



**CONCESSION AGREEMENT**  
**FOR**  
**DEVELOPMENT AND MANAGEMENT OF DUTY FREE**  
**RETAIL SERVICES UNDER A SINGLE MASTER LICENSE**

**AT**  
**JOMO KENYATTA INTERNATIONAL AIRPORT**

**BETWEEN**  
**KENYA AIRPORTS AUTHORITY**

**AND**  
**DUFY INTERATIONAL AG**

REF NO KAA/193/2013-2014

DATED This 22<sup>nd</sup> DAY of January 2015

**DRAWN BY**  
OGETTO, OTACHI & COMPANY ADVOCATES,  
MILIMANI ROAD,  
AMBASSADOR COURT, BLOCK C-6,  
P.O. BOX 79438-00200  
**NAIROBI**  
**info@law-consults.org**

## CONCESSION AGREEMENT

THIS AGREEMENT (this "Agreement") is made the... 22<sup>nd</sup> day of January, Two Thousand and Fifteen BETWEEN KENYA AIRPORTS AUTHORITY a statutory body by virtue of the Kenya Airports Authority Act (CAP 395, Laws of Kenya) of Post Office Box 19001-00501, NAIROBI in the Republic of Kenya (herein called the "Authority" which expression shall where the context so admits include its successors and assigns) of the one part and DUFREY INTERNATIONAL AG, a Swiss corporation of Brungaesslein 12, CH-4052, Basel, Switzerland (hereinafter called the "Concessionaire" which expression shall where the context so admits include its successors and assigns) of the other part:

### WHEREAS

1. The Authority is empowered by virtue of the Kenya Airports Authority Act:
  - a) To provide facilities for passengers and other persons making use of the services or the facilities at airports and elsewhere as the Board of the Authority may from time to time consider necessary or desirable.
  - b) To enter into agreements with any person or agency for *inter alia* the performance or provision by that person or agency of any of the services or facilities that may be performed by the Authority.
2. The Authority wishes to concession the Services (defined below) at the Terminal (defined below) under a Single Master License, for the benefit of passengers and other persons making use of the Airport (defined below) to be undertaken by the Concessionaire at the highest international standards with due regard to the security and safety of passengers and all operators.
3. The Concessionaire has the technical competence and capacity to perform such Services and has agreed to perform the Services as more particularly defined in this Agreement on the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

### ARTICLE I INTERPRETATIONS AND DEFINITIONS

In this Agreement where the context so admits: -

- 1) "The Act" means the Kenya Airports Authority Act and as may be amended from time to time.
- 2) "Airport" means a defined area including any building, installation, runway, and equipment intended to be used either wholly or in part for the arrival,

departure and surface movement of aircraft and for the purpose of this Agreement it shall mean Jomo Kenyatta International Airport.

- 3) "Airsides" shall mean, that portion of the Airport consisting of airside buildings, aircraft Aprons, ramp, taxiways and runways.
- 4) "Apron" means a defined area of land at an aerodrome intended to accommodate aircraft for purposes of loading or unloading passengers, baggage, cargo, refueling, parking or maintenance of aircraft.
- 5) The expression "The Authority" shall mean the Kenya Airports Authority a Statutory Body by virtue of the Kenya Airports Authority Act (CAP 395, Laws of Kenya).
- 6) "Authorized Employee" means an employee authorized by the Authority's Managing Director to exercise the powers or perform the duties and functions in respect of this Agreement.
- 7) "Commencement of Services" refers to 4 months from the date of grant of all necessary approvals by KAA.
- 8) "Concession" means the right given by the Authority to provide the Services under this Agreement for the fees set out in Article II(3).
- 9) "Concession Documents" means:
  - a. Tender Document for management contract of a Duty Free Retail Master Concessionaire Tender No. KAA/193/2013-2014 together with all addendums and clarifications thereto as issued by the Authority and whose copy is annexed as Schedule 1 of the Agreement
  - b. Technical Bid as submitted by the Concessionaire under the Tender and whose copy is annexed as Schedule 2 of the Agreement.
  - c. Statement of Financial Compliance as submitted by the Concessionaire and whose copy is annexed as Schedule 3 of the Agreement.
- 10) The "Concessionaire" shall mean DUFREY INTERNATIONAL AG and shall include its successors in title and assigns.
- 11) "Concession Fee" means the variable concession fee payable pursuant to Article II(4)(c).
- 12) "Duty Free Retail Shops" means outlets at the Terminal offering Duty Free items such as liquor and tobacco, jewelry, watches, perfumes, cosmetics, leather and related items, electronics, chocolate and confectionary, textiles, fashion wear and accessories, toys, gifts, souvenirs and similar Duty Free items, as described

