Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2008

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

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

From: George M. Burgess
County Manager

Subject: Award of License Agreement for Non-Exclusive Wireless High Fidelity (WI-FI) System Provider at Miami International Airport (MIA), RFP No. MDAD-01-06

Recommendation

It is recommended that the Board approve the award of a Non-Exclusive License Agreement (Agreement) to Electronic Media Systems, Inc. (EMS), to design, supply, install, operate, and maintain internet service provider connectivity to Miami International Airport (MIA) users via MIA's wireless network infrastructure, and authorize the Mayor or designee to execute the Agreement, attached hereto, and exercise any renewal, termination or cancellation provisions therein.

Scope

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

Delegated Authority

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the subject agreement, the Director or designee has the authority to exercise the option to extend and terminate the agreement.

Fiscal Impact/Funding Source

The County shall be paid a monthly fee consisting of sixty-five percent (65%) of the gross revenues for the month. The County shall also be paid fifty percent (50%) of all advertising revenues obtained from title and/or presenting sponsors and any other related advertising revenues. Passengers will be charged $6.95 for 24 hours of access or $19.95 per month.

Track Record/Monitor

Although Electronic Media Systems, Inc., does not have any direct contracts with the County, EMS does have a contract with H.I. Development, the firm which manages the MIA Hotel for the Miami-Dade Aviation Department (MDAD). Under that contract, the track record for EMS has been satisfactory according to MDAD Commercial Operations Manager Patricia Ryan, who monitors the hotel management contract.

Compliance Data

There is no history of violations for this firm in the Department of Small Business Development's (SBD) database.

Background

The Non-Exclusive Wireless High Fidelity (WI-FI) System Provider at MIA RFP No. MDAD-01-06 was advertised with an issue date of November 1, 2006, for qualified firms to design, supply, install, operate, and maintain internet service provider connectivity to Miami International Airport users via MIA's wireless network infrastructure.

The MIA Wireless Data System (MWDS) is designed for the primary purpose of providing wireless Local Area Network (LAN) service to MIA patrons, tenants and MDAD. The operator shall also be capable of providing internet connectivity utilizing the MWDS to serve customers using existing wireless devices, as well as any emerging wireless technologies.

Responses were received from the following firms:

ARINC Inc.
Concourse Communications Miami LLC
T-Mobile USA, Inc.
Electronic Media Systems, Inc.

The Selection Committee met and reviewed three (3) of the (4) proposals submitted. The firm, Concourse Communications Miami, LLC was deemed non-responsive by the County Attorney's Office on February 12, 2007, because the proposal was submitted by officers of the firm named Concourse Communications Group, LLC and it was stated in their proposal that a new firm named Concourse Miami, which does not currently exist, would be formed "upon successful award," which would not comply with the RFP's minimum qualifications. Upon a supplemental review, the non-responsiveness decision was upheld on March 9, 2007.

The Selection Committee also heard presentations from the submitting firms, and made a recommendation in accordance with the requirements of the RFP. The Selection Committee recommended award to Electronic Media Systems, Inc.

PROJECT:	Non-Exclusive Wireless High Fidelity (WI-FI) System Provider at Miami International Airport
PROJECT NO.	RFP No. MDAD-01-06
PROJECT LOCATION:	Miami International Airport
COMPANY NAME:	Electronic Media Systems, Inc.
TERM OF AGREEMENT:	Five (5) years
OPTION(S) TO RENEW:	At the sole discretion of the County, the initial five (5) year Term may be extended for one (1) two (2) year term provided the extension is mutually agreed to by the County and the Operator in writing.
CONTRACT MEASURES:	Airport Concession Disadvantaged Business Enterprise (ACDBE) participation was voluntary for this project.

	ACDBE firms: The Himmer Group, LLC - Fifteen percent (15%) KMG Worldwide PR, LLC – Five percent (5%)
HOW LONG IN BUSINESS:	18 Years
COMPANY PRINCIPALS:	H. Scott Phillips, President and CEO Sarah J. Phillips, Secretary
GENDER, ETHNICITY & OWNERSHIP BREAKDOWN:	H. Scott Phillips - Male Caucasian - 100% of Stock
COMPANY LOCATION:	10460 N.W. 46th Street Miami, Florida 33178
PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:	None
ADVERTISEMENT DATE:	November 1, 2006
LIVING WAGE:	Not Applicable
USING DEPARTMENT:	Miami-Dade Aviation Department

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: May 6, 2008

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

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

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)(D)
5-6-08

RESOLUTION NO. _____

RESOLUTION AWARDING A NON-EXCLUSIVE LICENSE AGREEMENT FOR WIRELESS HIGH FIDELITY (WI-FI) SYSEM PROVIDER AT MIAMI INTERNATIONAL AIRPORT, RFP NO. MDAD 01-06, TO OPERATOR, ELECTRONIC MEDIA SYSTEMS, INC. (EMS); AUTHORIZING MAYOR OR HIS DESIGNEE TO EXECUTE AGREEMENT AND TO EXERCISE ANY RENEWAL OR TERMINATION PROVISIONS CONTAINED THEREIN

WHEREAS, the 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 to Electronic Media Systems, Inc., (EMS), a non-exclusive License Agreement for Wireless High Fidelity (WI-FI) System Provider at Miami International Airport, RFP No. MDAD 01-06 for a five (5) year term with one (1) option to extend the term for two (2) years, upon mutual agreement of the parties, for Miami-Dade County to be paid a monthly fee consisting of sixty-five percent (65%) of the gross revenues for the month and also be paid fifty percent (50%) of all advertising revenues obtained from title and/or presenting sponsors and any other related advertising revenues, all as set forth in the accompanying memorandum from the County Manager; this Board authorizes the Mayor or designee to execute the contract between Miami-Dade County and Electronic Media Systems, Inc., (EMS), in substantially the form attached hereto; and authorizes the Mayor or designee to exercise any renewal, termination or cancellation provisions 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 6th day of May, 2008. 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.

