Memorandum

MIAMI-DADE COUNTY

Date: February 2, 2010

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

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Award Recommendation - RFP for Retail Concessions Program 2009
RFP No. MDAD-04-09 - Package 5 – Project Horizon, Inc. dba In Motion Entertainment

RECOMMENDATION

It is recommended that the Board approve the award of a Lease and Concession Agreement ("Agreement") to Project Horizon, Inc. dba In Motion Entertainment for Retail Concessions Program 2009 Package 5, consisting of one specialty retail location, and authorize the Mayor or the Mayor's designee to execute the Agreement attached hereto, with the exhibits on file with the Clerk of the Board.

SCOPE

Miami International Airport (MIA) is located primarily within Commission District Six; however, the impact of this item is countywide 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 Aviation Director or designee has the authority to exercise the renewal options and to terminate the agreement.

FISCAL IMPACT/FUNDING SOURCE

This project is revenue generating. The County shall be paid the greater of a monthly percentage fee of the total monthly gross revenues or the minimum monthly guarantee. The Minimum Annual Guarantee ("MAG") submitted by Project Horizon, Inc. dba In Motion Entertainment is $100,000.

TRACK RECORD/MONITOR

In Motion Entertainment has a current contract with Miami-Dade County for one retail location at MIA and their performance has been satisfactory. The Project Manager is Adrian Songer, MDAD Commercial Operations.

COMPLIANCE DATA

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

BACKGROUND

The RFP for Retail Concessions Program 2009 was advertised on August 17, 2009, for qualified firms to propose for the opportunity to provide financing, designing and constructing, managing, operating and maintaining high quality, reasonably priced specialty retail, newsstand and food and beverage spaces that are available in the North and South Terminals of Miami International Airport. The RFP contained six packages and establishes opportunities for Master Concessionaires or Fee Managers for Packages 1, 2, and 3. Packages 4, 5, and 6 were open to all Concessionaires.

Package 1 has four food and beverage locations, Package 2 has a total of nine locations (three news and books and six specialty retail locations); Package 3 has a total of nine locations (two news and books and seven specialty retail locations); Package 4 has two specialty retail locations and Packages 5 (specialty retail) and 6 (food and beverage) each have one location.

The Selection Committee met and reviewed the one proposal submitted on Package 5 in response to the RFP, and heard a presentation from the firm. The firm was deemed responsible and having met the minimum

qualification requirements. Since In Motion Entertainment was the only Proposer, after the presentation, the sealed price envelope was opened and read aloud. As a result for Package Five, the Selection Committee recommended award of the agreement to Project Horizon, Inc., dba In Motion Entertainment, the top-ranked proposer.

PROJECT:	Retail Concessions Program 2009
PROJECT NO.	RFP No. MDAD-04-09
PROJECT LOCATION:	Miami International Airport
COMPANY NAME:	Project Horizon, Inc., dba In Motion Entertainment
TERM OF AGREEMENT:	Eight years
OPTION(S) TO RENEW:	At the sole discretion of the County, the initial eight-year term may be extended for a maximum of one two-year term provided the extension is mutually agreed to by the County and the Master Concessionaire in writing.
COMPANY PRINCIPALS:	P. Jeremy Smith Zdrarko Mincek Gene McCormick
GENDER, ETHNICITY & OWNERSHIP BREAKDOWN:	Non-Hispanic Male
COMPANY LOCATION:	4801 Executive Park Court, Suite 100 Jacksonville, FL 32216
HOW LONG IN BUSINESS:	Twelve years
PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:	In Motion Entertainment currently has a lease agreement with MIA.
CONTRACT MEASURE:	The goal established was Voluntary Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation.
CONTRACT MEASURE ACHIEVED:	Project Horizon, Inc., dba In Motion Entertainment did not include ACDBE Participation.
ADVERTISEMENT DATE:	August 17, 2009
LIVING WAGE:	Not Applicable
USING DEPARTMENT:	Miami-Dade Aviation Department

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: February 2, 2010

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

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

Please note any items checked.

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(D)
2-2-10

RESOLUTION NO. _____

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING AWARD OF A LEASE AND CONCESSION AGREEMENT FOR THE RETAIL CONCESSION PROGRAM 2009 PACKAGE 5, PROJECT NO. MDAD-04-09, BETWEEN PROJECT HORIZON, INC. DBA IN MOTION ENTERTAINMENT AND MIAMI-DADE COUNTY, WITH A MINIMUM ANNUAL GUARANTEE OF $100,000, AND FOR A TERM OF EIGHT (8) YEARS, WITH A TWO (2) YEAR OPTION TO RENEW; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME, AND TO EXERCISE RENEWAL AND TERMINATION PROVISIONS THEREOF

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves award of a Lease and Concession Agreement for the Retail Concession Program 2009 Package 5, Project No. MDAD-04-09, between Project Horizon, Inc. dba In Motion Entertainment and Miami-Dade County, with a minimum annual guarantee of $100,000, and for a term of eight (8) years with a two (2) year option to renew, in substantially the form attached hereto and made a part hereof, with Exhibits on file with the Clerk, and authorizes County Mayor or Mayor's designee to execute same and to exercise renewal and termination provisions thereof.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of February, 2010. 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.

David M. Murray

LEASE AND CONCESSION

AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

PROJECT HORIZON, INC. dba IN MOTION ENTERTAINMENT

CONCESSIONAIRE

(PACKAGE 5)

FOR THE RETAIL CONCESSIONS PROGRAM 2009

AT

MIAMI INTERNATIONAL AIRPORT

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Exhibit H – Executed copies of the Affidavits and Condition of Award Certificates

DEFINITIONS

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

The term "**ACDBELO**" shall mean Airport Concession Disadvantaged Business Enterprise Liaison Office, Associate Aviation Director, Minority Affairs Division, Miami-Dade Aviation Department.

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

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 "**Approved Improvements**" are the improvements to a Location, which have been approved by the Department which may include the design, equipment, fixtures, flooring, and signage.

The term "**Base Building Work**" shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building. Base Building Work includes delivery of portions of the Locations in Shell Condition.

The term "**Beneficial Occupancy**" shall mean the date when a Certificate of Occupancy or Temporary Certificate of Occupancy has been received for each Location.

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

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

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

The term "**Common Logistics Fee**" shall mean an amount to be invoiced as a separate line item and collected from Sub-tenants by the Concessionaire for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the Concessionaire may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient

operation of the Retail Program. The Concessionaire will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

The term **"Common Logistics Program"** shall mean a program to offer logistics support either on or off Airport which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistics system.