in the Tender Documents but excludes all other non-duty free commercial activities at the Terminal.

- 13) "Force Majeure" shall mean any circumstances beyond the reasonable control of any party causing any delay in, or failure to render any performance, to the extent that such delay or failure is caused by war, civil disturbance, riot, strike or other industrial action, fire, severe weather, natural disaster, governmental action (whether or not valid), substantial decrease of passenger flow in the Terminal, prolonged closure of the Airport, a change in applicable law which negatively impacts the ability of Concessionaire to provide the Services in a commercially reasonable manner, and such other unforeseeable events which cause a material change to the circumstances underlying this Agreement.
- 14) "Gross Receipts" means all proceeds (excluding VAT and credit card commissions) derived or accruing to the Concessionaire directly from the provision of the Services at the Airport.
- 15) "Guaranteed Minimum" shall mean the lowest payment assured by the Concessionaire to the Authority with respect to their operations. This shall not be dependent on volume of business carried out.
- 16) "IATA" means the International Air Transport Authority.
- 17) "ICAO" means the International Civil Aviation Organization.
- 18) "Initial Term" means the period of ten (10) years from the date of Commencement of Services.
- 19) "Services" shall mean the Development and Management of Duty Free Retail Services under a Single Master License for the operation of Duty Free Retail Shops in the Terminal.
- 20) "Tender" shall mean Tender No. KAA/193/2013-2014 for the Development and Management of Duty Free Retail Services under a Single Master License.
- 21) "Tender Documents" shall mean the Documents referred to at Clause 9 above.
- 22) "Term" means the term of this Agreement, including the Initial Term and any renewal term granted pursuant to Article II(3) subject to earlier termination in accordance with this agreement
- 23) "Terminal" means Terminal "IV" as per the Tender Document (presently referred to as Terminal "T1A") hereinafter "The Terminal".

## ARTICLE II SCOPE AND NATURE OF THE AGREEMENT

- 1) CONCESSION DOCUMENTS

The Tender Documents shall be deemed to form and shall be read and construed as part of this Agreement.

2) **GRANT OF CONCESSION**

In pursuance of and in exercise of the powers conferred upon the Authority under the Act and in consideration of the payment of the fees set out in paragraph 4 of this Article and of the other covenants of the Concessionaire contained in this Agreement, the Authority hereby grants to the Concessionaire the right to provide the Development and Management of Duty Free Retail Services under a single Master License in the Terminal in accordance with the Tender Documents and subject to the terms of this Agreement. The space provided for which shall be at Levels "0" and "1" of the Terminal shall be approximately 730.0 Square Meters..

3) **TERM**

This Agreement shall commence as of the date first set forth above and shall last until the end of the Initial Term, unless extended as provided for in this paragraph. On the written request of the Concessionaire made at least three (3) months before the expiry of the Initial Term, the Authority may at the expense of the Concessionaire grant to the Concessionaire an extension of the Term for another term of five (5) years PROVIDED HOWEVER THAT the Concessionaire shall have performed and observed, in all material respects, all its obligations covenants and conditions contained or implied in this Agreement and any other Agreement, Deed, Lease, or License issued by or entered into with the Authority. The concession fees payable for such extension of the Term shall be fixed in accordance with clause 4 (f) of this Article.