Oren Rosenthal

LICENSE AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

ELECTRONIC MEDIA SYSTEMS, INC.

OPERATOR

FOR WIRELESS HIGH FIDELITY (WI-FI) SYSTEM PROVIDER

AT

MIAMI INTERNATIONAL AIRPORT

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DEFINITIONS

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

The term "**Advertising Revenues**" shall mean revenues generated by the Operator from title and presentation sponsors and any other related advertising revenues.

The term **"Airport"** shall mean Miami International Airport.

The term **"Airport Concession Disadvantaged Business Enterprises" or "ACDBE"** shall have the meaning ascribed in Article 14 entitled "Airport Concession Disadvantaged Business Enterprises".

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

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 terms "**Day**" and "**Days**" shall mean calendar days, unless specifically stated otherwise.

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 **"Effective Date"** shall mean the date of execution by the County Manager and the attestations by the Clerk of the Board.

The term **"Extension"** shall mean the addition of one (1) separate two (2) year term following the Term.

The term **"FAA"** shall mean the Federal Aviation Administration, and any successor agency, office or department thereto.

The term **"Gross Revenues",** as used in this License Agreement, shall mean all monies paid or payable to and consideration of determinable value received by the Operator in operation under the License Agreement except for Advertising Revenues as defined above, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term "Gross Revenues" shall not include: (i) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (ii) promotional discount and coupon offers issued to customers as a result of a Departmental

approved marketing plan, or (iii) any sums collected for any federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services.

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

The term "**Nonexclusivity**" shall mean as ascribed in Sub-Article 1.03 of this License Agreement.

The term **"Operator"** shall mean the person, firm, or entity that enters into this License Agreement with the County.

The term "**Percentage Fee**" shall mean the payment made by the Operator to the Department as consideration for the privilege to engage in business at Miami International Airport to operate a WI-FI system.

The term "**Proposal"** shall mean a Proposer's written response to RFP MDAD-01-06.

The term **"Request for Proposal" or "RFP"** shall mean RFP No. MDAD-01-06 and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The terms "**Services**", "**Work**", "**Program**", "**Project**" or "**Engagement**" shall mean all matters and things that shall be done by the Operator in accordance with Article 2 "Scope of Services" and the terms and conditions of this License Agreement.

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

The term **"TSA"** shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term **"Term"** shall mean as ascribed in Article 1.01.

FORM OF LICENSE AGREEMENT FOR A NON-EXCLUSIVE OPERATOR FOR WIRELESS HIGH FIDELITY (WI-FI) SYSTEM PROVIDER AT MIAMI INTERNATIONAL AIRPORT

THIS LICENSE 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 Electronic Media Systems, Inc., ("Operator"), a Florida 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 create a public WI-FI System for the enjoyment of the airline passengers and Airport patrons of Miami International Airport; and

WHEREAS, the public WI-FI System will enhance the level of customer service and conveniences of airline passengers and Airport patrons, as further described herein; and

WHEREAS, Request for Proposals, RFP No. MDAD-01-06 was issued by the County and in response to the Request for Proposals, the County received a Proposal from the Operator; and,

WHEREAS, the Operator agrees to provide the Services as stated in Article 2.0, the Request for Proposals and the Proposal;

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

ARTICLE 1 – TERM

1.01 TERM: The County hereby grants a License Agreement to the Operator for a Term of five (5) years which commences thirty (30) days after the execution of the License Agreement by both parties, and expires at 11:59 P.M. on the last day of the fifth (5) year thereafter. Notwithstanding the above, the Term may be extended by the County for unforeseen delays.

1.02 EXTENSION: At the sole discretion of the County, the initial five (5) year Term may be extended for one (1) two (2) year term provided the extension is mutually agreed to by the County and the Operator in writing. In the event the County elects to extend the Agreement, the Operator shall be notified, in writing, no less than three hundred and sixty-five (365) Days prior to the expiration of the Term. The Operator may elect not to agree

to the extension, and, if so, must notify the Department thirty (30) days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

In the event the Operator is in default, pursuant to Article 12 "Default and Termination by County" of the License Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

1.03 NONEXCLUSIVITY: This License Agreement is nonexclusive in character and in no way prevents the Department from entering into a License Agreement with any other parties for the sale or offering of similar or 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 License Agreement.

1.04 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 License Agreement and upon which the County relied. The RFP and the proposal are incorporated into this License Agreement. In the event there are any conflicts between **this License Agreement and the RFP including any Addenda or the Proposal, the terms of this License Agreement shall govern.**

ARTICLE 2 – SCOPE OF SERVICE

2.01 SCOPE OF SERVICE: The Operator shall design, supply, install, operate, and maintain the public WI-FI System portal for the Miami International Airport facility. The System does not include WI-FI coverage or any other services to areas outside the Terminals except as may be approved in writing and by the mutual consent of both by parties.