The term **"Concessionaire"** shall mean the person, firm, or entity that enters into this Lease and Concession Agreement.

The term **"Consumer Price Index"** or **"CPI"** shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the U.S. Cities Average: All items.

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

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

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

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

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

The term **"Gross Revenues"**, as used in this Agreement, shall mean all Sub-tenant minimum annual guaranteed rents and percentage fees, if any, paid or payable by the Concessionaire from the Sub-tenants and any consideration of determinable value paid or payable to the Concessionaire by any third party (for example, retail display allowances and other promotional incentives). However, the term Gross Revenues shall not include: (i) any and all pass-through charges such as Sub-tenant payments to the Concessionaire for any sums collected for federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services, utilities, the Common Logistics Fee and contribution to the Marketing Program; (ii) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable or (iii) promotional discount and coupon offers issued to customers as a result of a Department approved marketing plan. In connection with such Concessionaire's Gross revenues, Concessionaire hereby agrees to apply any security deposits received from its Sub-tenants to the payment of Sub-tenant minimum annual guaranteed rents and percentage fees, if any, due to non-payment by a Sub-tenant from time to time following applicable notice and cure periods provided in the Sub-Lease agreement.

The term **"Gross Receipts"** shall mean Gross Revenues received by Concessionaire as a result of operations pursuant to Concessionaire's Sub-Lease of a Location to an approved Sub-tenant.

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

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the date of execution by the County Manager and attestment by the Clerk of the Board of the Lease and Concession Agreement.

The term **"Location(s)"** shall mean the concession locations as depicted on Exhibit A, "Locations (Package Summary)".

The term **"Location Commencement Date"** shall mean for each Location, the date of Beneficial Occupancy or 120 Days after the Turnover Date (180 days for food & beverage).

The term "**Minimum Annual Guarantee" or "MAG"** shall mean as ascribed in Article 3.01.

The term **"Minimum Monthly Guarantee"** shall mean as ascribed in Article 3.01.

The term "**Nonexclusivity**" shall mean as ascribed in Sub-Article 1.10 of this Agreement.

The term **"Market Basket"** shall mean that MIA concession store prices shall not exceed by more than 10% stated market basket of a selection of three (3) Greater Miami Area locations where visitors may purchase similar product categories excluding stadiums, arenas, amusement and entertainment venues and hotels.

The term "**North Terminal**" shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourses A-D.

The term **"Operational Term"** shall mean as ascribed to in Article 1.02.

The term **"Proposal"** shall mean a Proposer's written response to RFP MDAD-04-09.

The term **"Refurbishment of Locations"** shall mean the refurbishment and expenditure by the Concessionaire or its Sub-tenants of not less than fifty dollars per square foot ($50psf) for Approved Improvements to begin no earlier than the sixth (6^{th}) Operational Term year of the Agreement and be completed no later than the last day of the sixth (6^{th}) Operational Term year of this Agreement.

The term **"Request for Proposal" or "RFP"** shall mean this RFP No. MDAD-04-09, and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"Retail"** when used in this Agreement shall mean those newsstand, retail, and food & beverage Locations as depicted in Exhibit A of the Lease and Concession Agreement.

The term **"Retail Concession Design Guidelines"** shall mean MIA's distinct design guidelines in the North, Central, and South Terminals as set forth in Exhibit E.

The term **"Shell Condition"** shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of each Location or area immediately adjacent thereto for electric, telephone and data communications,

heating ventilating and air conditioning systems including ducts ("HVAC"), fire alarm system and fire sprinkler system.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and a new J Concourse and connecting concession and public locations.

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

The term "**Sub-Lease**" shall mean the contractual agreement between the Concessionaire and its Sub-tenant.

The term "**Sub-tenant**" shall mean any person, firm, entity or organization, entering into an agreement with Concessionaire for sale, retail products to the public at the Airport at a Location.

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

The term "**Turnover Date**" shall mean the date approved by the Department for the Concessionaire to commence construction of a Location.

LEASE AND CONCESSION AGREEMENT FOR A NON-EXCLUSIVE CONCESSIONAIRE FOR RETAIL CONCESSIONS PROGRAM 2009 AT MIAMI INTERNATIONAL AIRPORT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this _____ day of _____, 2010, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and Project Horizon, Inc. dba In Motion Entertainment, ("Concessionaire") (Package 5), a 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 retail and food & beverage concessions program in conjunction with the development program for the North and South Terminal projects; and

WHEREAS, the concessions program is designed to provide a locally, nationally, and internationally recognized themed tenant base; and

WHEREAS, the retail and food & beverage concessions program will enhance the accommodations and conveniences of airline passengers and Airport patrons, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

WHEREAS, Request for Proposal, RFP No. MDAD-04-09 was issued by the County and in response to the Request for Proposal, the County received proposals and an award has been made to the Concessionaire,

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

ARTICLE 1 – TERM, EXTENSION AND LOCATIONS

1.01 INTERIM TERM: The County hereby leases to the Concessionaire the Locations depicted in Exhibit A for the Interim Term which commences on the Lease Effective Date and terminates on the earlier to occur of: 1) the first day of the month following Beneficial Occupancy of the last Location to complete the required improvements pursuant to **Sub-Article 4.01, Improvements To Location** or 2) the first day of the month following three

hundred and sixty-five (365) Days after the Lease Effective Date. Notwithstanding the above, the Interim Term may be extended by the County for unforeseen delays.

1.02 OPERATIONAL TERM: The County hereby leases to the Concessionaire the Locations depicted in Exhibit A commencing upon the termination of the Interim Term of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8th) year thereafter unless sooner terminated. In no event shall this Agreement afford Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

1.03 EXTENSION: At the sole discretion of the County, the initial eight (8) year Operational Term may be extended for a maximum of one (1) two (2) year term provided the extension is mutually agreed to by the County and the Concessionaire in writing.

In the event the County elects to extend the Agreement, the Concessionaire shall be notified, in writing, no less than three hundred and sixty-five (365) Days prior to the expiration of the Operational Term. The Concessionaire 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 Concessionaire is in default, pursuant to **Article 12 "Default and Termination by County"** of the Lease and Concession Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

1.04 LOCATIONS: The Department hereby provides to the Concessionaire the Locations as depicted in Exhibit A, Locations.

1.05 SUPPORT SPACE: In addition to the Locations provided to the Concessionaire in **Sub-Article 1.04 "Locations"**, the Department may provide administrative and support space, if available, to the Concessionaire.