4) **FEES**

In consideration of the Authority granting the Concession to the Concessionaire hereunder, the Concessionaire shall pay to the Authority the following fees: -

- (a) From the Commencement of Services through to the termination or expiry of this Agreement, Rent in the amount of Ksh.2,000/= per square foot of actual space utilized by the Concessionaire and as certified by the Authority. This amount shall be adjusted to reflect yearly inflationary rates and shall be payable quarterly in advance on the fourteenth (14<sup>th</sup>) day of each quarter. For the avoidance of any doubt, the space for which the amount herein applies shall reflect any adjustments occasioned by any exigencies of design and construction.

- (b) For the Initial Term, a Guaranteed Minimum of USD 3,500,000.00 per annum payable quarterly in advance in equal installments of USD 875,000 each on the fourteenth (14<sup>th</sup>) day of each quarter.
- (c) For the Initial Term, a Concession Fee calculated at twenty percent (20%) of Gross Receipts, payable quarterly in arrears, reconciled with the Guaranteed Minimum paid during the respective quarter of the Initial Term, using the same reconciliation procedures as the annual reconciliation procedures described in clause (e) below (*mutatis mutandis*), with a final reconciliation being made against the Concessionaire's final audited accounts for each year of the Term. In the event that there is a change in the taxation or the scope of service charged to taxes and duties, the fees shall be calculated as though no such change(s) had occurred.
- (d) At the end of each year of the Initial Term, a reconciliation of the Concession Fees payable for the year then ending shall be undertaken by the Concessionaire based on the Gross Receipts for that year as shown in the Concessionaire's annual sales reports for the relevant period. The Concessionaire shall prepare and deliver to the Authority a statement of account reflecting such reconciliation and taking into account the quarterly installment payments of the Guaranteed Minimum. A certified true copy of the Concessionaire's annual sales reports for the relevant period shall accompany the statement of account. If the Concession Fees payable for such year are greater than the total Guaranteed Minimum amount paid during such year, the Concessionaire shall pay the shortfall to the Authority within thirty (30) days of delivery of the statement of account to the Authority. If any reconciliation discloses an overpayment for the relevant quarterly or annual period, the Concessionaire may at its option set-off such overpayment against the next following payment or against any payments due.
- (e) In the event of an extension of the Term, the fees payable shall be negotiated and fixed for a subsequent five year period of the Term as a percentage of Gross Receipts by agreement between the Concessionaire and the Authority. The Concessionaire and the Authority undertake to each other to negotiate in good faith to agree on such fees.
- (f) The Concessionaire shall install electronic point of sale system (EPOS), based on sale by boarding pass. The system will have the capability of linking to KAA SAP ERP system. Both parties shall pay their respective costs to facilitate connectivity.

The parties agree that any fees based on Gross Receipts payable hereunder shall be made in US Dollars or in the equivalent thereof in Kenya Shillings or any other globally acceptable currency according to the exchange rate declared by the Central Bank of Kenya.

5) **PERFORMANCE**

The obligation of the Concessionaire in accepting this concession shall be:

- (a) To perform the Services in compliance with the provisions of the Kenya Airports Authority Act, the Kenya Civil Aviation Act and all relevant government laws, rules and regulations in force from time to time as they apply to the activities of the Concessionaire under the Agreement.
- (b) To comply with international standards for Duty Free Retail procedures as recommended by ICAO and IATA.

**ARTICLE III  
GENERAL OBLIGATIONS OF THE CONCESSIONAIRE**

1) **GENERAL OBLIGATIONS**

The Concessionaire hereby covenants and agrees with the Authority as follows:

- (a) To provide the Services in an efficient and competent manner and to standards prevailing in the industry.
- (b) To employ adequate staff for purposes of providing the Services.
- (c) At its own cost, to provide and replace all equipment the Concessionaire requires for the provision of the Services and maintain such equipment in good order and condition.
- (d) At all times to maintain high standards of general cleanliness in providing the Services and ensure compliance with all statutory requirements affecting the same. The Concessionaire may subcontract such obligations as it deems appropriate in its discretion.
- (e) To allow Authorized Employees, including the Authority's medical officer of health, at all reasonable times during normal business hours upon being given reasonable advance written notice of no less than ten (10) business days (except in cases of emergency where such advance written notice is not possible) to inspect the operations of the Concessionaire.
- (f) Not to do or permit to be done anything, which is a nuisance, annoyance or disturbance at the Airports or to other users of the Airport, acting reasonably.

