Memorandum

MIAMI-DADE COUNTY

Date: September 4, 2007

To: Honorable Chairman Bruno A. Barreiro,
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Agenda Item No. 8(A)(1)(F)

Subject: Award Recommendation-Airport Network Media Programming Services
RFP No. MDAD-04-06

RECOMMENDATION

It is recommended that the Board approve the award of a Non-Exclusive Agreement (Agreement) to AC Holdings, Inc., for the subject project and authorize the Mayor or his designee to execute the Agreement substantially in the form attached hereto, with the Exhibits on file with the Clerk of the Board. It is further recommended that the Board authorize the Mayor or his designee to exercise any renewal, termination or cancellation provisions therein.

SCOPE

Miami International Airport is located primarily within Commission District Six. However, the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset.

FISCAL IMPACT/FUNDING SOURCE

This project is revenue generating with the following payments to the County:

- The Operator shall pay to the County a Minimum Annual Guarantee (MAG) of One Hundred Thousand Dollars ($100,000.00) starting on the Effective Date. This Minimum Annual Guarantee is to be prorated and payable in equal quarterly payments in U.S. funds, on the first day of each quarter in advance and without billing or demand.

- The Operator shall pay the County the greater of the MAG or the Airport's Revenue Share Pool Payment of the Net Revenues, whichever is greater. The Revenue Share Pool Payment is the payment from the Net Revenues by participating Eligible Airports.

TRACK RECORD MONITOR

Under the existing agreement, the track record for AC Holdings, Inc., has been satisfactory according to Miami-Dade Aviation Department (MDAD) Commercial Operations Division Director Patricia A. Ryan, who will monitor the new contract.

BACKGROUND

The Airport Network Media Programming Services RFP. No. MDAD-04-06 was advertised on November 17, 2006, for an operator to provide, install, maintain, manage and operate first-class Airport Network Media Programming Services throughout the Airport as required. While MDAD owns the system that provides the power and connectivity to distribute programming to various MIA locations, the

selected proposer will be responsible from the electrical/cable outlets outward to include display screens, monitors, speakers, brackets, wall mounts, and any related components necessary to provide Airport Network Media Programming Services. MDAD shall have no less than six one-minute segments (which may be used as two thirty-second contiguous spots within the hour) during the day (the "Local Spots") without charge. MDAD may use this "free airtime" to promote the local area, the concessions or services at the Airport or the County, for public service announcements or to sell to advertisers. The Airport Network Media Service will provide continuous news information, and entertainment television programming material professionally produced and have the ability to go "live" broadcasting breaking news or special events. The operator will provide its airport customers with high-quality local commercials and the ability to provide messages and informational programming to passengers.

One Proposer responded to County's public advertisement: AC Holdings, Inc. This is the only provider of CNN Airport broadcasts.

The Selection Committee met and reviewed the one (1) proposal submitted by AC Holdings, Inc., on March 9, 2007. At the meeting, the Committee was informed by the County Attorney's Office that the proposal was responsive. The Committee members found the firm responsible and having met the minimum qualifications.

At this meeting, the sealed price envelope was opened and read aloud. The Minimum Annual Guarantee submitted by AC Holdings, Inc., was in the amount of One Hundred Thousand Dollars ($100,000.00). Following authorization by the County Manager, a Negotiation Committee met with AC Holdings Inc., to review and modify contract language. Such modifications did not have a financial impact.

PROJECT:	Airport Network Media Programming Services
PROJECT NO.	RFP No. MDAD-04-06
PROJECT LOCATION:	Miami International Airport
COMPANY NAME:	AC Holdings, Inc.
TERM OF AGREEMENT:	The term of this Agreement is five (5) years.
OPTION(S) TO RENEW:	One (1) two (2) year extension.
CONTRACT MEASURES:	There is no Airport Concession Disadvantaged Business Enterprise (ACDBE) goal established for this RFP.
COMPANY PRINCIPALS:	Deborah L. Cooper Senior Vice President & General Manager
GENDER, ETHNICITY & OWNERSHIP BREAKDOWN:	AC Holdings, Inc., is a wholly owned subsidiary of Turner Private Networks (TPN).

COMPANY LOCATION:	One CNN Center, SE07 Atlanta, GA 30303-2762
HOW LONG IN BUSINESS:	25 years
PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:	One (1) Agreement AC Holdings, Inc., is the current service provider at Miami International Airport. Payments to the County totaled $40,000.
ADVERTISEMENT DATE:	November 17, 2006
USING DEPARTMENT:	Miami-Dade Aviation Department
APPROVED FOR LEGAL SUFFICIENCY:	Yes

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: September 4, 2007

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(F)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(F)
09-04-07

RESOLUTION NO. _____

RESOLUTION AWARDING AIRPORT NETWORK MEDIA PROGRAMMING SERVICES AGREEMENT AT MIAMI INTERNATIONAL AIRPORT, RFP NO. MDAD 04-06 TO AC HOLDINGS INC.; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE AGREEMENT AND ANY RENEWAL, TERMINATION, OR CANCELLATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby awards the Airport Network Media Programming Services Agreement at Miami International Airport, RFP No. MDAD 04-06 to AC Holdings Inc., for a five (5) year term with one (1) option to renew for a two (2) year extension for a minimum annual guarantee of $100,000, as set forth in the attached memorandum from the County Manager; this Board authorizes the Mayor or his designee to execute the Agreement between Miami-Dade County and AC Holdings, Inc. in substantially the form attached hereto with the Exhibits on file with the Clerk of the Board and made a part hereof and to exercise any renewal, termination, or cancellation provisions contained therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of September, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. RW

Roy Wood

LICENSE AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

AC HOLDINGS, INC.

OPERATOR

FOR AIRPORT NETWORK MEDIA PROGRAMMING SERVICES

AT

MIAMI INTERNATIONAL AIRPORT

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Attachments

Exhibit A – Approved Installation Areas (Locations)
Exhibit A-1 Administrative Office/Support Space
Exhibit B – Surety Performance and Payment Bond
Exhibit C – CATV Head-Room
Exhibit D – Performance Bond for MAG Requirements
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Exhibit H – *See note below
Exhibit I – Quarterly Report of Revenue Share Pool
Exhibit J – List of Prohibited Items
Exhibit K – Commercial Operations Tenant Handbook
Exhibit L – Standards of Operation

*Executed Affidavits and Condition of Award Certificates will be added as Exhibit H.

DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

The term **"Agreement"** shall mean this Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Operator.