2.02 USER INTERFACE PORTAL: The Operator will design, install and maintain a user interface portal for the existing gateway, which will include the following minimum user options:

- Splash page in multiple languages (English and Spanish)
- Branding as MIA's public WI-FI network
- Promotion of MIA products and services (e.g. airline listings; flight information; concessions directory; lost and found; parking rates; airport web site link)
- Authentication / Internet access option(s) including:
  - Direct bill to credit/debit cards
  - Roaming partner: Licenses/access/utilization/billable/receivables

2.03 BACK-OFFICE: Operator will install and manage all local and/or remote backend systems as required to support all billing functions associated with the system. Operator will be responsible for all costs, including transaction and credit card processing fees, and customer refund requests. The Department will not be involved in any phase of this billing process.

2.04 CUSTOMER SUPPORT: The Operator will provide a live support center on a 24-hour / 7 days a week / 365 days a year to assist customers requiring technical support and all billing inquiries. The Operator is responsible for all costs associated with the support function including:

1. Respond to customer/passenger complaints within twenty-four (24) hours.
2. Ensure customer service program and compliance.

The Operator will accept trouble tickets or similar reports from the Department's Help Desk, customer service department or information desk and provide closeout detail or projected closure.

2.05 SYSTEM MARKETING AND OBTAINING ADVERTISING REVENUE: The Operator will market the WI-FI network to maximize usage and revenues. A marketing plan shall be submitted to the Department at the commencement of the License Agreement and thereafter ninety (90) days prior to each fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) days after receipt of the plan to approve or disapprove the same in its discretion. If MDAD disapproves the plan, the Operator shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time. The Department reserves the right to request at any time any further submission of plans and may assist the Operator in the marketing effort at its discretion.

The Operator shall continuously seek to obtain advertising revenues from title and/or presenting sponsors and any other related advertising revenues. Prior to acceptance by the Operator of any advertising contracts, the Department shall approve all such advertising, its layout and content in writing.

2.06 SYSTEM MAINTENANCE: The Operator will provide system upkeep, maintenance and repair ensuring 99.9% uptime.

2.07 INTERNET CONNECTION: The Operator shall furnish at least a full T1 with a bandwidth requirement of two (2) times the daily traffic. The communication circuit must be redundant, in case of failure. The Operator shall maintain the Internet Service Provider (ISP) connection to the system router located in MIA computer room.

2.08 SERVICES AND SALES RIGHTS: The Operator shall not allow any services or the sale of any item or product not specifically covered. Any such sales by the Operator of services, products, or items not specifically approved herein, or approved in writing by the Department, may constitute a violation. In the event of such violation, the Operator shall discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Operator to discontinue such sales within twenty-four (24) hours shall subject the Operator to penalties pursuant to **Sub-Article 3.16 "Penalties".** Upon the assessment of three (3) penalties against an Operator for violation committed by such Operator, a notice of default will be tendered.

2.09 OPERATING: The Operator shall:

1. Provide quality control audits and reports to include downtime.
2. Generate monthly reports to the Department detailing bandwidth usage per system, and bandwidth usage per user and ad hoc reports.
3. Develop annual revenue projections by month.
4. Generate and provide the Department monthly revenue reports, and such other financial and management reports as are usual and customary.
5. Prepare other reports and analyses as may be requested.
6. Ensure compliance with the Department, Local, State, and other governmental agencies.
7. Implement any new policies, and procedures, and operational directives as issued from time to time by the Department.
8. Ensure payment is submitted with the Monthly Report of Gross Revenues to the Department.
9. Participate in any airport-wide customer service program implemented by the Department.

2.10 PROHIBITED ACTIVITIES: Without limiting any other provision herein, Operator shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) increase in anyway the rate of fire insurance on the MIA Terminal Building or any of its contents, (b) create a nuisance or annoyance or safety hazard, or obstruct or interfere with the rights of others in the MIA Terminal Building; (c) use, or allow the system to be used, for any improper or unlawful purposes; (d) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (e) construct any improvement on or attach any equipment to the roof of the Airport except as required to permit Operator to perform its maintenance and repair obligations under this License Agreement, Operator shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

3.01 COMPENSATION FEE TO DEPARTMENT: As consideration for the privilege to engage in business at Miami International Airport, Operator shall pay the Department, on a monthly basis, without billing or demand, **sixty-five percent (65%)** of Gross Revenues, which is payable to the Department as Revenue, in U.S. funds. The Operator shall pay Percentage Fee to the Department monthly in two installments: (a) as an "Advance Payment" which shall be paid to the Department on the first day of the month and shall be based on historical data from previous months as further described in this sub-article; and, (b) on the tenth (10th) day of the month following the month during which the Gross Revenues were received or accrued ("Remaining Payment"). Both the Advance Payment

and the Remaining Payment shall include any applicable taxes as may be required by law. Advance Payment plus Remaining Payment is equal to Revenue.

In the first year of this License Agreement (except as stated in the next paragraph), the Operator shall pay to the Department fifty (50%) percent of the Revenues due to the Department as Advance Payment. In the second year of this License Agreement, the Operator shall pay to the Department sixty (60%) percent of the Revenues due to the Department as Advance Payment. In the third year of this License Agreement and for the remainder of this License Agreement, including any Extension, the Operator shall pay to the Department seventy (70%) percent of the Revenues due to the Department as Advance Payment.

For the first three months, of this License Agreement, the Operator will not pay the Advance Payment, but shall instead pay the Revenue to the Department on the tenth (10th) day of the month following the month during which the Wireless Gross Revenues were received or accrued. Thereafter for the remainder of the License Agreement, including any Extension, the Advance Payment amount shall be based on using the Revenue amount paid to the Department in the third month immediately prior to the month that the Revenue is due. As an example, in the first year for the month of April, the Operator shall multiply the Revenue amount paid to the Department in the preceding January by 50% and pay that amount to the Department as the Advance Payment, on or before that April 1, without billing or demand. The Remaining Amount due on or before April 10 of that month would equal to the Revenue minus the Advance Payment paid for that month.

