the coverages and limits described in Exhibit 6.

(3) All liability policies must specify that the insurance company has no right of subrogation against the United States of America and must provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit 6 to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Operator will repair or replace those Premises and personal property utilized by the Operator in the performance of the Operator's obligations under this Agreement.

(2) For this purpose, the Operator must provide fire and extended insurance coverage on Premises for all or part of their replacement cost as specified in Exhibit 6 in amounts no less than the Director

may require during the term of the Agreement. The minimum values currently in effect are set forth in Exhibit 6.

(3) Commercial property insurance must provide for the Operator and the United States of America to be named additional insured as their interests may appear.

(4) In the event of loss, the Operator must use all proceeds of such insurance to repair or replace the Premises and personal property utilized in the Operator's operations under this Agreement, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 applies to such insurance proceeds. The Operator will not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover the Premises must contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Operator without requiring endorsement by the United States, unless the damage exceeds \$1,000,000. The use of insurance proceeds for repair or replacement of Premises will not alter their character as properties of the United States and, notwithstanding any provision of this Agreement to the contrary, the Operator will gain no ownership or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property insurance policies must include the coverages and amounts described in Exhibit 6.

SEC. 13. BONDS AND LIEN

(a) Bonds

The Director may require the Operator to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Operator's obligations under this Agreement.

(b) Lien

As additional security for the faithful performance by the Operator of its obligations under this Agreement, and the payment to the United States of America of all damages or claims that may result from the Operator's failure to observe any such obligations, the United States of America has at all times the first lien on all assets of the Operator within the Park, including all personal property of the Operator within the Park used in the performance of the Agreement.

SEC. 14. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

(1) The Operator must maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system must be capable of providing the information required by this Agreement, including the Operator's repair and maintenance obligations. The Operator's system of accounts classification must be directly related to the Operator's Annual Financial Report.

(2) If the Operator's annual Gross Receipts are \$250,000 or more, the Operator must use the accrual accounting method.

(3) In computing net profits for any purposes of this Agreement, the Operator must keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Agreement by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Operator or by any other device.

(b) Annual Financial Report

(1) The Operator must submit annually as soon as possible but not later than 120 days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year ("Annual Financial Report").

(2) If the annual Gross Receipts of the Operator are in excess of \$1,000,000, the financial statements must be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual Gross Receipts are between \$500,000, and \$1,000,000, financial statements must be reviewed by an independent Certified Public Accountant in accordance with Statements on Standards for Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual Gross Receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) Balance Sheet. Within ninety (90) days of the execution of this Agreement or the Effective Date, whichever is later, the Operator must submit to the Director a balance sheet as of the beginning date of the term of this Agreement. The balance sheet must be audited or reviewed, as determined by the annual Gross Receipts, by an independent Certified Public Accountant. The balance sheet must be accompanied by a schedule that identifies and provides details for all Capital Investments. The schedule must describe these Capital Investments in detail showing for each such Capital Investment the date the related Approved Project was constructed or installed, the amortization to date of the Capital Investment, and the future amortization over the remainder of the Agreement term.

(2) Statements of Capital Renovation Account Activity. The Operator must submit annually, not later than 120 days after the end of the Operator's accounting year, a statement reflecting total activity in the Capital Renovation Account for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project-by-project basis.

SEC. 15. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this Agreement:

(a) Insurance Certification

As specified in Section 12, the Operator must, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Agreement. The Operator must give the Director immediate written notice of any material change in its insurance program, including any cancellation of required insurance coverages.

(b) Environmental Reporting

The Operator must submit environmental reports as specified in Exhibit 3 of this Agreement, and as otherwise required by the Director under the terms of this Agreement.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Operator to submit other reports and data regarding its performance under the Agreement or otherwise, including operational information.

SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION

(a) Suspension

The Director may temporarily suspend operations under this Agreement, in whole or in part, upon the mutual agreement of the parties or in the Director's sole discretion, to protect Park visitors or to protect, conserve, and preserve Park resources. No compensation of any nature will be due to the Operator by the Director in the event of a suspension of operations, including for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this Agreement upon the mutual agreement of the parties or at any time in the Director's sole discretion to protect Park visitors, protect, conserve, and preserve Park resources, to limit visitor services in the Park to those that continue to be necessary and appropriate, or when necessary to achieve the purposes of the VEIA.