The term **"Airport"** shall mean Miami International Airport (also MIA).

The term "**Airport Concession Disadvantaged Business Enterprises" or "ACDBE"** shall have the meaning described in entitled "Airport Concession Disadvantaged Business Enterprises".

The term **"Airport Network Media Programming Service"** or **"AMS"** shall refer to those services outlined in Sub-Article 2.02, Scope of Services.

The term "**Approved Installation Areas**" or "**Locations**" shall mean areas of the Airport identified in Exhibit A by the Department for the actual placement of Display Equipment.

The term **"Board"** shall mean Board of County Commissioners of Miami-Dade County.

The term **"Breaking News"** shall mean live news coverage taken from CNN Airport Network's affiliate, CNN and/or any of its affiliated networks, and includes news and information service intended for television generally consisting of national and international news, finance news, weather reports, features and other such programming as CNN and/or any of its affiliated networks may, from time to time, elect to produce or provide, of breaking news events that temporarily interrupts regularly scheduled programming and is not planned, scheduled or announced in advance.

The term **"Capital Improvement Program"** or "**CIP**" shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The term **"Code"** shall mean the Code of Miami-Dade County, Florida.

The term "**County"** shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term **"Date of Execution"** shall mean the date of attestation by the Clerk of the Board following execution of the Agreement by the County Manager of Miami-Dade County or designee.

The term **"Days"** shall mean calendar days, unless specifically stated as other.

The term "**Department"** or **"MDAD"** shall mean the Miami-Dade Aviation Department.

The term **"Director"** shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term "**Display Equipment**" shall mean all equipment whose power source originates from the taps/receptacle units and outward to include display screens, monitors, speakers, brackets, wall mounts, and any related components necessary to provide Airport Network Media Programming Services by the Operator.

The term **"Effective Date"** shall mean the (60th) sixtieth day after the Date of Execution.

The term "**Eligible Airports**" shall be defined as those airports that receive Airport Network Media Programming Services from the Operator with a contractual right to receive a portion of Net Revenues.

The term **"Net Revenues"** as used in this Agreement, shall mean gross advertising revenue from the sale of national advertising time by the Operator to third parties in a given quarter, less (i) the applicable advertising agency commission fees actually paid or payable by the Operator (not to exceed fifteen percent (15%) and (ii) any sums collected for any federal, state, County and municipal taxes imposed by law upon the sale of services.

The term "**Revenue Share Pool**" is the amount of Net Revenues designated for Eligible Airports.

The term "**Infrastructure Distribution System**" shall mean the system that is necessary to provide power and connectivity (wiring, cabling, taps, conduit, et al) to distribute programming to the Locations.

The term "**Insertion Equipment**" shall mean the equipment provided by the Department which is necessary to insert its audio/video advertisements and/or promotional announcements directly into the Airport Network Media Programming Services.

The term "**Local Spots**" are designated times during the 24 hour day that may be used by the Department to sell to local advertisers or to promote the local area, the County, its concessions, community or region serviced by the Department.

The term "**Minimum Annual Guarantee" or "MAG"** shall mean as described in Sub-Article 3.01 of this Agreement.

The term **"Minimum Guarantee Payment"** shall mean as described in Sub-Article 3.01 of this Agreement.

The term "**Nonexclusive**" shall mean as described in Sub-Article 1.05 of this Agreement.

The term **"Operator"** shall mean AC Holdings, Inc.

The term "**Measured Viewing Audience**" shall be the amount determined by multiplying a fraction, the numerator of which shall be the quantity of gate Locations receiving the AMS at the Airport during a quarter, and the denominator of which shall be the total number of gates at the Airport during the same calendar quarter, by the total ticketed passengers within the Airport for the same calendar quarter.

The term **"Revenue Share Pool Payment**" shall mean the amount determined by multiplying a fraction, the numerator of which shall be the Measured Viewing Audience and the denominator of which shall be the measured viewing audience for the AMS at all Eligible airports during the same calendar quarter, by the Revenue Share Pool.

The term "**Programming**" shall mean the news, information and entertainment television programming material professionally produced and provided by Operator or any entity controlled by, under common control with or controlling Operator.

The term "**Proposal"** shall mean a Proposer's written response to RFP MDAD-04-06.

The term "**Reception Equipment**" is the satellite receiving equipment necessary to receive the Programming.

The term **"Special Programming"** is special programming coverage taken from CNN Airport Network's affiliate CNN and/or any of its affiliated networks, including scheduled Presidential debates, live press conferences, live sporting events and other programming not constituting coverage of day-to-day news.

The term **"State"** shall mean the State of Florida.

The term **"Turnover Date"** is the date which the Department notifies the Operator in writing of Location(s) that are ready for installation of Display Equipment..

The term **"Videotext"** shall mean video messages and information to Airport patrons that will appear at the bottom of the screen.

The words **"Work"**, **"Services"**, **"Program"**, **"Project"** or **"Engagement"** shall mean all requirements that shall be done by the Operator in accordance with the Scope of Services and the terms and conditions of this Agreement.

LICENSE AGREEMENT

FOR AIRPORT NETWORK MEDIA PROGRAMMING SERVICES AT MIAMI INTERNATIONAL AIRPORT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2007, by and between Miami-Dade County, Florida, a political subdivision of the State of Florida and **AC Holdings, Inc.** ("Operator"), a Georgia Corporation authorized to do business in the State of Florida.

RECITALS:

WHEREAS, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

WHEREAS, the Department desires to obtain Airport Network Media Programming Services for passengers at Miami International Airport;

WHEREAS, the County has issued Request for Proposal No. MDAD-04-06 to obtain such Program and the Operator has responded with a Proposal, both items incorporated herein by reference, providing its proposal to provide such Programming,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE 1 – TERM, EXTENSION AND LOCATIONS

1.01 TERM: The term of this Agreement is five (5) years after the Date of Execution.

1.02 EXTENSION: The County shall have at its sole discretion the option to extend this Agreement for one (1) two (2) year period.

1.03 APPROVED INSTALLATION AREAS (Locations): The Department hereby makes available to the Operator locations for the placement of Display Equipment as shown in Exhibit A.

1.04 ADMINISTRATIVE OFFICE/SUPPORT SPACE: The Department shall provide the Operator administrative/support space, at the current rental rates in place, which are subject to change, the location depicted in Exhibit A-1 "Administrative/Support Space. The Administrative/Support space is 194 square feet. The rental rate as of January 1, 2007 is $10 per square feet, plus sales tax in accordance with sub-article 3.10 taxes.