Further, as an example (First Year of License Agreement beginning January 1), and for hypothetical purposes Revenues to the Department being $5,000 in January; $10,000 in February; $20,000 in March, and $30,000 in April:

	Advance Payment	Remaining Payment	Revenue (For the Month)
January 1	0	0	0
January 10	0	0	0
February 1	0	0	0
February 10	0	$5,000	$5,000
March 1	0	0	0
March 10	0	$10,000	$10,000
April 1	$2,500	0	$2,500
April 10	0	$17,500	$20,000
May 1	$5,000	0	$5,000
May 10	0	$25,000	$30,000

The Monthly Percentage Fee payments to the Department shall commence upon the Beneficial Use of the system.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.12 "Annual Audit"**, are

considered as having been due on the tenth (10th) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

3.02 PRICE FOR SERVICES: The Operator shall charge patrons at MIA the following rates for WI-FI services:

CATEGORY	PRICE
Daily User (24 hrs)	**$6.95**
Monthly User	**$19.95**

3.03 ADVERTISING PERCENTAGE FEE: The Operator shall pay the Department **fifty percent (50%)** of all advertising revenues obtained from title and/or presenting sponsors and any other related advertising revenues. The Operator shall pay the advertising percentage fee on the tenth (10th) Day of the month following the month during which the advertising revenues were received or accrued.

3.04 PERFORMANCE BOND: Within thirty (30) Days of the Effective Date of this License Agreement, the Operator shall provide the Department a Performance Bond to guarantee payment of the Revenues. 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, refer to **Sub-Article 3.17 "Security Deposit".** 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 an amount equal to seventy-five percent (75%) of the Revenue amount provided for in **Sub-Article 3.01 "Compensation Fee to Department",** which is equal to **Four Hundred Seventy-two Thousand Six Hundred Forty-four and Forty-one Cents ($472,644.41)**. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the Revenue.

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.

3.05 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 License Agreement.

3.06 REPORTS OF GROSS REVENUES: On or before the tenth (10th) calendar day following the end of each month throughout Term, the Operator shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall report any percentage fee due to the Department pursuant to **Sub-Article 3.01 "Percentage Fee to the Department"**. The Operator shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) days written notice to the Operator. The statement must be signed by an officer (if the Operator is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Operator, and identify all Gross Revenues reported to the Operator during such month. Failure to comply within ten (10) 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 3.16 "Penalties"**.

3.07 OTHER REPORTS: The Operator shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) days written notice of the format and frequency required for said financial data and operating statistics.

3.08 LATE PAYMENT: In the event the Operator fails to make any payments as required to be paid under the provisions of this License 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.

3.09 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 License 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

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Department may require that future payments required pursuant to this License Agreement be made by cashier's checks or other means acceptable to the Department.

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

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

During normal business hours, 8:30 A.M. to 5:00 P.M., Monday through Friday

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

3.11 REVENUE CONTROL PROCEDURES: Notwithstanding anything to the contrary contained herein, the Operator shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Operator with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Operator to implement any such revenue control procedures.

3.12 ANNUAL AUDIT: Within ninety (90) days of each anniversary of the date of this License Agreement and within ninety (90) days following expiration or earlier termination of this License Agreement where Gross Revenues exceed $1 million per contract year, the Operator shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this License Agreement, 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 License Agreement. In addition, the audit shall also include as a separate report, 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 License Agreement for the period of examination. Each audit and examination shall cover the period of this License 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.

3.13 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 License Agreement, to: (1) verify, check and record data used in connection with operation of this License Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Operator for recording or compiling Gross 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 License Agreement, and other pertinent information as may be determined to be needed or desirable by the Department.

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 3.08 "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 License Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this License Agreement shall control even where this License Agreement references such principles or standards. In particular, without limitation, the Operator shall maintain all records required under this License 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.

3.14 RECORDS AND REPORTS: The Operator shall, at all times during the Term of this License Agreement, 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. In addition, Operator shall install or cause to be installed for use at all times such devices and forms, as are reasonably necessary to record properly, accurately and completely all sales. 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 of any nature related to transactions in connection with this License Agreement in a manner which segregates in detail those transactions from other transactions of the Operator and which supports the amounts reported to the Department in the Operator's monthly schedules. At a minimum, the Operator's accounting for such receipts shall include the following:

1. Operator's bank account statements;
2. A compiled report of transactions showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Operator's monthly "Revenue Reports"; 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 Gross Revenues in accordance with generally accepted auditing standards and the provisions of this License 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, including the general ledger and bank statements and all federal, state and local tax returns shall be made available, 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 to which such books and records relate (and the Operator shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Operator's business.

3.15 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 License 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.

3.16 PENALTIES (ALSO REFER TO SUB-ARTICLE 3.15 "ADDITIONAL FEES DUE"): If Operator defaults under any of the covenants or terms and conditions of this License Agreement, the Department shall 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 License Agreement, until said violations are remedied:

Violation	Fee	
Violation of Permitted Use	$1000	per Day
Unapproved Service	$ 750	per Day
Unauthorized Advertising	$ 500	per Day
Violations of other terms and conditions of this License Agreement as imposed by the Department	$ 100	per Day
Failure to Maintain Response Times	$ 50	per occurrence/ per Day
Failure to Submit Required Documents and Reports	$ 50	per Day

3.17 **SECURITY DEPOSIT**: 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 initial amount equal to twenty-five percent (25%) of the Revenue amount provided for in **Sub-Article 3.01 "Compensation Fee to Department"**, which is equal to **One Hundred Fifty-seven Thousand Five Hundred Forty-eight Dollars and Fourteen Cents ($157,548.14)**. Thereafter the amount shall be adjusted as necessary to reflect any increases in the Revenue. This requirement shall be met no later than thirty (30) days after the Effective Date of this 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.