(2) The Director may terminate this Agreement if the Director determines that the Operator has materially breached any requirement of this Agreement, including the requirement to maintain and operate the Visitor Services to the satisfaction of the Director, the requirement to provide only those Visitor Services approved by the Director pursuant to this Agreement, the requirement to pay the established privilege fee, the requirement to duly expend funds from the Capital Renovation Account, the requirement to obtain the approval of the Director before making improvements or modifications to the Premises, persistently low guest ratings or the Operator's failure to adequately address low levels of guest satisfaction, and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the Agreement, the Director will provide the Operator an opportunity to cure by providing written notice to the Operator of the breach. In the event of a monetary breach, the Director will give the Operator a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Agreement for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Operator thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Agreement for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature will be grounds for termination for

default without a second cure period. In the event of a breach of any nature, the Director may suspend the Operator's operations as appropriate in accordance with Section 16(a).

(4) To the extent otherwise permitted by law, the Director may terminate this Agreement upon the filing or the execution of a petition in bankruptcy by or against the Operator, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Operator for the benefit of creditors, a petition or other proceeding against the Operator for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Agreement or any part thereof upon execution, attachment, or other process of law or equity. The Director may terminate this Agreement if the Director determines that the Operator is unable to perform the terms of Agreement due to bankruptcy or insolvency.

(5) Termination of this Agreement for any reason will be effectuated by written notice to the Operator.

(c) Notice of Bankruptcy or Insolvency

The Operator must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Operator must also give the Director immediate notice of any petition or other proceeding against the Operator for the appointment of a trustee, receiver, or liquidator, or the taking by any person or entity of the rights granted by this Agreement or any part thereof upon execution, attachment, or other process of law or equity. For purposes of the bankruptcy statutes, the Director considers that this Agreement is not a lease but an executory contract exempt from inclusion in assets of the Operator pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) Upon termination of this Agreement for any reason, or upon its expiration, and except as otherwise provided in this section, the Operator must, at the Operator's expense, promptly vacate the Park, remove all of the Operator's personal property, repair any injury occasioned by installation or removal of such property, and ensure that the Premises are in at least as good of condition as they were at the beginning of the term of this Agreement, reasonable wear and tear excepted. The Operator must remove all brand proprietary signage, seal all openings of the Premises, and provide the Director with any and all keys to doors, windows, displays, and any areas of controlled access within the footprint of the Premises. The Operator's removal of such personal property must occur within thirty (30) days after the termination of this Agreement for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). Notwithstanding the foregoing, if Operator fails to remove its personal property within 30 days after the date of termination or expiration of this Agreement, the Operator will be deemed to have abandoned such property, and the Director will have the right at their option and in their sole discretion to take title to said property and sell, contract, salvage, or dispose of any and all property, including all furniture, fixtures, and equipment, in any manner permitted by law. The Operator will have no right, interests, or claim in or to any proceeds of the sale or other disposition of such property. Any net expense the Director incurs in disposing of such property must be immediately reimbursed by the Operator.

(2) To avoid interruption of services to the public upon termination of this Agreement for any reason, or upon its expiration, the Operator, upon the request of the Director, must consent to the use by

another operator of the Operator's non-branded personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator must pay the Operator an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied will be either straight line depreciation or depreciation as shown on the Operator's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this Agreement for any reason or its expiration, the Operator must, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

(3) Prior to and upon the expiration or termination of this Agreement for any reason, and, in the event that the Operator is not authorized to continue the operations authorized under this Agreement after its expiration or termination, the Operator must comply with all applicable requirements of Exhibit 9 to this Agreement, "Transition to New Operator." This section and Exhibit 9 will survive the expiration or termination of this Agreement.

SEC. 17. COMPENSATION

(a) Expiration or Termination

The Operator will not be entitled to compensation of any nature in the event of a termination or expiration of this Agreement, including for losses based on lost income or profit, the necessity to make expenditures as a result of the termination, or any Capital Investment in the Premises. If the Agreement is terminated pursuant to Section 16(b)(1), the Director may, in their sole discretion and subject to the availability of funds in the revolving fund established under the VEIA and Section 21(l), pay the Operator an amount equal to any Unamortized Investment associated with the related portion(s) of the Premises being withdrawn. Any amount paid to the Operator will be reduced by any amount of the Unamortized Investment attributable to Trade Fixtures redeployed in or on any remaining portions of the Premises, and the salvage or sale value, if any, of other Trade Fixtures. If the Agreement is terminated based on Operator breach, any payment that the Director elects, in its sole discretion, to pay to the Operator for its Unamortized Investment will be further reduced by the estimated costs of damages caused by the Operator's breach, as determined by the Director, which will include the estimated costs of resolicitation of this operation opportunity.