2) **SECURITY AND SAFETY REGULATIONS**

The Concessionaire, its employees and agents shall at all times observe and comply in all material respects with the security, safety and operational regulations, instructions or rules from time to time promulgated, issued, laid down or required by the Authority, the Government of Kenya or any Municipal body or authority.

3) **PERFORMANCE SECURITY**

The Concessionaire shall provide the Authority with a performance guarantee equivalent to quarterly concession fee, issued in favour of the Authority, which shall remain in force throughout the Term and shall be discharged and returned to the Concessionaire not later than thirty (30) days of completion of its performance obligations under this agreement. The Performance Security maintained shall reflect the prevailing concession rate payable.

**ARTICLE IV  
SPECIFIC OBLIGATIONS OF THE CONCESSIONAIRE**

1) **CONCESSIONS**

To use its endeavours to obtain all necessary licenses required for the efficient discharge of its Services.

2) **EQUIPMENT AND COMMODITIES**

- (a) To submit a full list of all equipment to be used for the Services for inspection by the Authority on reasonable notice and to avail all equipment for inspection from time to time.
- (b) To remove all garbage, if any, resulting from the performance of the Services and dispose of the same at designated areas.
- (c) To sell such commodities as outlined in Schedule 1 hereto or as otherwise agreed by the parties.
- (d) To maintain tariff rates comparable to those prevailing in the city of Nairobi and to submit the rates list to the Authority for record. The rates are to be displayed at the Concessionaire's retail outlet(s).
- (e) To display its name prominently including franchise approvals (if any) on its premises.
- (f) Not to advertise or place any advertisement on any premises allocated to it by the Authority, except within the dedicated areas which are the subject of this Agreement and in accordance with the Schedule to this Contract where the Concessionaire is allowed to advertise.



- (g) Not to erect or keep electric sky signs, electric advertisements, light any flag staffs wireless poles, television antenna, other communication equipment upon or near the Terminal without the prior written consent of the Authority which shall not be unreasonably withheld, or delayed.

3) **AIRPORT SAFETY**

- (a) To observe all Airport Safety regulations specifically;
  - i. The parking and positioning of the vehicles operated by the Concessionaire will be at all times subject to the control of the Authority so far as is material at the Airport.
  - ii. To secure the equipment, stock and merchandise and compensate the Authority for any damage caused on its property by the negligent use of equipment by the Concessionaire or its employees.
  - iii. To comply within a reasonable time (except in case of emergency) with operational instructions that shall be promulgated by the Authority from time to time and immediately notified to the Concessionaire by the Authority.
  - iv. To make necessary arrangements for keeping away insects and pests and to initiate pest control measures as desired by the Authority in areas under the control of the Concessionaire.
- (b) To secure any demised entrances or openings of operational areas leading to the Airside of the Airport, which the Authority deems necessary for security reasons.
- (c) To adequately insure its fittings, fixtures and equipment against any incidental damage and/or destruction PROVIDED ALWAYS upon demand such evidence of adequate insurance cover shall be produced to the due satisfaction of the Authority.
- (d) Not to render or suffer to do anything that compromises the Authority's safety and security regulations and to comply with the security regulations relating to the use of aerodromes with restricted areas.
- (e) Not to do nor permit to suffer to be done anything whereby any insurance coverage on the Terminal and the Airside by the Authority may become void or violable or whereby the rate of premium for such insurance may materially increase.

4) **INDEMNITIES**

The Concessionaire shall indemnify the Authority against: -

- (a) Any loss or damage to property of the Authority caused by the Concessionaire's negligence.
- (b) All actions, proceedings, claims, costs and demands for personal injury (including injury resulting in death) or for damage or loss of or to property which may be made against the Authority or any of its servants or agents arising out of or in connection with anything done by the Concessionaire due to the Concessionaire's negligence.