1.05 NONEXCLUSIVE: This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other

operators and/or others in other locations at the Airport during the Term or any Extension thereto of this Agreement.

1.06 ADDITION, DELETION AND RELOCATION OF LOCATIONS: The Department may add, delete, relocate or provide alternate Locations by providing to the Operator an administratively revised Exhibit A. The Department reserves the right, without limitation, at all times during the Term of this Agreement following thirty days advance written notice to the Operator, to require the addition, removal, or change of a Location. In the event the Department requires a change of Location, the Operator shall return the original Location to its original condition as it was at the Effective Date.

The Operator shall not add, remove or change the Location without the prior written approval of the Department.

1.07 CAPITAL IMPROVEMENT PROGRAM: The Capital Improvement Program (CIP) is currently underway and will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations that will not be demolished by the CIP.

1.08 REQUEST FOR PROPOSAL INCORPORATED: The Operator acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal (RFP), that was the basis for the award of this Agreement and upon which the County relied. The RFP and the Proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF THIS AGREEMENT SHALL GOVERN, FOLLOWED BY THE RFP AND THEN THE PROPOSAL.**

ARTICLE 2 – USE OF LOCATIONS

2.01 USE OF LOCATIONS:

A. Locations: The Operator shall use the Locations to place Display Equipment for the purposes of providing Airport Network Media Programming Services as depicted in Exhibit A.

There are 100 Approved Installation Areas (Locations). Currently there are 84 departure gates and 3 customs/in-transit lounges, covered by 58 fixed based display system installations at Miami International Airport.

The Airport plans to open the new South Terminal during the third quarter of 2007 with twelve (12) gate-rooms..

Planned Temporary Closures: The Airport will close North Terminal Concourse A concurrent with the opening of the South Terminal. In Concourse A there will be 10 hold rooms that will be closed for approximately two years. Passengers will depart from other terminals.

Planned Construction: It is anticipated that the final phase of the North Terminal will be completed by 2010 which will include thirteen (13) hold rooms. Additionally, there will be one in-transit lounge in Concourse D, and one in Concourse E Lobby area in the Central Terminal. The Department may designate other viewing areas upon completion of any terminal or any other airport renovations. These locations are not listed in Exhibit A. These locations will be added as described in Sub-article 1.06 of the Agreement "Addition, Deletion and Relocation of Locations".

The Operator may not operate the Locations for any other use.

B. **Administrative/Support Space:** MDAD will make available for lease administrative/support space to the Operator, under the terms set forth in Sub-Article 1.04 Administrative Office/Support space and Sub-Article 3.06 Annual Rental in Form of Agreement attached hereto.

C. **CATV Head-End Room**: The Department will make available rack space and the use of this room to the Operator. The CATV Head-end room, Exhibit C, is located in room C3134 on the third floor of the Terminal Building, Concourse C, within the Department's Information Systems Division. This room is shared between the Operator and MDAD. This room serves as the head-end for all programming on the CATV system.

The Department will also make available space for the Operator's Reception Equipment.

2.02 SCOPE OF SERVICES: The Operator shall provide, install, maintain, manage and operate a first class Airport Network Media Programming Service (AMS) throughout the Airport as required. The Operator will provide its airport customers with high quality local commercials and the ability to provide messages and informational programming to passengers.

Delivery of Service: The AMS shall be delivered to all Approved Installation Areas of the Airport seven (7) days a week on a 24-hour basis.

Display screens: The size of all monitors shall be approximately 42 inches (LCD or similar flat panel display screen).

Sound system: Shall be high quality speakers and shall include all necessary sound related components.

Audio Delivery System: The Operator shall install an audio level control computer, a key component of the audio system. In addition to the dedicated audio amplifier, each viewing area has its own computer and sensing device that will continually monitor the ambient noise level in the area and automatically adjust the program audio level up and down to keep it four to seven decibels above the noise level. The computer has several different settings to allow for the customizing of audio tracking in each viewing area.

Airport Operations: The Operator shall ensure that the AMS does not interfere with normal airport operations and that the AMS is interfaced to each gate area paging system. The page interface unit allows for the suppression of program audio during gate pages and also prevents the system from sensing a page as ambient noise and competing with it to rise above its volume level.

The AMS shall not obstruct or obscure any static advertising display, nor interfere with any operational or telecommunications requirements of the Department, air carriers, or governmental agencies at the Airport.

All Display Equipment and the volume of sound must be approved by the Department prior to installation and any alteration. The Operator shall make adjustments to the AMS as needed and/or required.

Installation and Maintenance: The Operator shall be solely responsible for the installation and maintenance of all equipment necessary to provide the AMS excluding Insertion Equipment. The Operator shall evaluate audio levels (both ambient noise and program volume) to ensure the system is tracking properly on a regular basis, and shall respond to any maintenance or repair requests in a timely manner.

The installation plan must be submitted within thirty (30) days of the Date of Execution shall include drawings, the method of installation and placement of equipment for Department approval for Locations.

Signal: The Operator shall provide its own signal from the point of origin to provide the AMS.

Content Programming: The AMS shall be in the format of continuous audio and video programming packages, with each package based on a formula for allocation of news, information and entertainment television programming material professionally produced and provided by the Operator; and approximately sixteen (16) minutes of advertising and promotional time (the advertising time), per hour. The Operator shall have the ability to interrupt the programming to go "live" to any Breaking News or Special Programming.

Live coverage may be provided for major sporting events, including selected NFL and NBA regular season and playoff games, the Super Bowl, NASCAR races, and college basketball, baseball, and football games.

The Operator must be able to broadcast live Breaking News. In times of national and international crisis, live reporting is needed to meet the public's growing demand for immediate information, allowing airport viewers to watch events as they unfold.

The Operator will not air graphic video coverage of air accidents or incidents involving damage or injury to commercial passenger aircraft or passengers, unless the incident involves a national emergency or threat to security.

MDAD Programming: MDAD shall have six (6) one (1) minute segments per hour except in hours that include Breaking News or Special Programming. The segments may be used as two (2) thirty second contiguous spots during the day (the "Local Spots") without charge. MDAD may use this "free airtime" to promote the local area, the concessions or services at the Airport or the County, for public service announcements or to sell to advertisers.

Local Insertion Capability: MDAD shall be responsible for the operation, upgrade and maintenance of the Insertion Equipment required to provide the necessary technical capabilities to allow it to utilize the Local Spots and install such Insertion Equipment so that such equipment can interface with the AMS.