(b) Personal Property

No compensation is due to the Operator from the Director or a successor operator for the Operator's personal property used in operations under this Agreement. However, the Director or a successor operator may purchase such personal property from the Operator subject to mutually agreed upon terms. Personal property not removed from the Park by the Operator in accordance with the terms of this Agreement will be considered abandoned property subject to disposition by the Director, at full cost and expense of the Operator, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Operator by the Director to the extent consistent with Applicable Laws.

SEC. 18. ASSIGNMENTS OR ENCUMBRANCES

(a) This Agreement is subject to the requirements set forth in this Section and Exhibit 10 to this Agreement with respect to proposed assignments and encumbrances, as defined in Exhibit 10, which require the Director's prior written approval. Failure by the Operator to comply with the requirements of this Section and Exhibit 10 will be considered a material breach of this Agreement for which the Director may terminate this Agreement for default. The Director will not be obliged to recognize any right of any person or entity to an interest in this Agreement of any nature, if obtained in violation of this Section.

(b) The Operator must advise any person or entity proposing to enter into a transaction which may be subject to this Section of the requirements of this Agreement.

SECTION 19. SUBOPERATORS

(a) The Operator may not enter into subagreements to transfer its rights, interests, or obligations in whole or in part under this Agreement without the prior written approval of the Director, which the Director may or may not provide in the Director's sole and absolute discretion. Subject to the terms set forth in this Section 19, and only after it has received the Director's written approval, the Operator may be permitted to enter into subagreements with respect to all or any portions of the Premises. The Operator will be solely responsible for all the activities of its Suboperators. The Director will not approve any proposed suboperator or subagreement that the Director determines would have an adverse impact on the Visitor Services or the Premises.

(b) Each proposed suboperator and subagreement, and any proposed modification or other agreement relating to any such subagreement, must be approved in advance by the Director. A proposed suboperator must be an individual, corporation, or other legally recognized entity that the Director determines has the experience and financial ability and is otherwise qualified to carry out the terms of the proposed subagreement. A proposed suboperator approved by the Director must sign a written subagreement with the Operator approved by the Director before operating within the Premises. Each subagreement must include the same or substantially similar terms as the template subagreement the Director provides the Operator, must not contain any terms that conflict with the terms in this Agreement, must acknowledge this Agreement and that the Operator is bound by the terms of this Agreement, and must require that the Suboperator comply with the same relevant requirements and obligations of the Operator under this Agreement. All rent, fees, charges, or other monies due and payable under this Agreement which are, pursuant to any subagreement, to be paid by a Suboperator must not be marked up by the Operator. If the Director approves the Operator to provide all or a portion of the Visitor Services through one or more Suboperators, the Operator will remain responsible for its Suboperators and complying with all the terms of this Agreement.

(c) Failure by the Operator to comply with the requirements of this Section will be considered a material breach of this Agreement for which the Director may terminate this Agreement for default. The Director will not be obliged to recognize any right of any person or entity to an interest in this Agreement of any nature, if, obtained in violation of this Section. The Operator must advise any person or entity proposing to enter into a subagreement with the Operator of the requirements of this Agreement.

SEC. 20. NATIONAL PARK SERVICE TRADEMARK LICENSE

(a) License Grant

The unique nature of a National Park Service operation blends commercial enterprise with the treasured historic, cultural and natural assets that the Director is responsible for protecting. The Director hereby grants to the Operator a royalty-free, non-exclusive, non-transferable license to use the marks as listed in Exhibit 8 (“Marks”) for use solely to carry out the services described under this Agreement in a manner that promotes National Park Service goals and values as stated herein. The Operator has the right to sub-license Marks in order to carry out services described under this Agreement upon written approval of the Director and under the same or substantially similar terms as contained herein. Any use of any Mark intended to identify the National Park Service, or any part of the Premises, must inure to the benefit of the National Park Service. This license will cease upon termination or expiration of the Agreement, or as otherwise determined by the Director or by law. This license does not constitute a compensable interest to the Operator.

(b) Quality Control and Goodwill

The Operator acknowledges that the maintenance of the high quality of the services, materials, products, and merchandise produced, sold, or otherwise prepared for public dissemination pursuant to or in order to carry out services required under this Agreement, as well as the control by the Director over their nature, quality, and manner of delivery or distribution, are material conditions of this Agreement. The Operator must maintain the distinctiveness of the Marks, the image of the National Park Service brand, and the image and high quality of the services, materials, products, and merchandise bearing the Marks licensed herein. Marks may be used and appear together with other marks used in connection with the Operator’s related goods and services but must stand by themselves. The Operator must immediately cease use of a Mark used in association with the services provided under this Agreement on request of the National Park Service.