5) **NOTICE OF ANY ORDER FROM ANY COMPETENT AUTHORITY**

- (a) Within seven (7) days of the service thereof, to give full particulars to the Authority of any notice or order given, made or issued by virtue of any law, regulation or direction there under affecting the Services.

**FIRE FIGHTING EQUIPMENT**

- (b) To provide firefighting equipment and maintain the same continuously in a fit and proper condition for the areas under the control of the Concessionaire.

6) **NUISANCE**

Not to do or permit or suffer to be done by persons over whom the Concessionaire exercises control anything (excluding all such acts and things required to be done in order to carry out the Services in accordance with the Concession) which are a nuisance, annoyance, inconvenience or disturbance to the Authority or any of the Authority's servants, occupiers of any adjoining or neighbouring premises or visitors to the Airport, acting reasonably.

7) **SHAREHOLDING**

To notify the Authority forthwith if the shareholders of the Concessionaire at the date hereof shall cease to hold the beneficial ownership of more than fifty per cent (50%) of the issued shares of the Concessionaire (hereinafter referred to as 'Change in Control'), it being understood and agreed that an assignment in accordance with the terms of Article VI shall not be a Change in Control.

8) **OPERATIONS OF BUSINESS**

In compliance with normal Airport practice, the Concessionaire shall when required by the Authority, prepare and submit yearly returns of duty free statistics in respect of each traveler served in a format agreed by both parties.

9) **CONCESSIONAIRE'S EMPLOYEES**

- (a) To take reasonable measures to employ competent servants and/or agents of high integrity for the efficient performance of the Concessionaire's obligations under this Agreement.
- (b) To ensure and provide at all times:
- i. Efficient, prompt and courteous service.
  - ii. Its servants and/or agents employed or deployed wear uniforms bearing the Concessionaire's tag.
  - iii. Employees who after completing relevant training and induction:
    - Are conversant with Airport operation procedures.
    - Are Familiar with Regulations governing the Airport terminal and airside operations.
    - Are familiar with airport emergency procedures in relation to the Services granted herein.
- (c) The Concessionaire shall forthwith and as a condition precedent to the commencement of the Agreement take out at its own expense adequate insurance indemnifying the Concessionaire and the Authority for all liabilities arising out of any claims arising whatsoever including those claims raised by any workmen employed in the performance of this Agreement for payment of compensation under or by virtue of the Employment Act (No 11 of 2007) or any other law amending or replacing such Act and for all costs and expenses incidental or consequential thereto.
- (d) To be responsible for all its employees and where appropriate carry out the requirements necessary for the proper issue to them by the Authority of airport security passes.

10) **STANDARD HEALTH CLAUSES**

To comply with standard health requirements in and around the Airport that the Authority shall from time to time promulgate and immediately notify the Concessionaire of.

11) **FINANCE AND ACCOUNTS**

The Concessionaire shall:

- (a) Maintain proper books of account for transactions in respect of this Agreement using the generally accepted accounting practices in Kenya, which records shall be open at all times for inspection by the Authority

on reasonable notice for the purpose of validating the sales and Concession Fees payable to the Authority, such inspections not to be carried out more than once in each calendar year and to maintain such records after termination of this Agreement for a period of at least three years. The costs of such inspections shall be borne by the Authority.

- (b) Produce at the end of each financial year certified statement of Annual Sales for the Services within thirty (30) days after the Annual General Meeting which approves the audited accounts of the Concessionaire for the financial year concerned PROVIDED ALWAYS the statement shall be signed by the Concessionaire's auditor who must be a duly certified auditor registered in Kenya.

## ARTICLE V THE AUTHORITY'S COVENANTS

The Authority hereby covenants with the Concessionaire as follows:

### 1) CONCESSIONAIRE'S QUIET ENJOYMENT

That the Concessionaire paying the Concession fee agreed herein before and observing and performing the covenants herein before contained shall peaceably perform the Services during the Term granted without any interruption or disturbance from the Authority, or any person claiming under or in trust for the Authority.

