

STATE OF NORTH CAROLINA

PERMIT AGREEMENT

COUNTY OF CABARRUS

Issued to: _____
(Business Name)

(Address)

Effective Date: _____

The holder of this Permit is granted a nonexclusive privilege by the City of Concord ("City") to enter onto certain designated areas of Concord Regional Airport ("Airport") to provide the following services:

Permittee is allowed access to the following designated areas of the Airport pursuant to this permit:

This permit shall be for a term of month-to-month not to exceed one year from the effective date shown above and may be extended at the discretion of the City for up to an additional year or portion thereof. This Permit may be canceled by either party upon not less than ten (10) days written notice. In addition, the Permit is valid only for so long as Permittee has a current agreement or contracts with its customers under which the Permittee will be providing goods or services to its Airport customers. The City shall have the right to terminate the Permit upon determining that Permittee no longer has any contracts for providing goods or services to an Airport customer for which this Permit was required. Termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of termination.

This Permit is issued subject to the following Terms and Conditions attached hereto, consisting of pages 2 through 7. The Permittee hereby accepts this Permit and agrees to abide by all provision, terms, and conditions hereof. Permittee further agrees to keep a copy of this Permit on hand at all times while performing work pursuant to this Agreement.

CITY OF CONCORD: _____
(Business Name)

W. Brian Hiatt, City Manager

By: _____
(Signature of Owner/President/Manager/Partner)

ATTEST:

Kimberly Deason, City Clerk

Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

VaLerie Kolczynski, Interim City Attorney

TERMS AND CONDITIONS

Sec. 1. General.

1. Authority to Conduct Business on the Airport. This Permit allows the Permittee to conduct certain commercial activities within certain designated areas of Concord Regional Airport ("Airport"). Designated areas are listed on the first page of this Permit. These Terms and Conditions apply to all of Permittee's activities occurring at the Airport.
2. Compliance with Rules and Regulations. The Permittee shall observe, obey and comply with all ordinances of the City and all other laws, statutes, regulations and rules of the Federal, State, and local governments, and any and all plans and programs developed in compliance therewith which may be applicable to its operations under this Permit.
3. Permits and Licenses. The Permittee shall obtain and maintain in a current condition all federal, state, and local permits and licenses required for its operations hereunder and shall pay all taxes and fees that may be assessed, levied, exacted, or imposed on such operations and shall make all applications, reports and returns required in connection therewith. Upon request of the City, the Permittee shall provide the City and all others designated by the City with copies of any and all permits and licenses, applications therefor, and reports in connection therewith.
4. Indemnification. To the maximum extent allowed by law, the Permittee shall defend, indemnify, and save harmless the City of Concord, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this Permit as a result of the acts or omissions of the Permittee, its clients, agents, subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the gross negligence of the City its agents, officers, or employees. In performing its duties under this section, the Permittee shall at its sole expense defend the City of Concord, its agents, officers, and employees with legal counsel reasonably acceptable to City. As used in this subsection – "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney's fees, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this Permit (whether by expiration of the term or otherwise).
5. Payment of Penalties and Fines. The Permittee agrees to pay on behalf of the City any penalty, assessment, or fine, issued against the City, and to defend, or to settle, in the name of the City any claim, assessment, or civil action, which may be presented or initiated by any agency or officer of the federal, state, or county governments, based in whole or in part upon a claim or allegation that Permittee, its employees, agents, servants, partners, principals, contractors,

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invitees or customers, have violated any law, ordinance, rule, regulation, or directive described in Section 1, paragraph 2 hereof or otherwise applicable to Permittee's operations hereunder, or any plan or program developed in compliance therewith.