MDAD shall have the capability to encode data streams into the Packages from time to time to provide textual video messages and information to Airport patrons that will appear at the bottom of the screen ("Videotext"). The Department shall have the right to insert textual passenger service messages and other public information, free of any charge for inclusion on the service, in ten (10) second intervals (unless otherwise agreed to by the Department and the Operator) in the Programming, that do not compromise the Programming or compete with or otherwise diminish the effect of paid advertising.

Service, Marketing and Other Related Researches:

The Operator may conduct oral and written surveys/polls of Airport patrons for the purposes of collecting information and other data related to the service in general and the traffic flow and viewing opportunities within each area where the equipment has been installed. These surveys/polls may be performed during the term of the Agreement, subject to the written approval of the Department's designated representative. The results of such surveys/polls shall be presented to the Department.

ARTICLE 3 - RENTALS, PAYMENTS AND REPORTS

3.01 MINIMUM ANNUAL GUARANTEE: As part of the consideration for the privileges granted to the Operator herein to engage in business at the Airport, the Operator shall pay to the County a Minimum Annual Guarantee of **One Hundred Thousand Dollars ($100,000.00) starting on the Effective Date.** This Minimum Annual

Guarantee is to be prorated and payable in equal quarterly payments in U.S. funds, on the first day of each quarter in advance and without billing or demand. All quarterly payments hereunder shall be referred to herein as the Minimum Guarantee Payment (MGP) for the term of this Agreement and any extensions thereof.

3.02 NO NEGOTIATIONS: The Operator understands and agrees, as a condition precedent to the County's consideration of the Proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**, and **Sub-Article 3.04 "Revenue Share Pool Payment"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 22.11 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term and any extension of this Agreement.

3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE:

If the Minimum Annual Guarantee (MAG) is recalculated for any airport under contract with the Operator for Eligible Airports during its term or extension of agreement, the Recalculation of the MAG of the latest airport recalculated will be used to determine the new MAG at MIA. In the event the Operator negotiates a new MAG, the method of recalculation will be the percentage change between the current and newly negotiated MAG. That newly calculated percentage rate will be used to determine MIA's new MAG.

If the airport MAG is recalculated for any other airport, then the MAG shall be recalculated as of the first day of the month immediately following the anniversary of the Effective Date and every year thereafter, except that the MAG can never be less than the MAG submitted in its proposal.

3.04 REVENUE SHARE POOL PAYMENT: The Operator shall pay the Department the greater of the MAG, or the Airport's Revenue Share Pool; whichever is greater for the preceding quarter. The Revenue Share Pool shall be calculated using the methodology used for participating Eligible Airports.

The Revenue Share Pool Payment shall be due on the fifteen (15th) Day of the month following the quarter during which the Revenue Share Pool was received.

Revenue Share Pool Payment to the Department payable on any unreported Net Revenues from the Net Revenue Pool, determined by the annual audit required pursuant to Sub-Article 3.17 "Right to Audit/Inspect", are considered as having been due on the fifteenth (15th) Day of the month following the quarter during which the unreported Net Revenue Pool were received.

3.05 CAPITAL INVESTMENT: The Operator shall submit to the Department an updated financial plan demonstrating its proposed Capital Investment for Display Equipment, Reception Units and any other associated capital costs under this Agreement in an amount not less than the amount stated in its Proposal.

3.06 ANNUAL RENTAL: The Operator shall pay rent at the prevailing terminal class rates for the lease of any Administrative Office/Support space provided by **Sub-Article 1.04**, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.15, Address for Payments**.

3.07 ADMINISTRATIVE OFFICE/SUPPORT SPACE RATE ADJUSTMENT: On October 1st of each year of the Agreement, the rental rates, pursuant to **Article 1.04, "Administrative Office/Support Space"** shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten Days of same.

3.08 PERFORMANCE BOND FOR MAG REQUIREMENTS: Within thirty (30) Days from the Date of Execution of the Agreement, the Operator shall provide the Department a Performance Bond to guarantee payment of MAG and annual rent, if any, of Administrative office or support space. Operator shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and, thereafter, until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Performance Bond shall initially be in the amount equal to seventy-five percent (75%) of the MAG provided for in **Sub-Article 3.01**, and any annual rent due for Administrative Office and Support Space provided for in **Sub-Article 3.06**, which is equal to Seventy Six Thousand Five Hundred Sixty Four Dollars and Twelve Cents ($76,564.12). Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and Rent.

The Department may draw upon such form of security instrument, if the Operator fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such

draw, Operator shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Operator is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Operator within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

3.09 PAYMENT SECURITY: The Operator shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an amount equal to twenty-five percent (25%) of the MAG amount provided in Sub-Article 3.01, and any annual rent due for Administrative Office/Support Space provided for in **Sub-Article 3.06**, which is equal to Twenty Five Thousand Five Hundred Twenty One Dollars and Thirty Eight Cents ($25,521.38). Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG and annual rent. This requirement shall be met no later than thirty (30) Days after the Date of Execution of the Agreement. The payment security shall be kept in full force throughout the Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the Operator fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Operator shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies.

3.10 TAXES: The Operator shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Operator to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, penalties and charges levied thereon. The Operator hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Operator and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Operator to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and penalties payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.11 REPORT OF REVENUE SHARE POOL: On or before the fifteenth (15th) calendar day following the end of each quarter throughout the Term and any Extension of this Agreement, the Operator shall furnish to the Department, **Exhibit I "Quarterly Report of Revenue Share Pool".** This report shall provide the Net Revenues, the Revenue Share Pool, Revenue Share Pool Payment, the calculations used to

determine those amounts, and the total amount paid to and/or owed to all Eligible Airports. The report shall be prepared and attested to by an independent, nationally-recognized accounting firm. The report shall include all information relevant for purposes of determining and explaining the Airport's Revenue Share, Pool Payment, including the amount of any payments made to other Eligible Airports.

The Operator shall certify as to the accuracy of such Net Revenues in such form mutually agreed upon the Department and the Operator. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Operator.

Failure to comply within fifteenth (15) Days following the due date of the report shall result in a late fee penalty of fifty dollars ($50.00) per Day, as provided in **Sub-Article 3.21 "Penalties"**.

3.12 OTHER REPORTS: The Operator shall provide the Department with quarterly reports reflecting financial data and operating statistics of its operation in a format and frequency mutually agreed upon by the Department and the Operator.