The Concessionaire shall pay monthly rental payments for the Concessionaire's administrative and storage space at the rate applicable for terminal rental payments and annual adjustments as provided for in **Sub-Article 3.06 Annual Rent.**

1.06 STORAGE SPACE: The Department may make available to the Concessionaire storage space outside of Location(s), if available.

1.07 COMMON WAREHOUSE SYSTEM: Due to the fact that storage space is limited in this Agreement and such space is separate from the Locations, should the Concessionaire determine, in its sole discretion, the need to use off-Airport properties for storage space, the Concessionaire shall be entitled through itself, or through an independent third-party contractor, to operate a common logistical support service with respect to the delivery and storage of Sub-tenants' merchandise, inventory, equipment and supplies to a central commissary warehouse location off of the Airport and the re-delivery of Sub-tenants' merchandise, inventory, equipment and supplies to each of the Sub-tenants' Location at the

Airport as approved by the Department. The Department may elect to initiate a Common Logistics Program to assist in storage, delivery equipment and supplies in which case a Common Logistics Fee may be assessed to Concessionaire.

In the event of a Department initiated Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and/or The actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of equipment needed to operate such program), as may be determined by the Department from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Concessionaire shall not be entitled to charge Sub-tenants for any of the Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Concessionaire as part Common Logistics Fee shall not be included in Concessionaire's Gross Revenues for any and all purposes of this Agreement. It is recognized by the Department that any such payments by Sub-tenants to the Concessionaire shall not be included in the calculation of the Percentage Fee, if any, from Concessionaire to the Department as provided for in **Article 3.03 "Percentage Fee to the County"**. The Department reserves the right to review the basis of the actual costs and allocation thereof should the Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to approve such program and require that the Concessionaire impose the Common Logistics Fee in a non-discriminatory manner.

1.08 ADDITION, DELETION AND MODIFICATION OF LOCATIONS:

A. ADDITION OF LOCATIONS: If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for concession development comparable to the concept categories in this Agreement, the Department may, but is not required to, offer such additional Location to the Concessionaire upon written notification. The Concessionaire will have thirty (30) Days to submit a written response accepting or rejecting the additional Location. Acceptance of any additional Location will require the Department and the Concessionaire to mutually agree upon an applicable retail category as described in Exhibit A at the applicable category percentage fee, **Sub-Article 3.05, Concessions Category Percentage Fee**, prior to final approval.

B. ADDITION OF TEMPORARY LOCATIONS: The Department reserves the right to require the Concessionaire to provide, and cause to be operated, temporary locations. Any rents for these locations are subject to the terms of this Agreement. The square footage for these temporary locations shall not be included in the calculation of the Minimum Annual Guarantee pursuant to **Sub-Article 3.01**. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.

C. **DELETION OR MODIFICATION OF LOCATIONS:** The Department reserves the right, at its sole discretion, to delete or modify any of the Locations, or any administrative support and storage spaces due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Concessionaire shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Concessionaire or its Sub-tenants (except for reimbursement of the unamortized costs, pursuant to **Sub-Article 4.10** for any inconvenience or loss of business as a result of the deletion or modification of any Locations or other space pursuant to this Sub-Article.

D. **ADMINISTRATIVE REVISIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Locations pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in **Sub-Articles 1.04 "Locations", 1.05 "Support Space", and 1.07 "Storage Space"** and total payments due the Department in accordance with **Article 3, Rentals, Payments and Reports** and **Article 2 Use of Locations.**

1.09 NONNEXCLUSIVITY: This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other Concessionaires and/or others in other locations at the Airport during the Interim Term, Operational Term and any Extension of this Agreement.

1.10 CONDITION OF THE LOCATIONS: CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATIONS TO THE CONCESSIONAIRE ON AN "AS IS" BASIS AND THAT THE CONCESSIONAIRE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE LOCATIONS including: (i) the quality, nature, adequacy and physical condition and aspects of the Locations, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Locations; (iii) the development potential of the Locations, the use of the Locations, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Locations for any particular purpose; (iv) the zoning or other legal status of the Locations or any other public or private restrictions on use of the Locations; (v) the compliance of the Locations or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Locations; (vii) the quality of any labor and materials used in any improvements on the Locations; (viii) the condition of title to the Locations; (ix) the agreements affecting the Locations; and (x) the Proposal submitted by Concessionaire to the Department, including any statements relating to the

potential success or profitability of such Proposal. Concessionaire represents and warrants that it has made an independent investigation of all aspects of its Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Concessionaire has satisfied itself as to such suitability and other pertinent matters by the Concessionaire's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Concessionaire accepts the Locations in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Locations to the requirements of applicable law, the Concessionaire assumes sole responsibility for any such work.

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

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

ARTICLE 2 – USE OF LOCATIONS

2.01 **LOCATIONS:** The Locations as referenced in Exhibit A, "Locations (Package Summary)" shall be used solely for their assigned and approved concept category unless otherwise modified pursuant to **Sub-Article 2.04. "New Concepts"** Failure to maintain the concept category pursuant to **Article 2 "Use of Locations"** may result in liquidated damages as indicated in **Sub-Article 3.24 "Liquidated Damages".**

2.02 **USE OF LOCATIONS:** The Concessionaire shall have the right, privilege, and obligation to develop, lease, market and manage and to cause the Sub-tenants to operate and maintain the Locations, depicted in Exhibit A, "Locations (Package Summary)", for the purpose of establishing high quality, state of the art retail concessions as approved by the Department.

2.03 **CONCESSIONAIRE SERVICES AND SALES RIGHTS:** The Concessionaire shall not allow any services or the sale of any item or product not specifically covered by the

categories approved in this Agreement. Any such sales by the Concessionaire or Concessionaire's Sub-tenants of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Concessionaire shall discontinue or cause its Sub-tenants to discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Concessionaire or its Sub-tenants to discontinue such sales within twenty-four (24) hours shall subject the Concessionaire to liquidated damages pursuant to **Sub-Article 3.24 "Liquidated Damages"**. Upon the assessment of thirty (30) Days of liquidated damages as to a Location for a Location operated by a Sub-tenant, the Concessionaire shall tender a notice of default to the Sub-tenant(s) in violation, with copies of said default notice to the Director and pursue all remedies available in law and equity to cease such actions. Failure of the Concessionaire to: (i) notify the Sub-tenant(s) of the default, (ii) pursue all remedies available to cease the unauthorized sales or services shall be an event of default and grounds for termination of this Agreement. Upon the assessment of thirty (30) Days of liquidated damages against a Concessionaire for violation committed by such Concessionaire or its Sub-tenant(s), a notice of default will be tendered.