ARTICLE 4 – IMPROVEMENTS

4.01 **IMPROVEMENTS:** The Department may, with mutual consent of the Operator, fund certain improvements needed to support the WI-FI system and allow the Operator to build such improvements in compliance with MDAD Tenant Airport Construction (TAC) procedures.

It is the intent of the parties that approved improvements may include but are not limited to network: fiber, access points, antennas, radios, switches, routers, etc., and the remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail.

Improvements not constituting approved improvements may include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department, and (iii) can be removed without damage to the premises. The Operator is liable and shall indemnify the Department for any damage which results from the removal of said improvements. This provision shall survive the termination or expiration of this License Agreement.

Off-Airport properties used will not be considered and costs incurred shall not constitute approved improvements.

4.02 DESIGN OF IMPROVEMENTS: The Operator may, with mutual consent of the Department, fund certain improvements needed to support the WI-FI system. Plans for the design of improvements will be in accordance with Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures" and "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan" and the "MDAD Design Guidelines Manual" (www.Miami-Airport.com). As plans for the improvement are completed, the Operator shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications, construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be prepared by an architectural interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.

4.03 CERTAIN CONSTRUCTION CONTRACT TERMS: All contracts entered into by the Operator shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02 "Design of Improvements"** and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the Department in the event the contractor fails to complete the construction on time. The Operator agrees that it will use its best efforts and take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Operator, the Operator shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed. The work to be performed under such contract(s) shall be insured by a Exhibit B, "Surety Performance and Payment Bond" provided by Operator to the Department in the form contained in Exhibit B "Surety Performance and Payment Bond" in the License Agreement. The Surety Performance and Payment Bond shall be in full force throughout the term of the installation contract.

4.04 IMPROVEMENTS FREE AND CLEAR: The improvements, upon completion, shall immediately become the property of the Department, free and clear of any liens or encumbrances whatsoever, other than the Department's obligation to reimburse the Operator for the un-amortized value of the Approved Improvements as provided in this License Agreement. The Operator agrees that any contract for construction, alteration or repairing of the improvements 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

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Department (and the Operator) from the claims of any laborers, subcontractors or material men against the locations or improvements.

4.05 OTHER REQUIREMENTS: The Operator shall apply for and obtain a building permit from the Department for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) days following the completion of construction of the improvements, the Operator shall furnish to the Department one (1) complete set each of legible prints (black line), photo mylars and 35 mm aperture card microfilm of construction drawings, and auto cadd files revised to "as built", including all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Operator does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

4.06 REVIEW OF CONSTRUCTION: The Department shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the final plans and any changes thereof requested by the Operator and approved by the Department.

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, 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 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 License Agreement.

The Department shall retain the right, in accordance with the provisions of this License Agreement, to make reasonable objections to the quality and character of the service rendered to the public, as may be amended from time to time.

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

A. Department's Maintenance 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 at its own expense; provided, however, that for purposes of this License 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 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.

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

B. 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.

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

1. The Operator hereby confirms that it has made its own investigation of all the costs of doing business under this License Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed to operate and 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 License 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 License Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to 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 License 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, or the construction of the terminal building.

ARTICLE 7–FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES, AND EQUIPMENT: Any equipment, furnishings, fixtures and signs installed by the Operator shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Operator, as provided in this License Agreement shall, except as provided in **Sub-Article 7.02(B) "Disposal of Furniture, Fixtures, and Equipment"**, be removed from within five (5) Days following the expiration or earlier termination of this License Agreement.

7.02 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT: At least thirty (30) Days prior to the expiration of this License 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, furnishings, fixtures, signs, or carts

installed the Operator:

(A) Require the Operator to remove such equipment, furnishings, fixtures, signs, or carts within five (5) Days following the expiration or earlier termination of this License Agreement, subject to the provisions of **Article 4 "Improvements"**; or

(B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Operator or any Sub-tenant (personal property as referred to in **Article 4. "Improvements"**) in accordance with the provisions of this License Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos.

ARTICLE 8 – MAINTENANCE

8.01 REMOVAL OF TRASH: The Operator shall, at its cost and expense, remove or cause to be removed and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Operator enters into License Agreements for the janitorial and trash removal, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. Any trash left or stored in any area visible to the public or edible items not properly contained may result in penalties being assessed pursuant to **Sub-Article 3.16 "Penalties"**.

The Department reserves the right to charge the Operator retroactively non-discriminatory proportionate share for waste disposal which may be imposed either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.02 FAILURE TO MAINTAIN: Upon failure of the Operator to maintain as provided in this **Article 8 "Maintenance"**, the Department may perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Operator, in addition to any penalties imposed by the Department pursuant to **Sub-Article 3.16 "Penalties".**

Failure to pay said costs upon billing by the Department will cause this License Agreement to be in default as stated in **Sub-Article 12.02 "Payment Default"**.