3.13 LATE PAYMENT: In the event the Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.

3.14 DISHONORED CHECK OR DRAFT: In the event the Operator delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Operator shall incur and pay a service fee of TWENTY-FIVE DOLLARS ($25.00), if the face value of the dishonored check or draft is fifty dollars ($50.00) or less, THIRTY DOLLARS ($30.00) if the face value of the dishonored check or draft is more than fifty dollars ($50.00) and less than three hundred dollars ($300.00), or FORTY DOLLARS ($40.00), if the face value of the dishonored check is three hundred dollars ($300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus penalties imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

3.15 ADDRESS FOR PAYMENTS: The Operator shall pay all monies payable and identify the Agreement for which payment is made, as required by this Agreement, to the following:

In Person: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300
Miami, Florida 33122

During normal business hours, 8:00 A.M. to 5:00 P.M., Monday through Friday

By Mail: Miami-Dade Aviation Department
Finance Division
P.O. Box 526624
Miami, FL 33152-6624

By Express Mail: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300
Miami, Florida 33122

By Wire Transfer: In accordance with Wire Transfer instructions provided by MDAD's Finance Division, 305-876-7383.

3.16 ANNUAL AUDIT: Within one hundred and twenty (120) Days of the beginning of each calendar year following the Effective Date of this Agreement and within one hundred twenty (120) Days following expiration or earlier termination of this Agreement, the Operator shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report , as detailed in **Exhibit G "Independent Auditor Report** summarizing the Operator's quarterly Net Revenues, the Revenue Share Pool, Revenue Share Pool Payment, the calculations used to determine those amounts, and the total amount paid to and/or owed to all Eligible Airports, including the Airport for the preceding year. The report shall be prepared and attested to by an independent, nationally-recognized accounting firm. This report shall be prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

3.17 RIGHT TO AUDIT/INSPECT: The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Operator may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Operator for recording or compiling Net Revenues information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be

determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give advance notice to the Operator.

If it is established that the percentage fees have been underpaid to the Department, the Operator shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.13 "Late Payment"** from the date such amount or amounts should have been paid.

Further, if such examination establishes that Operator has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Operator.

In the event of any conflict between any provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Operator shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

3.18 RECORDS AND REPORTS: The Operator shall, at all times during the Term of this Agreement, or any Extension hereof, and in accordance with applicable law, maintain at the Operator's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations, in a form consistent with good accounting practice. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Operator shall account for all revenues related to transactions in connection with this Agreement in a manner which supports the amounts reported to the Department in the Operator's quarterly schedules. At a minimum, the Operator's accounting for such receipts shall include the following:

1. Operator's bank account statements;
2. A report showing all Net Revenues, Revenues Share Pool listing Eligible Airports, Revenue Share Pool Payment calculations, and totaled payments for each Eligible Airport by month. The quarterly total shall correspond with the amounts reported to the Department on the Operator's "Quarterly Report of Net Revenues"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the

Operator's Net Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Operator's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined.

3.19 ADDITIONAL FEES DUE: If the Department has paid any sum or has incurred any obligation or expense for which the Operator agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Operator to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

3.20 UTILITIES: The cost of all utilities used or consumed on the Locations shall be provided by the Department.

The cost of all utilities used or consumed in the administrative office/support space shall be borne by the Operator. If the administrative/support space is not provided with a separate electric, the Operator agrees to pay for such utility as a monthly charge, plus any applicable taxes, upon billing by the Department, or utilities company. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Operator on actual usage measured by temporary meter, arranged and paid for by the Operator. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Operator hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Operator shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

Utilities including electric and telecommunications, as necessary, must be pulled by the Operator from the nearest junction box in accordance with MDAD requirements.

3.21 PENALTIES: If Operator does not perform under any of the covenants or terms and conditions of this Agreement, the Department may elect to impose the financial penalties described below, as a result of the violation(s), on a daily basis, in addition to any other penalties permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation	Fee (Per Occurrence)
Failure to complete installation of the Locations Within one hundred twenty (120) days after the Turnover Date.	$ 50 per Day/per Location
Violation of Permitted Use of a Location	$100 per Day/per Location
Failure to Maintain Required Hours of Operation	$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	$ 50 per Day/per Location
Failure to Install Timely within 60 days of receipt of the permit for technical approval of the plans for locations turned over for installation	$ 25 per Day/per Location
Violations of other terms and conditions	$ 75 per Day/per Location

If a violation occurs, the Department shall notify the operator in writing to cure the violation within fourteen (14) days of receipt of notice. If the violation is not cured within the fourteen (14) days, penalties will be assessed.

The foregoing is due and payable from the Operator. The parties agree that the exact monetary value of said damages caused by the Operator's failure to perform may be difficult and/or impractical to determine; therefore the Operator agrees that the above stated sums represent fair and reasonable estimates of such monetary value of such damages.

ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

4.01 IMPROVEMENTS TO LOCATIONS: The Operator shall be solely responsible for signal distribution cabling from the taps on the Infrastructure Distribution System to the Display Equipment necessary to provide Airport Network Media Programming Services, all of which shall be at Operator's expense, and in accordance with plans approved by the Department. All installations shall be designed to comply with the Americans with Disabilities Act (ADA), and all other applicable codes including but not limited to the South Florida Building Code and the NFPA Life Safety Code.

4.02 REPLACEMENT OF DISPLAYS BY OPERATOR: The Department by notice **pursuant to Sub-article 18.06 of this agreement** may require the Operator to replace inoperable Display Equipment. If the Department does require a replacement of Display Equipment, then the Operator shall make this replacement within 48 hours of the notice.

4.03 IMPROVEMENTS FREE AND CLEAR: The improvements made by the Operator, from the electrical/cable outlets (taps) outward to the Display Equipment, upon completion, shall become the property of the Operator. The Operator agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work

and labor to be performed shall be in writing and shall contain provisions to protect the Department from the claims of any laborers, subcontractors or material men against the locations or improvements.

4.04 OTHER REQUIREMENTS: The Operator shall apply for and obtain a building permit(s) from the County for all appropriate inspections. Within thirty (30) calendar days following the completion of installation of the improvements, the Operator shall furnish to the Department copies of all releases of Operator claims.