2.04 NEW CONCEPTS: The Concessionaire and the Department may modify, by mutual agreement, certain concepts within the established categories and among the Locations. The proposed new concept as agreed to by the Department and the Concessionaire will be reflected in a revised Exhibit A, a revised Percentage Fee as applicable for the category as provided for in **Article 3 "Rentals, Payments and Reports"**, and a revised **Article 2 "Use of Locations"**.

2.05 SCOPE OF SERVICES: The Concessionaire hereby agrees that it will cause its tenants to finance, design and construct, lease, manage, operate and maintain the Locations depicted in Exhibit A, "Locations (Package Summary)", for the purpose of establishing high quality, state of the art retail concessions as approved by the Department. Its responsibilities are further defined but not limited to the following:

A. Financing:

Be capable of financing the design, construction and build out of the Locations depicted on Exhibit A, "Locations (Package Summary)".

Develop a financial plan indicating the source of funding for capital investment and continued maintenance and operation of the Locations.

B. Developing:

The Concessionaire shall design a concession program to fulfill the concept categories and submit initially and thereafter annually a merchandising and layout plan identifying the product categories within each Location for each Location. The Concessionaire will be responsible for updating the store layout plan and merchandising plan no less than annually or as necessary throughout the Interim Term,

Operational Term and any Extension of this Agreement, providing suggestions as needed for Sub-tenant for each concept for consideration by the Department.

C. Design and Construction Coordination:

Design and Construction Coordination requirements are detailed in Sub-Article 4 Improvements to the Locations.

D. Leasing:

The Concessionaire shall be responsible for subleasing as follows:

1. Coordinate its leasing process with the Department, obtaining approval of each Sub-Lease agreement prior to subleasing.
2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, if subleasing is conducted, in accordance with **Article 20, "Sub-Leases"** of the Lease and Concession Agreement no later than thirty (30) Days from the Lease Effective Date of the Lease and Concession Agreement.
3. Perform background checks and investigate all prospective Sub-tenants, including partners, joint ventures, and other key participants. Prepare and make available to the Department, if requested, background check summaries.
4. Negotiate Sub-Leases with potential Sub-tenants to include, but not be limited to:
    a. Negotiating financial terms with potential Sub-tenants in accordance with the Department's approved key business terms and baseline pro-forma.
    b. Preparing term sheets of potential sub-tenant deals, outlining all business terms for the Department's approval.
    c. List of use and products for each concept.
5. Prepare the appropriate Sub-tenant lease agreement and exhibits.

    Sub-Lease agreements shall:

    (1) Not extend beyond the expiration date or termination date of the Lease and Concession Agreement.

    (2) Contain comparable terms and conditions as may be applicable to those contained in the Lease and Concession Agreement.

E. ACDBE Plan

The Successful Concessionaire for Packages 4, 5 and 6 that elected to include ACDBE participation in its Proposal, shall comply with the ACDBE Plan submitted with its Proposal and shall:

1. Maximize ACDBE and local participation by meeting or exceeding the ACDBE goal under this Lease and Concession Agreement.
2. Develop, implement, manage, and monitor a program to identify and include Local/ ACDBE businesses in the concession programs.
3. Describe the extent and type of ACDBE subleasing in the Program, if any.

4. Submit an ACDBE community and local business opportunities outreach program for concession opportunities, subject to the Department's approval.

F. Managing

The Concessionaire shall, if applicable:

1. Design a concession program fulfilling the concept category and submit a merchandising plan initially and for annual review until expiration of the Agreement identifying the product categories for each Location. The Concessionaire will review the store layout plan no less than annually and update the store layout as necessary throughout the Agreement.
2. Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
3. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement and any Sub-Lease agreements, including but not limited to, use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.
4. Function as operations liaison between the Department, governmental agencies, Sub-tenants and others.
5. Maintain permanent records for each Location leased.
6. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).
7. Establish and maintain for the Department a potential Sub-tenant database, including correspondence with potential Sub-tenants.
8. Develop, maintain and make available, if requested, all files, including those of any Sub-tenants, to include copies of licenses, permits, insurance certificates, and letters of credit.
9. Provide from time to time, as requested by the Department, annual financial statements demonstrating its and its Sub-tenant's financial capacity to perform its obligations under the terms of the Agreement.

G. Operating

The Concessionaire shall:

1. Provide quality control audits and reports, including maintenance of the street pricing requirements covering compliance with contract requirements, cleanliness of the Location, timeliness of service, quality of the product
2. Generate monthly reports to the Department, including sales by unit, concept and Location.
3. Develop annual revenue projections by month by its Sub-tenant, by Location, concession category, and product category to be updated on a regular basis.

4. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and analyses as may be requested periodically by the Department, including number of transactions per hour, average sales per transaction, and sales per product category.
5. Provide on-site staff to perform daily functions as required by the Scope of Services and the Standards of Operations identified in this Lease and Concession Agreement, subject to acceptance by the Department
6. Ensure compliance, or cause Sub-tenants to comply with the Department and other governmental agency ID Badging requirements.
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. Respond to customer/passenger complaints on a timely basis. Ensure customer service program compliance. The Concessionaire and/or its Sub-tenants will submit its/their customer service-training program within thirty (30) Days of the Lease Effective Date of the Agreement, for the Department's review and approval.
10. Coordinate and implement regular employee customer service training programs, to include employees from both the Concessionaire and its Sub-tenants, if applicable.
11. Participate and shall cause any Sub-tenant to participate in an airport-wide customer service program implemented by the Department.

H. Maintaining

The Concessionaire shall:

1. Maintain or cause to maintain the Locations pursuant to Department standards, which may be promulgated from time to time.
2. Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
3. Shall take such corrective action as necessitated to maintain Locations in an acceptable condition as required by the Department.

2.06 ANNUAL PLAN SUBMISSION: The Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) Days prior upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) Days after receipt of the foregoing plan to approve or disapprove the same in its discretion. If MDAD disapproves the plan, the Concessionaire 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.

2.07 PROHIBITED ACTIVITIES: Without limiting any other provision herein, Concessionaire or its Sub-tenants shall not, without the prior written consent of the

Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA Terminal Building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) 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 (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Concessionaire or its Sub-tenants to perform its maintenance and repair obligations under this Agreement, Concessionaire or its Sub-tenants 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 MINIMUM ANNUAL GUARANTEE (MAG): As consideration for the privilege to engage in business at Miami International Airport, the Concessionaire shall pay the Department the amount of **$100,000** annually as may be adjusted by the prorated amount stated below and subject to recalculation pursuant to **Sub-Article 3.03 "Recalculation of the Minimum Annual Guarantee"**, inclusive of Location and Location Storage rent.