8.03 ENVIRONMENTAL RECYCLING: The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Operators. Participation in this program, once established, will be mandatory. The Operator shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling

program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Operator is the sole responsibility of the Operator. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

8.04 **FIRE PROTECTION AND SAFETY EQUIPMENT**: The Operator must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term and any Extension of this License Agreement or any insurance carrier providing insurance covering any portion.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 **NO ASSIGNMENT:** The Operator shall not assign, transfer, pledge or otherwise encumber this License Agreement nor shall the Operator allow others to use the System, 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 License Agreement and the entering into of this License 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 License 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 License 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 License 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 License 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: Prior to execution of this License Agreement by the County and commencement of the Term of this License Agreement, 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 33102-5504 for approval. All insurance shall be maintained throughout the Term and any Extension of this License 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 License Agreement:

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

B. Public 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 Public 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 License Agreement.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this License 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 Risk Management Office.

11.02 CERTIFICATE 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 License Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the License Agreement period, 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 "B" as to management, and no less than "Class V" 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 OPERATOR LIABLE: Compliance with the requirements as to carrying insurance in Article 11 "Insurance" shall not relieve the Operator from liability under any other provision of this License Agreement.

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

11.06 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 as may be applicable. 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 agree to provide copies to the Department, at the Operator's sole cost and expense.

11.07 PERSONAL PROPERTY: Any personal property of the Operator, or of others, placed in 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.

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

11.09 INSURANCE REQUIRED OF SUB-TENANTS: The limits for each type of insurance may be revised upon review and approval of the Sub-tenant'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.

The Operator shall cause its Sub-tenant to provide certificates of insurance indicating the following types of insurance coverage prior to any occupation of the premises:

A. Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $5,000,000 per occurrence for Bodily Injury and Property Damage combined. Miami-Dade County must be shown as an additional insured with respect to this coverage.

The Public Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the contractor(s) in the performances of the construction contract.

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

*Under no circumstances is the Operator or a Sub-tenant allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

C. **Certificate Continuity:** The Operator shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force for the duration of the License Agreement, including any and all option years, if applicable.

D. **Insurance Company Rating Requirements:** All insurance policies required above 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 "B" as to management, and no less than "Class V" 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 MDAD's Safety and Insurance Office.

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

E. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders,

amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Operator agrees to permit or cause such inspection to be permitted at the offices of the Department.

11.10 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

A. Indemnification, Bonds and Insurance Required from Construction Contractor: The following language, including the indemnification clause, shall be included in all construction contracts between the Operator and its general contractor(s):

Indemnification: The Contractor shall defend, indemnify, and save harmless the County, the Consulting Engineers, the Architect/Engineer, the Field Representative, the Lessee of the locations, and their officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death), property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the Contractor or its contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any Indemnitee arising from the contract or its performance shall be limited to the greater of $1 million or the Contract Amount. Further, this indemnification requirement shall not be construed so as to require the Contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the Indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise.

B. Surety Performance and Payment Bonds: Pursuant to and in accordance with Section 255.05, Florida Statutes, the Operator or each contractor performing any part of the work for the Operator shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit "B", Surety Performance and Payment Bond". Within ten (10) Days of issuance, Operator shall record all bonds required by this License Agreement in the Department of Public Records of Miami-

Dade County. Prior to performing any portion of the Work, the Operator shall deliver to County the Bonds required to be provided by Operator or each contractor as set forth in this License Agreement.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
$ 500,001 to $1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over $10,000,000	A IX

For contracts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.

b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.

d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

e) For contracts in excess of $500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

g) The attorney-in-fact or other officer who signs a Exhibit B, "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

The Bond shall be delivered to the Department upon execution of the contract between the Operator and its contractor or the Sub-tenant and its contractor, as the case may be.

C. **Insurance Required of Construction Contractor(s):** The limits for each type of insurance may be revised upon review and approval of the construction plans. Additional types of insurance coverage may be required if, upon review of the construction plans, the Department reasonably determines that such coverage is necessary or desirable.

The Operator shall cause its contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

(a) Workers' Compensation as required by Chapter 440, Florida Statutes.

(b) Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $5,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Operator must be shown as an additional insured with respect to this coverage.

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

*Under no circumstances is the contractor allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

(D) **Certificate Continuity:** The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Operator and approved by the Operator and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Operator at a minimum of thirty (30) Days before such expiration.

(E) **Insurance Company Rating Requirements:** All insurance policies required above 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 "B" as to management, and no less than "Class V" 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 Operator.

(F) **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Operator to agree to permit such inspection at the offices of the Department.

(G) **Personal Property:** Any personal property of the contractor, or of others, used shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT: A default shall mean a breach of this License 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 License Agreement;

(B) The Operator has failed to make prompt payment to subcontractors or suppliers for any service or work;

(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 Operator 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 City at Airport or disregard of the safety of persons using the Airports, 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 License 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 Director;

(I) The Operator has failed to obtain the approval of the Department where required by this License 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 14.07 "Airport Concession Disadvantaged Business Enterprises 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 Revenue payments and Percentage Fee payments 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 County may, at its option, terminate this License Agreement after five (5) Days notice in writing to the Operator.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Operator to terminate this License 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 shall 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 License Agreement other than those that constitute default pursuant to **Sub-Article 12.02 "Payment Default"**.

(B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.

(C) 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 License Agreement. In the event of any such subsequent breach or default, the Department may terminate this License Agreement upon the giving of written notice of termination to the Operator, such termination to be effective upon the seventh (7th) 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 Department 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 License 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 License 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 License 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 License Agreement may be terminated in its entirety upon the abandonment by the Operator 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 for the purposes authorized in **Article 2 "Scope of Service"**.

12.08 TERMINATION FOR CAUSE: The County may terminate this License 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 License 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 License 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 Department materials and property; and

(C) Vacate, quit and surrender, all 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 License 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 18.09 "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 License 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 License 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 License 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 License 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 (ACDBE)

14.01 ACDBE REQUIREMENTS: The Department has established a voluntary ACDBE goal participation for certified ACDBE's in connection with this License Agreement.