### 2) CONCESSIONAIRE'S RIGHT OF ACCESS

- (a) To permit the Concessionaire whether by servant(s) or agent(s) to use in common with the Authority and the other Concessionaires any of the common facilities in the Airport including without prejudice to the generality of the foregoing all access over the access roads within the Airport on a 24 hour basis.
- (b) To facilitate basic services necessary for the carrying out of the Services (including electricity, water, air conditioning, communications services, and other such services and the repair and maintenance thereof). Notwithstanding the aforementioned, the Authority shall not be responsible for any consequential loss or inconvenience caused by any failure of such services, if the same arises from a temporary breakdown of the installations but shall indemnify the negligence of the Authority or its agents or licensees where the Concessionaire is unable to carry out the services for 14 days or more, subject to the Concessionaire taking all reasonable steps to mitigate any such losses.

### 3) INDEMNITIES

The Authority shall indemnify the Concessionaire against: -

- (a) Any loss or damage to property of the Concessionaire caused by the Authority's negligence.
- (b) All actions, proceedings, claims, costs and demands for personal injury (including injury resulting in death) or for damage or loss of or to property which may be made against the Concessionaire or any of its servants or agents arising out of or in connection with anything done by the Authority due to the Authority's negligence.

4) **OTHER COVENANTS**

- (a) The Concessionaire shall be the Single Master Licensee for the Development and Management of Duty Free Retail Services in the Terminal and shall have the right, with the consent of the Authority, to sublet any and all space granted to it under this contract. The Authority will endeavour to ensure the optimal utilization of the Terminal by the Concessionaire but in the event the Authority has to make adjustments due to commercial and other reasons, the Authority will allocate the Concessionaire a substantially similar alternative operating area.
- (b) During the Term of this Agreement, the Authority shall not contract any other person or entity for the operation of Duty Free Retail Shops at the Terminal.
- (c) The Authority shall endeavour to provide office and warehouse storage space for use by the Concessionaire outside the Terminal upon payment by the Concessionaire the appropriate prescribed fees, rates and charges.
- (d) The Authority shall have the right at any time as it may reasonably think fit during the Term, to rebuild or to execute any other works, alterations and additions or improvements and to erect scaffolding and loading in connection therewith in or to any part of the Airport or the Terminal or in or to any fixtures, appurtenances or equipment notwithstanding any interference to light, air to the Concessionaire and notwithstanding any suffering or offensive or disagreeable noise, nuisance, scaffolding or annoyance caused to the Concessionaire by any such works, alterations, additions or improvements **PROVIDED ALWAYS THAT** the Concession Fees and the Minimum Guarantee payments due hereunder shall be adjusted, and the Authority shall provide a substantially similar alternative location, in each case as agreed by the parties acting reasonably and in good faith.

**ARTICLE VI  
ASSIGNMENT**

This Agreement may only be assigned with the Authority's prior written consent, (which consent, , shall not be unreasonably withheld, conditioned, or delayed but may, if given, be subject to such conditions as may reasonably be imposed by the Authority and subject to internal requisite statutory approvals of the Authority).

**ARTICLE VII  
TERMINATION**

**1) TERMINATION BY THE AUTHORITY**

The Authority may terminate this Agreement before the expiry of the Term without prejudice to antecedent breach of any covenant or provision herein contained, by giving the Concessionaire written notice;-

- (a) If the Concessionaire defaults in paying the Concession Fee in accordance with the terms of this Agreement within thirty (30) days of a notice from the Authority that payment is due after its due date;
- (b) If the Concessionaire fails to remedy within thirty (30) days of a written notice to do so a material breach on its part of the covenants set out in the Agreement;
- (c) If the Concessionaire stops payment generally of its debts or ceases to carry out its obligation under this contract or is deemed to be insolvent under the relevant laws or convenes a meeting of its creditors or any class thereof for the purpose of making or proposing and/or entering into any arrangement composition, assignment or reorganization with or for the benefit of its creditors or any class thereof; or
- (d) If the Concessionaire effectuates any Change in Control of the Concessionaire as defined in Article IV clause 7.