The Minimum Annual Guarantee ("MAG") payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law.

The MAG shall commence upon the Location Commencement Date of each Location and is comprised of a rent payment of **$65.69** per square foot annually for each square foot of Location space occupied and the amount by which the stated MAG above, as adjusted and recalculated from time to time, exceeds the Location rent.

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS: The Concessionaire understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**, and **Sub-Article 3.04 "Percentage Fee to the Department"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 22.11 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Interim Term, Operational Term and any Extension of this Agreement. If the Concessionaire's Locations are so damaged as to significantly impact the Concessionaire's operations for a period in excess of seventy-two (72) hours, the Department shall provide a

proportionate abatement of the MMG for that portion of the Locations rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Lease Effective Date and every year thereafter. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities Average: All Items, for the published, preceding twelve-month period.

3.04 PERCENTAGE FEE TO THE DEPARTMENT: The Concessionaire shall pay the Department the total percentage fee of Gross Revenues or the Minimum Monthly Guarantee; whichever is greater, for each respective package. The monthly percentage fee shall be due on the tenth (10^{th}) Day of the month following the month during which the monthly gross revenues were received or accrued. Percentage fees are non-taxable.

The Monthly Percentage Fee payments to the Department shall commence upon the Beneficial Occupancy for each Location.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.19 "Annual Audit"**, are considered as having been due on the tenth (10^{th}) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

To the extent the Concessionaire and the Department mutually agree to change a concept category for a particular Location, then the corresponding percentage fee, as listed per category in **Sub-Article 3.05, "Concessions Category Percentage Fee"**, will be adjusted accordingly.

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3.05 CONCESSIONS CATEGORY PERCENTAGE FEE: The Concessionaire shall pay the Department the Percentage Fee for the corresponding category.

CONCEPT CATEGORY	APPLICABLE PERCENTAGE
RETAIL	
Bookstores	9%
News & Gifts	16%
Newsstands	13%
Entertainment & Electronics	8%
Fashion Apparel & Accessories	11%
Gift Specialty Shops	13%
Jewelry, Watches & Accessories	14%
Sundries, Personal Care	14%
Travel Accessories	14%
Services	10%
FOOD & BEVERAGE	
Branded Concept	13%
Quick Serve	17%
Beer & Wine	18%

3.06 ANNUAL RENTAL: The Concessionaire shall be required to pay rent at the prevailing terminal class rates for the lease of support and storage spaces provided by **Sub-Articles 1.05** and **1.06**, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.17, Address for Payments**.

3.07 ANNUAL RENTAL RATE ADJUSTMENT: On October 1st of each year of the Agreement, the rental rates, pursuant to **Article 3.06, "Annual Rental"** shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten (10) Days of same.

3.08 COMMON WAREHOUSE LOGISTICS FEE: In the event the Department initiates a Common Logistics Program the actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or Concessionaire from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Concessionaire shall not be entitled to charge Sub-tenants for any of the Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the

Common Logistics Fee. All funds received by Concessionaire as part of the Common Logistics Fee shall not be included in Concessionaire's Gross Revenues for any and all purposes of this Agreement, it being recognized by the Department that any such payments by Sub-tenants to the Concessionaire shall not be included in the calculation of the Percentage Fee, if any, due from Concessionaire to the Department as provided for in **Sub-Article 3.04 "Percentage Fee to the Department"**. The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Concessionaire impose the Common Logistics Fee in a non-discriminatory manner within store categories.

3.09 CONCESSION MARKETING FEE: A concession marketing fee of one half (1/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following the first Location opening on the twentieth (20^{th}) of each month to be used for marketing the concessions at the Airport.

3.10 MAG PERFORMANCE BOND: Within thirty (30) Days of the Lease Effective Date of this Agreement, the Concessionaire shall provide the Department a Performance Bond to guarantee payment of the MAG and rental for the lease of support and storage spaces. Concessionaire shall keep such Performance Bond in full force and effect during the Interim Term and Operational Term and any Extension of this Agreement, as applicable, and thereafter until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond or other security instrument 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 or other security instrument shall initially be in an amount equal to seventy-five percent (75%) of the MAG amount provided for in Sub-Article 3.01, which is equal to **Seventy-five Thousand Dollars ($75,000)** and seventy-five percent (75%) of any annual rental and applicable taxes for the lease of support and storage spaces set forth in Sub-Article 3.06. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and lease of support and storage spaces.

The Department may draw upon such form of security instrument, if the Concessionaire 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, Concessionaire 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 Concessionaire is not in default and fully

complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Concessionaire within one hundred eighty (180) Days after the end of the Operational Term or any Extension of the Operational Term.

3.11 TAXES: The Concessionaire shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, liquidated damages and charges levied thereon. The Concessionaire 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 Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and liquidated damages payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.12 REPORTS OF GROSS REVENUES: On or before the tenth (10^{th}) Day following the end of each month throughout the Interim Term, Operational Term and any Extension of this Agreement, the Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall report each Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department"**. The Concessionaire 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 Concessionaire. The statement must be signed by an officer (if the Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Concessionaire, and identify all Gross Revenues by Location reported to the Concessionaire during such month. Failure to comply within ten (10) Days following the due date of the report shall result in a late fee liquidated damage of fifty dollars ($50.00) per Day, as provided in **Sub-Article 3.24 "Liquidated Damages"**.

3.13 OTHER REPORTS: The Concessionaire 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.

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

3.15 DISHONORED CHECK OR DRAFT: In the event the Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Concessionaire 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 liquidated damages imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

3.16 **ADDRESS FOR PAYMENTS:** The Concessionaire shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:

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

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 592624
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.

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

3.18 **ANNUAL AUDIT:** Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Concessionaire 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 separately stating its and each Sub-tenants Gross Revenues, 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 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 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 Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

3.19 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 Concessionaire may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Concessionaire 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 Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give advance notice to the Concessionaire.

If it is established that the percentage fees have been underpaid to the Department, the Concessionaire shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.15 "Late Payment"** from the date such amount or amounts should have been paid.

Further, if such examination establishes that Concessionaire 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 Concessionaire.