The Operator will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting DBE revenue and operational expenses, on or before the tenth (10th) day of every month.

14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS: When an ACDBE participates in a contract; only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.

When a ACDBE performs as a participant in a joint venture, a portion of the total dollar value of the contract during the complete contract term, equal to the distinct clearly defined portion of the work of the contract that the ACDBE performs will be counted toward

ACDBE goals as outlined in Appendix C "Airport Concession Disadvantage Business Enterprise Participation Plan/Provision".

Expenditures to an ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:

A. ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the specific identified work.

B. The Department will determine whether a ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture License Agreement; the subcontract License or other Licenses in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

C. An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.

D. If an ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.

E. When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this Article, the ACDBE may present evidence to rebut this presumption. The Department will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The Department's decision on commercially useful function matters is final.

14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING: Operators may satisfy a part of the ACDBE goal by Joint Venturing with a ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23, Subpart F. A "joint venture" or ("JV") shall mean and may be referred to as an "association" of two or more businesses acting as an Operator and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The joint venture License Agreement must specify the following:

A. Each ACDBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

B. The work should be submitted as part of this License Agreement and annually thereafter to the Aviation Department's Minority Affairs Division. The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the License Agreement. Such "minimum amount of aggregate time" is defined as ten (10) hours per week.

Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), in addition to the Monthly Report of ACDBE Joint Venture Activity (Appendix C, page 12), providing details of how the performance objectives were achieved and providing documentation of the achievement on the ACDBE form on page 12 of Appendix C. This information should include, but not be limited to:

Details of training sessions, including class rosters and lesson plans.

1. Deliverables and work products.
1. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
2. Proof that employees of partners actually work for them (payroll, payroll tax returns, and the like).

C. Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.

D. Each ACDBE JV partner must perform work that is commensurate with the License Agreement.

As described below, each ACDBE must submit, as part of its ACDBE Plan, a plan for the achievement of the ACDBE goal, including Schedule of Participation and the Letter of Intent from certified ACDBE's, or who have applied for certification through the Miami-Dade County Department of Business Development, as required by the Airport Concession Disadvantaged Business Enterprise Participation Plan.

Without limiting the requirements of the License Agreement, the Department will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE): ACDBE firms must maintain their certification throughout the term of this License Agreement.

14.05 AFFIRMATIVE ACTION AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS: The Operator acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Subpart F, Disadvantaged Business Enterprise Programs, are applicable to the activities of the Operator under the terms of the License Agreement, unless exempted by said regulations, and hereby agrees to

comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation.

These requirements may include, but not be limited to, the compliance with Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Operator has defaulted in the requirement to comply with the provisions of this Article and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Operator, to terminate this License Agreement, pursuant to the default language referenced in the License Agreement.

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

The Operator agrees to include the above statements in any subsequent Licenses.

14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM: Consistent with the goal of providing ACDBEs with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Sub-Article 14.07 "Airport Concession Disadvantaged Business Enterprise Participation Plan"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to, the following specific duties and responsibilities:

1. Store Operations
   a. Passenger profile analysis
   b. Cash handling/sales audit
   c. Enhancing sales
   d. Selling to the customer
   e. Staffing to meet customer levels
   f. Opening and closing procedures

2. Personnel
   a. Employment practices
   b. Compliance with wage and hour laws
   c. Compliance with County and Airport requirements
   d. Designing compensation and benefits plans
   e. Management and staff training to enhance product knowledge and customer service
   f. Warehousing, packaging and sales reporting of merchandise

3. Design and Display
   a. Retail layout
   b. Merchandising techniques
   c. Visual display techniques

4. Loss Prevention
   a. External and internal theft
   b. Shop security

5. Books, Records and Reports
   a. The books of account and supporting records of the Operator and the Sub-tenant(s) shall be maintained at the principal office and shall be open for inspection by the Department or the DBE Sub-tenant(s) or joint venture(s), upon reasonable prior written notice, during business hours.
   b. The Operator books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Operator shall provide to the Sub-tenant(s) or joint venture(s), within an agreed upon time after the end of each month during the term of the License Agreement, an un-audited operating (i.e., income) statement for the preceding month and for the year to date.
   c. Reports of the DBE Mentoring Program shall be submitted to the Department's Minority Affairs and the Retention and Business Development Division, outlining the specific areas of training (i.e., components covered; total number of hours of training; training material covered; etc.).

14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN: The Operator shall contract with those firm(s) as are listed on the Operator's ACDBE Participation Plan and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firms(s), (ii) reduce the scope of the work to be performed, (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The Department shall monitor the compliance of the Operator with the requirements of this provision as referenced in **Sub-Article 14.01 "ACDBE Requirements"** during the Term and/or Extension, if applicable. The Department shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, Sub-tenant Gross Revenues, records, records of expenditures, Sub-tenant agreements between the Operator and ACDBEs, and other records pertaining to the ACDBE Participation Plan.

If at any time the Department has reason to believe that the Operator is in violation of this provision, the Department may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination of this License

Agreement in whole or in part, unless the Operator demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the Department upon the Operator except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Aviation Director.

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 thereunder 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 License 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, or 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. The Operator further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-Lease and other agreement(s) which the Operator may enter into related to its activities under this License Agreement and that any such Sub-Lease and other agreement(s) shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this License Agreement prohibiting or limiting assignments, subletting or subleasing.