**2) TERMINATION BY THE CONCESSIONAIRE**

The Concessionaire may terminate this Agreement before the expiry of the Term without prejudice to antecedent breach of any covenant or provision herein contained, by giving the Authority written notice if:

- (a) the Terminal falls into disuse or the Authority permanently abandons it;
- (b) the Concessionaire is prevented from carrying out the Services under this Agreement, for a period of thirty (30) consecutive days due to a Force Majeure event;

- (c) the Authority fails to remedy within thirty (30) days of a written notice, a material breach on its part of the covenants set out in the Agreement;
- (d) the Authority stops payment generally of its debts or ceases to carry out its powers under the Act or is deemed to be insolvent under the relevant laws or convenes a meeting of its creditors or any class thereof for the purpose of making or proposing and/or entering into any arrangement, composition assignment or reorganization with or for the benefit of its creditors or any class thereof;
- (e) there is any change in the beneficial ownership of the shares of the Authority arising from any corporate restructuring including privatization of the Authority; or
- (f) there is a material amendment to the functions and powers granted to the Authority under the Act particularly in respect of its obligations under this Agreement.

#### ARTICLE VIII SEVERABILITY

Whenever any covenant condition or provision of this Agreement is held invalid by a Court of competent jurisdiction, that adjudication shall not affect the validity of any other covenant or provision in as much as the invalidity of any other covenant or provision does not materially prejudice either party to their rights and obligations under this Agreement.

#### ARTICLE IX FORCE MAJEURE

- 1) Neither party shall be liable in respect of failure to abide by the terms of this Agreement or for any loss or destruction, which has arisen from an event of Force Majeure and during the subsistence of any such event, both parties shall be relieved of their obligations to perform this Agreement.
- 2) The affected party shall immediately inform the other party of the nature of the Force Majeure. The affected party shall use its best effort to eliminate the effects of the Force Majeure as soon as possible and resume performance of its obligations under this Agreement.
- 3) If a Force Majeure event continues for a consecutive period of more than thirty (30) days, the Concession Fees and the Minimum Guarantee payments due hereunder may be adjusted, and the Term may be extended, in each case as agreed by the parties acting reasonably and in good faith.

**ARTICLE X  
DISPUTE RESOLUTION**

- 1) The parties hereto will endeavour to settle amicably disputes arising out of this Agreement. If any dispute or difference shall arise between the parties hereto as to the meaning or construction of this Agreement or anything herein contained or as to the rights or obligations of either party hereunder or otherwise in connection with this Agreement which cannot be settled amicably, then in all such cases the same shall be offered for decision to a single arbitrator to be appointed by agreement between the parties or failing such agreement within thirty (30) days after the date on which one of the parties hereto first serves on the other a notice giving the name, address and a summary of the qualifications of a suggested arbitrator, to be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators of Kenya, and any arbitration proceedings hereunder shall be conducted in Nairobi PROVIDED THAT the provisions of S.33 (1) of Kenya Airports Authority Act shall apply if any such dispute or difference concerns or includes a claim by the Concessionaire against the Authority for damages or other compensation as a result of any alleged breach by the Authority for this Agreement.
- 2) Each party shall bear its own costs of preparing and presenting its case. The costs of arbitration (including fees and expenses of the arbitrators) shall be shared equally between the parties unless the award provides otherwise.

**ARTICLE XI  
AMENDMENT**

- 1) This Agreement may only be amended or modified by a written memorandum signed by the Authority and the Concessionaire.
- 2) Any matters arising resulting in the amendment of this Agreement shall be undertaken through negotiations between the parties in accordance with applicable law.
- 3) The parties shall endeavour to incorporate into this Agreement all aspects of the Terminal or general airport operations that may have substantial impact on the Concession including but not limited to design, usage of the Terminal, commencement date and variation in scope of the operations through negotiations in the manner aforementioned. Amendments shall be in the form of a memorandum which shall be duly endorsed as an addendum to this Agreement.
- 4) Each and every covenant herein contained shall remain in full force both at law and in equity notwithstanding the party for whose benefit they are given shall have waived or assumed to have waived in any way whatsoever similar covenants affecting the other.