6. Assignment and Transfer: The privileges granted to this Permittee hereunder shall be exercised only by the Permittee, through its officers, partners and employees, and not by or through any other person, corporation, or legal entity. This Permit is not assignable or transferable by the Permittee in whole or in part to any other person, corporation or legal entity. No portion of the commercial activity allowed under this Permit shall be subcontracted unless the City has specifically approved such subcontract in writing.
7. Liability for Damaged Facilities. The Permittee shall be financially responsible for the repair or replacement of any property of the City damaged by the Permittee's operations hereunder, including damage or destruction through the acts or negligent acts of its employees, agents, servants, partners, principals, contractors, invitees, or customers, except for normal wear and tear of any facility or item of infrastructure permitted to be used by Permittee in the normal scope of Permittee's actions hereunder. The Permittee shall notify the City as to any damage to Airport property caused by Permittee or such other named parties and such damage shall be repaired either by the Permittee under the direction of City or by City itself, with the City having the right to determine which party shall make the repair and with Permittee being responsible for reimbursement to City of the actual cost of any such repair being made by City, plus an additional 25% of such costs as reimbursement for the City's administrative costs associated with such repair, upon Permittee's receipt of City's billing for such costs.
8. Signs and Posters. No signs, posters, or advertising devices shall be erected, displayed or maintained by the Permittee on any facility used by Permittee on the Airport or on Permittee's equipment or vehicles used on the Airport, without the written approval of City, and any signs, posters, or advertising devices not approved by City, may be removed by City at the expense of the Permittee. The Permittee shall, for identification purposes as opposed to advertising purposes, place its standard corporate identification on all of its equipment and vehicles operating on the Airport.
9. Default Termination. In addition to either party's right to terminate this Permit without cause on not less than ten (10) days' written notice, as set forth on Page 1 of this Permit, the City shall have the right, upon not less than 10 calendar days written notice to the Permittee, to terminate this Permit if the Permittee fails to comply with any of the terms, conditions and covenants of this Permit, unless the default shall have been cured within the notice period.
10. No Activity Termination. The City shall have the right, upon not less than 10 calendar days written notice to the Permittee, to terminate this Permit if Permittee has not engaged in any activity hereunder for ninety days or more.
11. Breach. In the event of a violation of any material term of this agreement, the non-violating party may terminate the agreement upon written notice. Such notice shall state the violation

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with specificity and shall give ten (10) days to cure the violation. The cure period shall be measured as ten (10) days from the date of receipt of notice by the violating party, or, if the date is not known, then thirteen (13) days from the date the notice is placed in the United States Post. If the violation remains uncorrected at the end of the cure period, the agreement shall be terminated without any further action by the non-violating party.

12. Permittee Rights; No Agency. This Permit does not grant the Permittee any rights to vehicle parking, equipment storage space, or any other rights in or for any land or space on the Airport, except as provided under Section 4, paragraph 3 hereof, as to Permittee's right to common use facilities and ingress and egress, nor does this Permit constitute the Permittee as the agent, partner, joint venture, or representative of the City for any purpose whatsoever.

Sec 2. Insurance.

1. Insurance Requirement. In addition to such insurance which may be required by law, the Permittee shall obtain and maintain during the term of this Permit the following insurance:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation	\$100,000 each accident, \$100,000 bodily injury by disease each employee, \$500,000 bodily injury by disease policy limit
General Liability	\$1,000,000 per occurrence
Automobile Liability	\$1,000,000 per occurrence
Umbrella	\$2,000,000

2. Certificates of Insurance. Prior to commencement of any privileges hereunder, and annually thereafter while this Permit is effective, the Permittee shall furnish certificates of insurance to clearly indicate (1) that the Permittee has obtained insurance in the type, amount and classifications as required for strict compliance with this Section; (2) that any material change or cancellation of the insurance shall not be effective without thirty days prior written notice to the City; and (3) that the City is named as an Additional Insured.
3. Additional Insurance. The City reserves the right to require the Permittee to provide such reasonably amended insurance coverage or such additional types of insurance coverage as the City deems necessary or desirable from time to time during the term of this Permit. Upon City's issuance of notice in writing to the Permittee regarding such amended or additional insurance coverage requirements, such requirements shall automatically amend the insurance requirements of this Permit as of the effective date stated in such notice.
4. Insurance Not a Limitation on Liability. Compliance with the foregoing requirements shall not relieve the Permittee of its liability under any other portion of this Permit or as may be provided by law.

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Sec. 3. Fees. Prior to commencement of the Permit, the Permittee shall pay the City a fee in the amount of THREE HUNDRED DOLLARS (\$300.00) in exchange for the privilege of engaging in commercial activities on the Airport or on portions of the Airport.

Sec. 4. Operations.