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

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Concessionaire to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

3.20 RECORDS AND REPORTS: The Concessionaire shall, at all times during the Interim Term and Operational Term of this Agreement, or any Extension hereof and in accordance with applicable law, maintain at the Concessionaire'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 on the Locations, in a form consistent with good accounting practice. In addition, Concessionaire shall install or cause to be installed for use at all times in each Location such devices and forms as are reasonably necessary to record properly, accurately and completely all merchandise sales and services from each Location. 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 Concessionaire shall account or shall cause its Sub-tenants to account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Concessionaire (and of the Sub-tenants, as the case may be) and which supports the amounts reported to the Department in the Concessionaire's monthly schedules. At a minimum, the Concessionaire's accounting for such receipts shall include the following:

1. Concessionaire's bank account statements (separate bank accounts shall be maintained for receipts from Sub-tenants' payments to the Concessionaire and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Location 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 Concessionaire'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 Concessionaire's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

   Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire'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 relating to Sub-tenant's sales, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Concessionaire 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 on the Locations 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 Concessionaire's business.

3.21 **ADDITIONAL FEES DUE:** If the Department has paid any sum or has incurred any obligation or expense for which the Concessionaire 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 Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

3.22 **UTILITIES:** The cost of all utilities used or consumed on the Locations shall be borne by the Concessionaire; provided, however, except with respect to the Concessionaire's support and storage space as defined in **Sub-Articles 1.05 and 1.06** at the Airport, the Concessionaire shall be entitled to pass the cost of all utilities used or consumed to the Sub-tenants at the same rates as billed to the Concessionaire without any administrative mark-up or profit. The Department requires the Concessionaire where such capability exists, to provide and install or cause the Sub-tenants to provide and install meters for utilities used at the Concessionaire's or its Sub-tenant's expense. If the Locations are not provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Concessionaire hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

3.23 **LIQUIDATED DAMAGES:** If Concessionaire or its Sub-tenants default under any of the covenants or terms and conditions, of this Agreement, Department shall impose the financial liquidated damages described below, as a result of the violation(s), on a daily basis, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation	Fee
Violation of Permitted Use of a Location	$ 100 per Day/per Location
Failure to Maintain Required Hours of Operation	$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	$ 50 per Day/per Location
Unauthorized Advertising	$ 50 per Day/per Location
Failure to maintain Location clean	$ 50 per Day/per Location

Failure to maintain Market Basket Pricing or to conduct the surveys as required	$	50 per Day/per Location
Installation of Unapproved Items in Locations	$	50 per Day/per Location
Violations of other terms and conditions	$	75 per Day/per Location

The foregoing is due and payable from the Concessionaire; however, it shall not be construed as prohibiting the Concessionaire from imposing the financial liquidated damages described above, as a result of the Sub-tenant's violation(s), on a daily basis, on the applicable Sub-tenants, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of the Sub-Lease agreements, until said violations are remedied by the applicable Sub-tenants.

3.24 PAYMENT SECURITY: The Concessionaire 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 MAG amount provided for in Sub-Article 3.01, which is equal to **Twenty-five Thousand Dollars ($25,000)** and twenty-five percent (25%) of any annual rental for the lease of support and storage spaces set forth in Sub-Article 3.06 and any applicable taxes. Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG and lease of support and storage spaces. This requirement shall be met no later than thirty (30) Days after the Lease Effective Date of the Agreement. The payment security shall be kept in full force throughout the Interim Term, Operational Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the Concessionaire fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Concessionaire 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 TO THE LOCATIONS

4.01 IMPROVEMENTS TO LOCATIONS: The Concessionaire shall be required to invest a minimum of two hundred dollars per square foot ($200.00 psf), for Approved Improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for each Location listed in Exhibit A and any additional location taken by the Concessionaire pursuant to **Sub-Article 1.09(A) "Addition of Location"**. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for a Location, the maximum proportion of soft costs permitted to be included as Approved Improvements shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Concessionaire to build such improvements in compliance with MDAD TAC procedures.

It is the intent of the parties that Approved Improvements may include but are not limited to the décor, 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 in the Final Plans, as such term is defined in **Sub-Article 4.02 "Design of Improvements"**.

Improvements not constituting Approved Improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to **Sub-Article 4.09 "Cost Documentation"**, and (iii) can be removed without damage to the premises. The Concessionaire is liable and shall indemnify the Department for any damage to the Locations which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as Locations, as stated in **Article 4 "Improvements to the Locations"** or as an extension of this Agreement, and costs incurred by either the Concessionaire or its Sub-tenants to provide such storage space shall not constitute Approved Improvements.

4.02 DESIGN OF IMPROVEMENTS: Plans for the design of improvements will be in accordance with Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures" or Exhibit M "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan", the "MDAD Public Address System Master Plan", and the "MDAD Design Guidelines Manual" (www.Miami-Airport.com) as may be established for the Terminal Retail Program. As plans for the improvement of individual Locations or common area improvements are completed, the Concessionaire shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications (including materials, colors, textures and fixtures), 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 REFURBISHMENT OF LOCATIONS: The Concessionaire shall refurbish the Locations or cause its Sub-tenants to refurbish their respective Locations to begin no earlier than the sixth (6^{th}) Operational Term year of the Agreement and be completed no later than the last day of the sixth (6^{th}) Operational Term year of this Agreement.

Approved Improvements for the refurbishment of the Locations shall not be less than fifty dollars per square foot ($50 psf). There will be no reimbursement or amortization of these costs for refurbishment.

4.04 NOT USED

4.05 CERTAIN CONSTRUCTION CONTRACT TERMS: All contracts entered into by the Concessionaire and/or its Sub-tenants for the construction of the Improvements 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 County in the event the contractor fails to complete the construction on time. The Concessionaire agrees that it will use its best efforts and shall also require the Sub-tenants to 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 Concessionaire, the Concessionaire shall provide or cause to be provided to the County copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Exhibit B, "Surety Performance and Payment Bond" provided by Concessionaire to the County in the form contained in Exhibit B "Surety Performance and Payment Bond" in the Lease and Concession Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation contract.

4.06 IMPROVEMENTS FREE AND CLEAR: The improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever, other than the County's obligation to reimburse the Concessionaire for the un-amortized value of the Approved Improvements as provided in this Agreement. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County (and the Concessionaire for contracts entered into by Sub-tenants) from the claims of any laborers, subcontractors or material men against the locations or improvements.

4.07 OTHER REQUIREMENTS: The Concessionaire shall or shall cause the Sub-tenants to apply for and obtain a building permit from the County for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Concessionaire shall furnish or shall cause the Sub-tenants to furnish to the Concessionaire and the County one complete set each of legible prints (black line), of construction drawings in electronic file format and in full compliance with Autodesk's DWG file format and standard revised as to "as built". Based upon submission date, the AutoCad.dwg version must be within two years of the latest release. MDAD will not accept the submission of any AutoCad drawing deliverable which contains references to external source drawing files. The closeout document package should include all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Concessionaire 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.