- 5) The failure to seek redress for any breach of or insistence upon the strict compliance of any of the terms and conditions of the Agreement (or in the case of the Authority any of the Authority's rules and regulations) shall not prevent any subsequent act which would have originally constituted a breach from having all the force of and effect in law.

**ARTICLE XII  
MISCELLANEOUS**

1) **SERVICE OF NOTICES**

- (a) The parties select as their respective addresses, the addresses set out in paragraph (2) of this Article at which, notices for all the purposes arising out of or in connection with the lease, its breach or termination, may validly be served upon or delivered by the parties.
- (b) Any notices, save as provided to the contrary, shall be in writing and shall either be delivered by hand or sent by registered post or by telex or facsimile.
- (c) If delivered by hand it shall be deemed to have been duly received by the addressee on the date of delivery.
- (d) If posted by prepaid registered post it shall be deemed to have been received by the addressee on the eighth business day following the date of such posting.
- (e) If sent by telex or facsimile it shall be deemed to have been served at the time of transmission.

2) **ADDRESSES**

(a) **The Authority**

Managing Director  
Kenya Airports Authority  
P. O. Box 19001-00501  
**NAIROBI - KENYA**  
Fax: 254 020 822078  
EMAIL: [info@kaa.go.ke](mailto:info@kaa.go.ke)

(b) **The Concessionaire**

The Managing Director  
DUFREY INTERNATIONAL AG  
Brungaesslein 12  
CH-4052 Basel  
Switzerland

*With a copy to Dufry Legal at [dufry@legal.com](mailto:dufry@legal.com)*

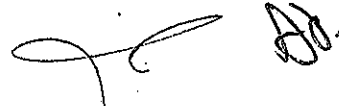
Either party may provide changes in the above addresses by notice given to the other party as aforesaid.

3) **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the Laws of the Republic of Kenya.

4) **MISCELLANEOUS**

- (a) This Agreement constitutes the entire agreement between the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. No amendment or cancellation thereof or addition thereto shall be of any force or effect unless reduced to writing and signed by both parties.
- (b) The Authority has entered into this Agreement pursuant to the powers vested in it as an Airports Authority and notwithstanding anything to the contrary herein expressed or implied, the provisions of the Act shall apply and deemed to be included in this Agreement.
- (c) Each party shall at all times keep confidential documents, data and information concerning the activities, business methods and other information of the other party, which is provided under the terms of this Agreement. No disclosure of information provided by the Concessionaire shall be permitted without the prior written consent of the Concessionaire.
- (d) Nothing in this agreement prevents the parties from agreeing in good faith on necessary adjustments resulting from operational or commercial imperatives or necessary design changes and which do not materially or substantially derogate from the terms of this agreement.

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized, cursive name, and the second is a shorter, more compact signature.

IN WITNESS WHEREOF the parties herein have caused their respective common seals to be hereunto affixed the day and year first herein written.

SEALED with the COMMON SEAL of  
KENYA AIRPORTS AUTHORITY  
In the presence of

*Carlene*

MANAGING DIRECTOR

*KKisia*

CORPORATION SECRETARY

STAMPED AND SIGNED BY THE DULY  
AUTHORISED ATTORNEYS OF  
DUFRY INTERNATIONAL AG  
In the presence of

JOHN ODERA WERE  
ADVOCATE  
NOTARY PUBLIC &  
COMMISSIONER FOR OATHS  
P. O. Box 2960-00200, NAIROBI

DUFRY International AG  
Brunngässlein 12  
P.O. Box  
CH - 4010 Basel

*Amex. MAHENDRA RAOYA*

*Asst. of fact in No. 10000000*

## THE SCHEDULES

1. Tender Document for management contract of a Duty Free Retail Master Concessionaire Tender No. KAA/193/2013-2014 together with Addendums and Clarifications
2. Technical Bid as submitted by the Concessionaire under the Tender Document
3. Statement of Financial Compliance as submitted by the Concessionaire