4.05 REVIEW OF INSTALLATION: During the design and installation process, the Department and Operator shall appoint a project manager. The project manager shall coordinate the rights and responsibilities of the Department and Operator hereunder. During such processes, all written notices required hereunder shall be submitted to the project manager as well as to the parties designated elsewhere herein. The Department's project manager shall coordinate the design review process with Operator's project manager. During installation, the Department's project manager (or his or her designee) shall have the right to inspect the progress of installation at any time and from time to time, but the Department's project manager shall not be permitted to order the Operator's contractor to make changes to the work. The Department agrees that all comments regarding the work shall be delivered to Operator's project manager.

4.06 INSTALLATION FEE: The Operator shall be responsible for the payment of all permit fees required by the County's Building Department, Department of Planning and Zoning, and any other Department for which a permit(s) must be issued for the design, demolition, installation, operation or maintenance of the Display Equipment.

4.07 CONSTRUCTION SERVICES: The Operator shall provide at a minimum, but not limited to, the following design and construction services:

1) Operator Improvements

Pursuant to the terms of this Agreement, the Operator shall construct or cause to be constructed certain improvements. The Department shall provide the Operator with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Operator and the Department, the Operator shall provide the Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Operator have mutually agreed on the scope of the improvements and the preliminary estimates, the Operator shall proceed to design and construct the improvements in accordance with the provisions of this Agreement.

2) Design and Construction Coordination

a. <u>Operator shall:</u>

1. Be responsible for construction management and coordination of all improvements to the Locations and authorized Administrative and Support space.

2. Coordinate meetings with MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Location as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Operator development requirement, whereby such elements are the designated responsibility of the Operator, if so implemented.

3) Construction

Operator shall:

1. Attend pre-construction meetings, construction meetings, monitor schedule, and coordinate locations development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.
6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for all Locations.

11. Organize and have available upon request completed project files.
12. Coordinate access to the Location to allow staff training and equipment testing.
13. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

ARTICLE 5 – STANDARDS OF OPERATION

5.01 STANDARDS OF OPERATION: The Operator shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA Terminal Standards" available on **www.miami-airport.com,** and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which the Operator agrees to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Operator. The Department shall provide the Operator with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Operator shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Operator shall immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

The Operator acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Locations at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to Exhibit L "Standards of Operation", as may be amended from time to time.

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

Department's Obligation: The Department shall clean, maintain and operate in good condition the terminal building. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Operator, and further provided that the Operator shall reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Operator, its officers, partners, employees, agents, contractors, subcontractors, licensees, or invitees. The Operator shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

A. The Operator must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Locations.

B. Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department.

C. No Other Obligation of Department: The Operator acknowledges that the Department has made no representations or warranties concerning the suitability of the Locations for the Operator's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Operator.

1. The Operator hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs

of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.

2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Operator by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.
3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Operator under or in connection with this Agreement.
4. The Department shall not be liable to the Operator for any loss of business or damages sustained by the Operator as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7 – EQUIPMENT

7.01 EQUIPMENT: Any equipment installed in the Locations by the Operator shall be consistent with **Exhibit E, "Design Retail Guidelines"**, keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, shall be removed from the Locations within ninety (90) Days following the expiration or earlier termination of this Agreement.

7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS: The Operator will be responsible, at its cost, for ensuring that the Locations and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities' locations. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Operator will be the same. However, the Department reserves the right to require the Operator to modify its operations or its physical locations to comply with the Department's ADA obligations with respect to the Locations, as the Department in its sole discretion deems reasonably necessary.

7.03 DISPOSAL OF EQUIPMENT: At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12 "Default and Termination by County"** or **Article 13 "Claims and Termination by Operator"** hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment installed in the Locations by the Operator:

(A) Require the Operator to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within ninety (90) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 "Improvements to Locations"**; or

(B) Retain any portion of the equipment of the Operator (personal property as referred to in **Sub-Article 4.01 "Improvements to Locations"**) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g. brand names owned by or licensed or franchised to Operator).

ARTICLE 8 – MAINTENANCE

8.01 MAINTENANCE AND REPAIR OF DISPLAY EQUIPMENT: The maintenance and repair of Display Equipment **shall** be the sole responsibility of the Operator, at its sole cost. The Operator shall provide all personnel necessary to perform these functions and address all customer complaints and inquiries, if any, during the term of this Agreement. Any problems concerning the service that comes to the attention of the County, such as any problems with the Display Equipment or customer inquiries or complaints, shall be directed to the Operator's designated local representative or communicated to the Operator as stated in this Agreement.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 NO ASSIGNMENT: The Operator shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Operator allow others to use the Locations, without the prior written consent of the Department.

9.02 OWNERSHIP OF THE OPERATOR: Since the ownership, control, and experience of the Operator were material considerations to the County in the award of this Agreement, the Operator shall take no actions which shall serve to transfer or, sell majority ownership or control of the Operator without the prior written consent of the Department.

9.03 CHANGE OF CONTROL: If Operator is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Operator to result in a change of control of Operator shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**. If the Operator is a partnership, transfer of any interest in the partnership, which results in a change in control of such Operator, shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership".**

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF OPERATOR: The Operator shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Operator or its employees, agents, servants, partners, principles or any other persons. The Operator shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

The Operator expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Operator shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF OPERATOR: Within thirty (30) days after the Date of Execution, the Operator shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33152-5504 for approval. All insurance shall be maintained throughout the Term and any Extension of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Operator's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Operator must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

A. Workers' Compensation as required by Chapter 440, Florida Statutes.

B. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Operator in the performances of this Agreement.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Operator allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the MDAD Risk Management Office.

11.02 CERTIFICATE OF CONTINUITY: The Operator shall be responsible for assuring that the insurance certificates required in conjunction with **Article 11 "Insurance"** remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the Term of the Agreement, the Operator shall be responsible for submitting new or renewed insurance certificates for its operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

Certificates will show that no modification or change in insurance shall be made without thirty (30) Days written advance notice to the certificate holder.

11.03 INSURANCE COMPANY RATING REQUIREMENTS: All insurance policies required above from the Operator shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

11.04 CANCELLATION OF INSURANCE OR BONDS: Cancellation of any insurance or bonds, or non-payment by the Operator of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.

11.05 RIGHT TO EXAMINE: The Department reserves the right, upon reasonable notice and at the County's sole cost and expense, to examine the original policies of insurance of the Operator (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Operator agrees to permit such inspection at the offices of the Operator. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Operator

agrees to provide copies to the Department, at the Operator's sole cost and expense.