Any change in the Location, concept or tenant proposed in response to the Request for Proposals must be approved in writing by the County. The Sub-tenant occupying the Location submitted in response to the Request for Proposal shall be given notice of the proposed change in writing with a copy to the County and an opportunity to respond in writing to the County and have an opportunity to be heard by the County.

4.08 REVIEW OF CONSTRUCTION: The County 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 Concessionaire or the Sub-tenant and approved by the County.

4.09 COST DOCUMENTATION: Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Articles 4.01 "Improvements to Locations", 4.03 "Refurbishment of Locations"**, and **4.04 "Concessionaire Development Requirements"**, the Concessionaire shall submit to the County a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Location in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the County (the "Certified Audit"). The Concessionaire or the Sub-tenants, as the case may be, shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Concessionaire or the Sub-tenants and approved by the County, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Concessionaire or the Sub-tenants, as the case may be. No non-receipted expenditures will be credited. Concessionaires not submitting certified audits within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the County shall also include an administrative fee of ten per cent (10%) of the monies due the County on the build-out of the Locations. In the event of any disputes between the County and the Concessionaire as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference"**. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Concessionaire in writing that it has approved or disapproved the certified costs for each Location and the common area improvements detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Concessionaire fails to submit the Certified Audit within the time prescribed above for any Location, then a liquidated damage will be assessed as noted in **Sub-Article 3.24 "Liquidated Damages"**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Concessionaire for un-amortized improvement costs for such Location pursuant to **Sub-Article 4.10 "Amortization Schedule"** shall equal the lesser of two hundred dollars ($200) per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

If the approved total receipted amount is below the Concessionaire or its Sub-tenant's minimum investment and is depicted as such in the results of the Certified Audit, the Concessionaire shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Location.

If the approved total receipted amount for Refurbishment of Locations is below the Concessionaire's or its Sub-tenant's investment, the Concessionaire shall be required to pay the Department the difference between the expended amount and the refurbishment amount within one hundred eighty (180) Days from the date of completion of refurbishment.

The Concessionaire shall be entitled to obtain reimbursement of such payments made to the Department from the applicable Sub-tenant(s) who fails to spend the minimum investment or the refurbishment amount for their specific Locations.

4.10 AMORTIZATION SCHEDULE: The Concessionaire shall amortize its capital investment for a period not to exceed (60) months using the straight-line depreciation method. If, at any time during the Operational Term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of any Location, the Department may designate new Locations at its sole discretion and reimburse the Concessionaire the unamortized balance of Approved Improvements for that Location.

Investment subject to such reimbursement shall include the following items only:

1. Directly contracted costs of construction.
2. Stores displays more than $500.00 per display, furniture, fixture, equipment and signage purchased and installed for direct use in the facility.
3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Concessionaire will be required to confirm the Minimum Investment within one hundred twenty (120) Days of Beneficial Occupancy for each Location. No non-receipted expenditures will be credited. If the approved total receipted amount is below the ($200/psf) minimum, the Concessionaire will be required to pay the Department the difference between the Minimum Investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

Concessionaires not submitting a certified audit within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of twenty-five percent (25%) of the monies due the Department on the build-out of the Locations.

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

4.11 **CONSTRUCTION PERMIT FEE:** The Concessionaire shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Concessionaire to the Department is an amount equal to one percent (1%) of the estimated construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Concessionaire's and Sub-tenant's plans/specifications. Such fee shall be non-refundable. The Concessionaire shall be entitled to require the Sub-tenants to pay their proportionate share for the construction costs for the improvements to be made by the Sub-tenants in each Location.

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

1) **Concessionaire Improvements**

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

2) **Design and Construction Coordination**

a. Concessionaire shall:

1. Be responsible for construction management and coordination of all improvements to the Locations and authorized administrative support space including those of Sub-tenants.
2. Coordinate meetings with Sub-tenants and Sub-tenant's architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.

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

3) Construction

Concessionaire shall:

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

13. Obtain Certificate of Occupancy for each Location.
14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

ARTICLE 5 – STANDARDS OF OPERATION

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

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which the Concessionaire agrees to observe and obey and cause its Sub-tenants 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 Concessionaire. The Concessionaire shall distribute such rules and regulations and operating performance standards to its Sub-tenants. The Department shall provide the Concessionaire 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 Concessionaire shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Concessionaire shall immediately implement and comply and shall cause its Sub-tenants to immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

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

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

5.02 MARKET BASKET PRICING POLICY: The Department has instituted a Market Basket pricing policy to ensure that Airport prices are comparable to retail in the Miami Dade County, Florida area to reinforce the objective of making the Airport a more "passenger friendly" airport, pursuant to Exhibit L "Standards of Operation."

The Concessionaire or its Sub-tenants who are not in compliance with the provisions of this Sub-Article shall be given seven (7) Days after notice of such non-compliance pursuant to **Sub-Article 18.09** to bring all products into compliance. Failure to do so shall subject the Concessionaire to liquidated damages pursuant to **Sub-Article 3.24 "Liquidated Damages"** and shall constitute a default under this Agreement.

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, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Concessionaire or its Sub-tenants, and further provided that the Concessionaire shall or shall cause its Sub-tenants to reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Concessionaire 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.

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

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

conditions beyond the control of the Department. If the Concessionaire's or Sub-tenant's Locations are of such a condition as to significantly impact the Concessionaire's or a Sub-tenant's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Concessionaire pursuant to this Agreement or the Sub-tenant pursuant to the Sub-Lease or license agreement, the Department may provide a rent abatement for that portion of the Locations rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

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

1. The Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Sub-tenants to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Concessionaire by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.
3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Concessionaire under or in connection with this Agreement.
4. The Department shall not be liable to the Concessionaire for any loss of business or damages sustained by the Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7 – FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES, AND EQUIPMENT: Any equipment, furnishings, fixtures and signs installed in the Locations by the Concessionaire or its Sub-tenant 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 Concessionaire or its Sub-tenant, as provided in **Sub-Article 4.01 "Improvements to Locations"**, shall, except as provided in **Sub-Article 7.03(B) "Disposal of Furniture, Fixtures, and Equipment"**, be removed from the Locations within five (5) Days following the expiration or earlier termination of this Agreement.