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 License Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this License 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 License 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 "Notices"** of this License 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 LICENSE

17.01 INCORPORATION OF TRUST LICENSE BY REFERENCE: Notwithstanding any of the terms, provisions and conditions of this License 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 License 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 License Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Operator or by other Operators under other Licenses 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 License 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 License Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust License Agreement. In the event the County has modified the terms and conditions of this License Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this License 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 any storage/support spaces at all reasonable times for the purposes of inspection to determine compliance with the provisions of this License 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.

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 Licenses; (e) concessions and other rental Licenses; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service Licenses under $1,000; (i) management Licenses; (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 Licenses. ***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 PAYMENT OF TAXES: The Operator shall pay all taxes lawfully assessed against its interests in, any storage/support spaces and its services hereunder, provided however, that the Operator shall not be deemed to be in default of its obligations under this License Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03 "Other Defaults"** hereof.

18.02 ALTERATIONS BY OPERATOR: The Operator shall not alter or modify the Locations or any storage/support spaces, except in accordance with **Article 4 "Improvements"** herein, without first obtaining written approval from the Department.

18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT: wherever in this License

Agreement rights are reserved to the County, the Department may exercise such rights.

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to 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 License Agreement, including the provisions of **Sub-Article 18.02 "Alterations by Operator", Sub-Article, 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify".**

18.05 SECURITY: The Operator acknowledges and accepts full responsibility for the security and protection of the System. The Operator fully understands and acknowledges that any security measures deemed necessary by the Operator for protection of the System shall be the sole responsibility of the Operator and shall involve no cost to the Department.

18.06 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.

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

18.08 FEDERAL SUBORDINATION: This License Agreement shall be subordinate to the provisions of any existing or future Licenses 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 License 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 License Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

18.09 NOTICES: Any notices given under the provisions of this License 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:

Electronic Media Systems, Inc.
10460 NW 46 Street
Miami, FL 33178

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.

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

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

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

18.13 AUTHORIZED USES ONLY: The Operator shall not use or permit the use of 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 License Agreement.

18.14 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 License 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 License Agreement with performance hereof by the Operator.

18.15 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 or its Sub-tenant(s) 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, its sub lessees, 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.

18.16 INTENT OF THIS LICENSE AGREEMENT: This License 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 License Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the License Agreement.

18.17 MODIFICATIONS: This License 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 18.04 "Administrative Modifications", Sub-Article 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this License 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 License Agreement.

18.18 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."

18.19 TRADEMARKS AND LICENSES: The Department may, from time to time, require 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 License Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this License Agreement. Such permission, when granted, shall be evidenced by a nonexclusive License Agreement executed by the Operator and the Department, on behalf of the Department granting the Operator the right, License Agreement 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.

18.20 HEADINGS: The headings of the various Articles and Sub-Articles of this License 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 License Agreement or any part or parts of this License Agreement.

18.21 BINDING EFFECT: The terms, conditions and covenants of this License 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.

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

18.23 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 License 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 License 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 License Agreement. A breach of this warranty makes this License Agreement voidable by the Department without any liability to the Contractor for any reason.

18.24 OTHER LIENS: Operator shall not permit any mortgages, deeds of trust or similar liens

to be imposed on any leasehold, or the furniture, fixtures and equipment or any portion thereof. Operator shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed, 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 interest in any personal property, 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 improvements, or any part thereof, as a consequence of any act or omission of Operator as a consequence of the existence of Operator's interest under this License Agreement.

ARTICLE 19 - NOT USED

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 License Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this License Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this License 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 System available to the Operator or by reason of any defects or deficiencies or in the terminal building including any defect or deficiency in the terminal building which substantially impedes the Operator's ability to operate 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 LICENSES WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY: This License 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 previsions of any and all existing Licenses between the County and the State of Florida, or its boards, agencies or commissions, and to any future License 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 License 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, 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 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 License Agreement, Operator shall obtain from such person or entity a written License 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 License 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 License Agreement and repossess the improvements thereto, and hold the same as if this License 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 sex 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. 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 Licenses at all tiers which are entered into in connection with Operator's services hereunder.

6. a) This License 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 sex in connection with the award or performance of any concession License Agreement covered by 49 CFR Part 23, Subpart F.

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

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 License Agreement.

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Term and/or Extension, if applicable, this License 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. This License Agreement may not be modified except by a written instrument signed by both parties except as otherwise specifically provided in this License Agreement.

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 License 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 License 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 Gross Revenues, on its income, on this License Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Operator herein, and on any and all equipment installed. 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, 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 License 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 License 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 property of the Operator located thereon, in order to enforce this License Agreement, to enforce applicable laws and regulations,

5. Time is expressed to be the essence of this License Agreement.

6. 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.

7. 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 License 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 License 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 ENTIRE LICENSE AGREEMENT: This License Agreement, together with the Exhibits attached hereto, constitutes the entire License Agreement between the parties hereto with respect to the subject matter hereof, and any prior Licenses, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral Licenses, 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 License Agreement. None of the provisions, terms or conditions contained in the License Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04 "Administrative Modifications"** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

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

OPERATOR

Electronic Media Systems, Inc.
(Legal Name of Corporation)

ATTEST:

Secretary _____
(Signature and Seal)

Sarah J. Phillips; Corporate Secretary
(Type Name & Title)

By: _____
Operator - Signature

Name: H. Scott Phillips

President and CEO
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

_____
Legal Name

By: _____
Signature

_____
(Type Name & Title)

_____
Legal Name

By: _____
Signature

_____
(Type Name & Title)

Attest: _____

Name of Managing Joint Venturer:

_____

Witness: _____

By: _____
Signature of Authorized Representative of the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

Approved for Form
and Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____