11.06 PERSONAL PROPERTY: Any personal property of the Operator, or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Operator or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

11.07 SURVIVAL OF PROVISIONS: The provisions of **Article 11 "Insurance"** shall survive the expiration or earlier termination of this Agreement.

ARTICLE 12 – DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT: A default shall mean a breach of this Agreement by the Operator (an "Event of Default"). In addition to those defaults defined in **Sub-Article 12.02 "Payment Default", Sub-Article 12.03 "Other Defaults**", and **Sub-Article 12.04 "Habitual Default"**, an Event of Default, may also include one (1) or more of the following occurrences:

(A) The Operator has violated the terms and conditions of this Agreement;

(B) The Operator has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the installation, operation, or maintenance of the Services;

(C) The Operator has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Operator's creditors, or the Operator has taken advantage of any insolvency statute or debtor/creditor law, or the Operator's affairs have been put in the hands of a receiver;

(D) The occurrence of any act, which operates to deprive the County of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;

(E) Abandonment or discontinuance of operations by Operator of its business by any act(s) of Operator;

(F) Any persistent violation on the part of Operator, its agents or employees of the traffic rules and regulations of the County at Airport or disregard of the safety of persons using the Airport, upon failure by Operator to correct the same;

(G) Failure on the part of Operator to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Operator being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;

(H) Failure by Operator to maintain its other equipment in a manner satisfactory to the Department;

(I) The Operator has failed to obtain the approval of the Department where required by this Agreement;

(J) The Operator has failed to provide adequate assurances as required under **Sub-Article 12.09 "Adequate Assurances";**

(K) The Operator has failed to comply with any provision of **Sub-Article A "Airport Concessions Disadvantaged Business Enterprise Participation Plan";**

(L) The Operator has failed in a representation or warranty stated herein; or

(M) The Operator has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

12.02 PAYMENT DEFAULT: Failure of the Operator to make MAG payments or Revenue Pool Payments whichever is greater, and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the Department may, at its option, terminate this Agreement after five (5) Days notice in writing to the Operator.

12.03 OTHER DEFAULTS: The Director shall have the right, upon thirty (30) Days written notice to the Operator to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period may be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) Days after such written notice the Operator commences to cure such default and thereafter diligently and continuously continues to cure such default:

(A) Failure of the Operator to comply with covenants of this Agreement other than those that constitute default pursuant to **Sub-Article 12.02 "Payment Default"**.

(B) Any Event of Default.

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Operator has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Operator, regardless of whether the Operator has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Operator may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Operator a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Operator that there shall be no further notice or grace

periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Director may terminate this Agreement upon the giving of written notice of termination to the Operator, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Operator shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Operator shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.10 "Actions at Termination"** hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE: If an Event of Default occurs, the Director shall notify the Operator by sending a written notice of default, specifying the basis for such Event of Default, and advising the Operator that such default must be cured immediately or this Agreement with the Department may be terminated. The Operator can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Operator's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Operator has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) Day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Operator shall discontinue the services.

12.06 UNAMORTIZED INVESTMENT EXTINGUISHED: Termination of this Agreement based upon **Sub-Article 12.07 "Termination for Abandonment", Sub-Article 12.02 "Payment Default", Sub-Article 12.03 "Other Defaults", Sub-Article 12.04 "Habitual Default",** or **Sub-Article 12.08 "Termination for Cause"**, shall extinguish any unamortized investment amounts owed the Operator by the Department.

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Operator of the Locations or the voluntary discontinuance of Operator's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Operator from providing services on the Locations for the purposes authorized in **Article 2 "Use of Locations"**.

12.08 TERMINATION FOR CAUSE: The County may terminate this Agreement, effective immediately if: (i) the Operator attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Operator is convicted of a felony during the Term or any Extensions thereof if applicable. The County may, as a further

sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Operator may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

12.09 ADEQUATE ASSURANCES: When, in the opinion of the Department, reasonable grounds for uncertainty exist with respect to the Operator's ability to perform the work or any portion thereof, the Department may request that the Operator, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Operator's ability to perform in accordance with terms of this Agreement. In the event that the Operator fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

12.10 ACTIONS AT TERMINATION: The Operator shall, upon receipt of such notice to terminate, and as directed by the Department:

(A) Stop all work as specified in the notice to terminate;

(B) Take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property; and

(C) Vacate, quit and surrender, all Locations and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County, on or before the date of termination.

ARTICLE 13 - CLAIMS AND TERMINATION BY OPERATOR

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Operator has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will

mail or otherwise furnish a written copy of the decision to the Operator at the address furnished in **Sub-Article 18.06 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Operator mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Operator's receipt of such decision, the Operator files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Operator shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Operator shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the Operator to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

13.02 TERMINATION: The Operator shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

(A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.

(B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Operator of the existence of such breach.

(C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Operator's provision of services for a period of one hundred eighty (180) Days.

ARTICLE 14
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES

The Operator shall maintain the ACDBE Participation, if any, as stated in the proposal submitted by the Operator and in accordance with the Code of Federal Regulations.

ARTICLE 15 - RULES, REGULATIONS AND PERMITS

15.01 RULES AND REGULATIONS: The Operator shall comply with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued there under by the Department, all additional laws, statutes, ordinances, regulations and rules of the federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Operator agrees to pay, on behalf of the County, any penalty, assessment or fine issued against the County, or the Department to defend in the name of the County 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 substantial part upon a claim or allegation that the Operator, its agents, employees, invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith.

15.03 PERMITS AND LICENSES: The Operator shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services.

ARTICLE 16 – GOVERNING LAW

16.01 GOVERNING LAW - VENUE: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION: In the event that the County or the Operator commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Operator agree to waive the procedures for initial service of process mandated by Chapters 48 and 83 of the Florida Statues, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Operator agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Operator has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Operator, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of state in accordance with Chapters 48 and 607 of the Florida Statues.

ARTICLE 17 – TRUST AGREEMENT

17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15th day of December, 2002, as amended from time to time, by and between the County and JP Morgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Operator at the offices of the Department during normal working hours.

17.02 ADJUSTMENT OF TERMS AND CONDITIONS: If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the MAG, fees and charges required to be paid hereunder to the Department by the Operator or by other Operators under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Operator and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Operator.

17.03 INSPECTIONS: The authorized employees and representatives of the County and of any applicable federal or state agency having jurisdiction hereof shall have the right of access to the Locations and any storage/support spaces at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the County to inspect and shall impart no liability on the County should it not make such inspection(s).