1. Restricted Area Access – Identification Badges: The Permittee shall be responsible for requesting the City to issue identification ("ID") badges to all employees who require access to Restricted Areas on the Airport as part of its regularly assigned duties, including areas designated as Secured Areas, Restricted Areas, or as otherwise determined by the City and certain areas designated by signs or regulations as off-limits to unauthorized individuals. The Permittee shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred or terminated from the employ of the Permittee or upon termination of this Permit.
2. Standards of Service.
 - (a) The operations and conduct of the Permittee, its employees and agents, shall be conducted in an orderly and proper manner so as not to annoy, disturb or be offensive to others at the Airport. The City shall have the right to object to the Permittee regarding the demeanor or conduct of the Permittee's employees and agents, whereupon the Permittee shall take all steps necessary to remove or correct the cause of the objection.
 - (b) The Permittee shall remove or cause to be removed all trash and refuse generated by Permittee, its agents, employees, Permittees, invitees, or customers to such locations in such manner as shall be designated by the City and in accordance with federal, state, and local requirements.
 - (c) The Permittee shall properly control the actions of its employees at all times its employees are working on the Airport, and ensure that they present a clean and neat appearance, discharge their duties in a courteous and efficient manner, be suitably uniformed, and wear appropriate corporate and Airport identification. Permittee's employees shall be uniformed in attire prominently displaying Permittee's business name at all times while performing work related to this Permit.
3. Common Use Facilities. The Permittee shall have the right, in common with others, as necessary for the performance of the services authorized herein, to use the ramps, roads, streets, and bridges and all other non-exclusive or common use facilities owned or provided by the City for users of the Airport, in accordance with regulations, operating procedures, and processes of the City and subject to the payment of any nondiscriminatory fees, rates and charges established by the County for such uses. However, the Permittee shall not be authorized to operate vehicles on the Air Operations Area (AOA) of the Airport, unless such access is determined to be necessary by the City. In such event, Permittee shall comply with all requirements of the City regarding the Permittee's use of vehicles on the AOA.

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4. Vehicles and Equipment: Vehicles and equipment of the Permittee, brought on to the Secured Area/Air Operations Area (“AOA”) of the Airport, shall at all times comply with the regulations of the Airport and shall be subject to Airport’s approval. The City shall have the right, but shall not be obligated, to inspect, at any time, the vehicles and equipment of the Permittee for proper safety equipment and general operating conditions. The City, shall further have the right to require removal from the Secured Area/AOA or any other area of the Airport of any vehicle or equipment of the Permittee determined by the Department, in its sole discretion, to be (i) parked in violation of any provisions of the rules and regulations of the Department, (ii) in an unsafe condition, or (iii) in a condition that may cause environmental damage. The City shall have no liability to the Permittee for such removal. Vehicles and equipment of the Permittee may not be stored on common use areas of any Secured Area or the AOA of the Airport.

Sec. 5. Miscellaneous.

1. Choice of Law and Forum. This agreement shall be deemed made in Cabarrus County, North Carolina. This agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this agreement shall be the appropriate division of the North Carolina General Court of Justice, in Cabarrus County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.
2. EEO Provisions. During the performance under this agreement, the Permittee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Permittee take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Employee shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.
3. Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out this agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
4. Performance of Government Functions. Nothing contained in this agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
5. Corporate Status. If the Permittee is dissolved or suspended and the Permittee does not notify the City of such dissolution within three (3) business days from date of dissolution or suspension, and/or the corporate status is not reinstated within thirty (30) days, this agreement, at the sole option of the City, shall be declared null and void or the Permittee shall execute a new agreement showing the Permittee’s correct legal entity.

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6. Severability. If any provision of this agreement shall be unenforceable, the remainder of this agreement shall be enforceable to the extent permitted by law.
7. Assignment, Successors and Assigns. The Permittee shall not assign (which includes to delegate) any of its rights or duties that arise out this contract without the City's written consent. Unless the City otherwise agrees in writing, the Permittee and all assigns shall be subject to all of the City's defenses and shall be liable for all of the Permittee's duties that arise out of this agreement and all of the City's claims that arise out of this contract. Without granting the Permittee the right to assign, it is agreed that the duties of the Permittee that arise out of this agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.
8. Modifications, Entire Agreement. A modification of this agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or other duly authorized official signs it for the City. This agreement contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.
9. W-9 Form. Permittee shall provide a completed W-9 form to the City upon execution of this agreement.
10. Corporate Seal. If a corporate seal is included by any party to this agreement, it is only for authentication purposes. This agreement is not signed under seal

Sec. 6. Notices.

Any notices required herein shall be delivered by hand or sent by certified or registered mail to the parties below:

To City of Concord:

Aviation Director
9000 Aviation Blvd.
Concord, NC 28027

To Permittee:

With a required copy to:

City Attorney
30 Market Street
PO Box 308
Concord, NC 28026

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