(c) Rights and Ownership

The Operator acknowledges that the National Park Service is the sole and exclusive owner of all right, title and interest in and to its Marks, including those licensed under this Agreement, as well as to all combinations, forms, and derivatives which must be approved by the Director. The Operator further acknowledges, represents, and warrants that it has not acquired and must not acquire (whether by operation of law, by this Agreement, or otherwise) any right, title, interest, or ownership (collectively “Ownership Rights”) in or to any National Park Service Marks or any part thereof. Should any Ownership Rights become vested in the Operator, the Operator agrees to assign, and hereby assigns, all such Ownership Rights to the Director free of consideration. The Operator must immediately provide and execute all documents reasonably requested by the Director to effectuate and record each such assignment. The Operator must not, during the term or at any time, thereafter, do anything which, in the Director’s sole judgment, could in any way damage the validity and subsistence of the Marks. The Operator must not attack, dispute, or challenge the National Park Service’s Ownership Rights in or to the Marks or the validity of this Agreement, nor will the Operator assist others in so doing.

SEC. 21. GENERAL PROVISIONS

- (a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, must have access to the records of the Operator and any Suboperators as provided by the terms of Applicable Laws.
- (b) All information required to be submitted to the Director by the Operator pursuant to this Agreement is subject to public release by the Director to the extent provided by Applicable Laws.
- (c) The Operator is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Agreement.
- (d) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Operator must be paid promptly by the Operator.
- (e) No member of, or delegate or resident commissioner to, Congress will be admitted to any share or part of this Agreement or to any benefit that may arise from this Agreement, but this restriction must not be construed to extend to this Agreement if made with a corporation or company for its general benefit.
- (f) This Agreement is subject to the provisions of 2 C.F.R. Part 1400, as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Operator be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (g) This Agreement incorporates by reference the Operator's Certification and, if applicable, the Operator's Respondent-Guarantor's(s') Certification(s). This Agreement contains the sole and entire agreement and understanding of the parties and supersedes all prior agreements and understandings of the parties relating to the subject matter of this Agreement. No oral representations of any nature form the basis of or may amend this Agreement. This Agreement may not be extended or renewed to extend its term beyond ten years per 54 U.S.C. § 101933.
- (h) This Agreement does not grant rights or benefits of any nature to any third party.
- (i) The invalidity of a specific provision of this Agreement must not affect the validity of the remaining provisions of this Agreement.
- (j) Waiver by the Director or the Operator of any breach of any of the terms of this Agreement by the other party will not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Agreement. The subsequent acceptance of any payment of money or other performance required by this Agreement will not be deemed to be a waiver of any preceding breach of any term of the Agreement.
- (k) Claims against the Director (to the extent subject to 28 U.S.C. § 2514) arising from this Agreement must be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. § 2514.
- (l) Nothing contained in this Agreement will be construed as binding on the Director to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or

administratively allocated for the subject matter of this Agreement, or to involve the Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement on the dates shown below.

OPERATOR UNITED STATES OF AMERICA

By _____ By _____

[Name of signer] [Name of signer]

[Title of signer] Director, National Park Service

[Company name]

DATE: _____, 20__ DATE: _____, 20__

[Corporation]

ATTEST:

By _____

[Name of signer]

[Title of signer]

DATE: _____, 20__

[Sole Proprietorship/Partnership/Limited Liability Company]

WITNESSES:

NAME _____ NAME _____

[Name of signer] [Name of signer]

ADDRESS _____ ADDRESS _____

DATE: _____, 20__ DATE: _____

ADDENDUM A

Initial Capital Investment Program

The Initial Capital Investment Program consists of the following projects at the following locations of the Premises. The Operator must undertake each project in accordance with the schedule below. The Operator must complete the Initial Capital Investment Program within the first two years of the Agreement.

Location	Project scope	Minimum Cost	Construction Start	Target Completion Date
Air And Space Kiosk				
American History Kiosk				
Arts And Industry Kiosk				
Constitution Gardens				
Thomas Jefferson Kiosk				
Lincoln North Kiosk				
Lincoln South Kiosk				
Natural History Kiosk				
Mobile pushcarts				

The Operator must submit individual project plans for each location to the Director for approval within 60 days of the Effective Date in accordance with the procedures in Exhibit 5.