17.04 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW: According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total

contract amount. The audit cost will be deducted by the Department from payments from the Operator. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under $1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Department contracts including, but not limited to, those contracts specifically exempted above.

ARTICLE 18 – OTHER PROVISIONS

18.01 RIGHTS TO BE EXERCISED BY DEPARTMENT: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

18.02 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed that the Department, upon written notice to the Operator, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.06 "Addition, Deletion and Relocation of Locations", Sub-Article, 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify".**

18.03 RIGHTS OF DEPARTMENT AT AIRPORT: The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Operator for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County its employees, or agents.

18.04 OTHER DEPARTMENT RIGHTS: The Operator shall be liable for any physical damage caused to the Locations by the Operator, its employees, agents, contractors, subcontractors, suppliers. The liability shall encompass: (i) the Operator's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the

physical damage caused by the Operator and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.

18.05 FEDERAL SUBORDINATION: This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

18.06 NOTICES: Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail, Return Receipt Requested, to:

To the County:

(Mailing Address)

Director
Miami-Dade Aviation Department
Post Office Box 025504
Miami, Florida 33102-5504

Or (physical address):

Miami International Airport
Terminal Building
Director's Office
Concourse E-5th floor
Miami, FL 33122

To the Operator:
AC Holdings, Inc.
Attention: Senior Vice President
One CNN Center, SE07
Atlanta, GA 30303-2762

With copies to:
Turner Broadcasting System, Inc.
Attention: General Counsel
One CNN Center, 13 North
Atlanta, GA 30303-2762

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

18.07 SEVERABILITY: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.

18.08 RIGHTS RESERVED TO DEPARTMENT: All rights not specifically granted to the Operator by this Agreement are reserved to the Department.

18.09 COUNTY LIEN: The County shall have a lien upon all personal property of the Operator in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.

18.10 AUTHORIZED USES ONLY: The Operator shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Operator under this Agreement.

18.11 NO WAIVER: There shall be no waiver of the right of the Department to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Operator unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Operator.

18.12 AIRPORT SECURITY PROGRAM: Operator agrees to observe all federal, state and local laws, rules and security requirements applicable to Operator's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations. Operator agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County or the Department, and to take such steps as may be necessary or directed by County or the Department to insure that employees, invitees and guests observe these requirements. If required by the Department, Operator shall conduct background checks of its employees in accordance with applicable federal, state or local laws. The Department shall have the right to require the removal or replacement of any employee of Operator

at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Operator, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Operator agrees to pay to County all such costs and expenses, including all costs of any administrative proceedings, court costs, and attorneys' fees and costs incurred by County in enforcing this provision. Operator further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Operator fails to remedy any such deficiency, County may do so at the cost and expense of Operator. Operator acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

18.13 INTENT OF AGREEMENT: This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

18.14 MODIFICATIONS: This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.02 "Administrative Modifications", Sub-Article 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

18.15 RADON DISCLOSURE: In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **"Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."**

18.16 TRADEMARKS AND LICENSES: The Department may, from time to time, authorize the Operator as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Operator and the Department, on behalf of the Department granting the Operator the right, license and privilege to use a

specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

18.17 HEADINGS: The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

18.18 BINDING EFFECT: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

18.19 GOVERNMENTAL DEPARTMENT: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.

18.20 INDEPENDENT CONTRACTOR: The Operator shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Operator in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Operator under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Operator represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Operator to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.

18.21 OTHER LIENS: Operator shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Operator shall not permit or suffer any liens, including mechanics'; material men's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Operator may in good faith contest any such lien if Operator provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Operator further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Operator shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established

against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Operator or as a consequence of the existence of Operator's interest under this Agreement.

ARTICLE 19 – NOT APPLICABLE

ARTICLE 20 - WAIVER OF CLAIMS

The Operator hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Operator hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Locations available to the Operator or by reason of any defects or deficiencies in the Locations or in the terminal building including any defect or deficiency in the Locations or in the terminal building which substantially impedes the Operator's ability to provide Services or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Operator hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY: This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

21.02 RIGHT TO AMEND: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Operator hereby consents to any and all such modifications and changes as may be reasonably required.

21.03 OPERATOR COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:`

1. Operator on behalf of itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Operator shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Operator shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Operator authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Operator shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Operator shall furnish the original or a true copy of such agreement to Department.

2. Operator will provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish this information, Operator shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and

hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

4. Operator assures County that no person shall be excluded on the grounds or race, creed, color, national origin or gender from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Operator also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.

5. Operator further assures County that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Operator also assures County that it will require its contractors to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Operator's services hereunder.

6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or gender in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

   b) Operator agrees to include the above statements in any subsequent agreements that it enters and cause those businesses to similarly include the statements in further agreements.

7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Operator agrees that it will adopt such requirements as part of this Agreement.

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Term and any Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not

preclude Operator from contesting said rulings or opinions, but the Operator shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS: The Operator agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Operator and delivery to the Department of an election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System.

21.06 REMEDIES: All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

21.07 NOT USED.

21.08 REGULATIONS OF DEPARTMENT: The rights and privileges granted to the Operator hereunder and the occupancy and use by the Operator shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

21.09 INTEREST: Any sums payable to the Department by the Operator under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

21.10 MISCELLANEOUS PROVISIONS: The Operator and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Operator or to its services or operations hereunder.

1. The Operator shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Operator to provide its services

hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Operator's property, on its services, on its Net Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Operator herein, on the Locations and on any and all equipment installed on the Locations and the Operator shall make and file all applications, reports, and returns required in connection therewith.

2. The Operator agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Operator or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.

3. The Operator is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Operator or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Operator.

4 The County shall have the right during the Operator's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Operator located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.

5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

6. Time is expressed to be the essence of this Agreement.

7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contain herein.

9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.

10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

21.11 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Operator, embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

21.12 MOST FAVORED NATIONS: If the Operator offers a programming service to other Eligible Airports located in the United States, the Operator shall offer such services to the Airport.

21.13 ENTIRE AGREEMENT: This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Operator hereby affirms the completeness and accuracy of the information provided by Operator to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Operator to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

OPERATOR

AC Holdings, Inc.
dba/Georgia AC Holdings, Inc.

By: _____
Deborah L. Cooper, Senior Vice President, and General Manager

ATTEST:

_____
Seal)

Robert Sauban, Vice President

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____ _____
County Manager Date

Approved for Form

and Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____ _____
Deputy Clerk Date

Resolution No.: _____

Date: _____