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

7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT: At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12 "Default and Termination by County"** or **Article 13 "Claims and Termination by Concessionaire"** 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 in the Locations by the Concessionaire or any Sub-tenant:

(A) Require the Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of Sub-Article **4.01 "Improvements to Locations"**; or

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

ARTICLE 8 – MAINTENANCE

8.01 CLEANING: The Concessionaire shall, at its cost and expense, keep or cause its Sub-tenants to keep the Locations clean, neat, orderly, sanitary and presentable at all times. If the Locations are not kept clean as provided in the Standards of Operation, Exhibit L, the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in liquidated damages being assessed pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

8.02 REMOVAL OF TRASH: The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Locations 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 Concessionaire enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Locations, 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. The Concessionaire shall have the right to charge Sub-tenants for a proportionate share of any such costs and expenses incurred to remove and properly dispose of all trash, refuse, and pest control as a result of inactions or actions by the Concessionaire and/or its Sub-tenants of any nature whatsoever. Any trash left or stored in any area visible to the public or edible items not properly contained may result in liquidated damages being assessed pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

The Department reserves the right to charge the Concessionaire retroactively non-discriminatory proportionate share for waste disposal a proportionate share in a non-discriminatory manner 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.

8.03 MAINTENANCE AND REPAIR: Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Concessionaire or its Sub-tenants specifically as a result of their operation shall remain the obligation of the Concessionaire or its Sub-tenants. The Concessionaire shall repair or cause to be repaired, at or before the end of the Operational Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed

satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of either the Concessionaire and/or a representative of the applicable Sub-tenant may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire (or if the Concessionaire fails to cause the Sub-tenant to perform such maintenance) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Concessionaire for such services, as provided by **Sub-Article 8.04.**

8.04 FAILURE TO MAINTAIN: Upon failure of the Concessionaire or its Sub-tenants to maintain the Locations as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Locations and 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 Concessionaire, in addition to any liquidated damages imposed by the Department pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

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

8.05 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 Concessionaires. Participation in this program, once established, will be mandatory. The Concessionaire and/or its Sub-tenants 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 Concessionaire or its Sub-tenants is the sole responsibility of the Concessionaire. 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.

8.06 FIRE PROTECTION AND SAFETY EQUIPMENT: The Concessionaire and its Sub-tenants 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 Interim Term, Operational Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Locations.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 NO ASSIGNMENT: The Concessionaire shall not assign, transfer, pledge or otherwise

encumber this Agreement nor shall the Concessionaire allow others to use the Locations, without the prior written consent of the Department.

9.02 OWNERSHIP OF THE CONCESSIONAIRE: Since the ownership, control, and experience of the Concessionaire were material considerations to the County in the award of this concession and the entering into of this Agreement, the Concessionaire shall take no actions which shall serve to transfer or, sell majority ownership or control (deemed to mean more than fifty percent (50%) of the stock) of the Concessionaire without the prior written consent of the Department.

9.03 CHANGE OF CONTROL: If Concessionaire 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 Concessionaire to result in a change of control of Concessionaire shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership".** If the Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Concessionaire (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**.

9.04 HOLDOVER:

A. With the Department's Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations of no less than seventy percent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement.

B. Without Department Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Locations a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS monthly Percentage Fee PLUS monthly installment of the support space annual lease rental pursuant to **Sub-Article 3.06 "Annual Rental"**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Concessionaire by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable

weekly in advance. Notwithstanding the above, the Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF CONCESSIONAIRE: The Concessionaire shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners, principles or any other persons. The Concessionaire 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 Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Concessionaire 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 CONCESSIONAIRE: Prior to execution of this Agreement by the County and commencement of the Interim Term of this Agreement, the Concessionaire 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 Interim Term, Operational Term and any Extensions of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Concessionaire'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 Concessionaire must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

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

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

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

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

*Under no circumstances is the Concessionaire 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 OF CONTINUITY: The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with Article 11 "Insurance" remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Concessionaire 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 Concessionaire shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

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

11.04 CONCESSIONAIRE LIABLE: Compliance with the requirements as to carrying insurance in Article 11 "Insurance" shall not relieve the Concessionaire from liability under any other provision of this 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 Agreement shall constitute a breach of this Agreement.

11.06 RIGHT TO EXAMINE: The Department reserves the right, upon reasonable notice to examine the original policies of insurance of the Concessionaire (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit or cause to permit such inspection at the offices of the Concessionaire. 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 Concessionaire agree to provide copies to the Department, at the Concessionaire's sole cost and expense.

11.07 PERSONAL PROPERTY: Any personal property of the Concessionaire or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Concessionaire 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 Agreement.

11.09 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 Concessionaire and its general contractor(s) and subcontractors:

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 Concessionaire or each contractor performing any part of the work for the Concessionaire 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, Concessionaire shall record all bonds required by this Agreement in the Department of Public Records of Miami-Dade County. Prior to performing any portion of the Work, the Concessionaire shall deliver to County the Bonds required to be provided by Concessionaire or each contractor as set forth in this 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 an 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 Concessionaire 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 Concessionaire 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) Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Concessionaire 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 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 Department's Risk Management 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 Concessionaire and approved by the Concessionaire 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 Concessionaire 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 "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Concessionaire.

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 Concessionaire to agree to permit such inspection at the offices of the Department. 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 Concessionaire agrees to provide copies to the Department, at the Concessionaire's sole cost and expense.

G. **Personal Property:** Any personal property of the contractor, or of others, placed in the Locations 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 Agreement by the Concessionaire (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 Concessionaire or its Sub-tenant has violated the terms and conditions of this Agreement;

(B) The Concessionaire or its Sub-tenants has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;

(C) The Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the

Concessionaire's creditors, or the Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Concessionaire's affairs have been put in the hands of a receiver;

(D) The occurrence of any act, which operates to deprive Concessionaire 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 Concessionaire of its business by any act(s) of Concessionaire;

(F) Any persistent violation on the part of Concessionaire, 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 Concessionaire to correct the same;

(G) Failure on the part of Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Concessionaire 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 Concessionaire or its Sub-tenants to maintain its other equipment in a manner satisfactory to the Director;

(I) The Concessionaire or its Sub-tenants has failed to obtain the approval of the Department where required by this Agreement;

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

(K) The Concessionaire has failed to comply with any provision of Sub-Article 14.07 "Airport Concession Disadvantaged Business Enterprise Participation Plan";

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

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

12.02 PAYMENT DEFAULT: Failure of the Concessionaire to make MAG/MMG 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 Agreement after five (5) Days notice in writing to the Concessionaire.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period 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 Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

(A) Failure of the Concessionaire to comply with covenants of this 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 Concessionaire 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 Concessionaire, regardless of whether the Concessionaire 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 Concessionaire 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 Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Concessionaire, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire 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 Concessionaire by sending a notice of default, specifying the basis for such Event of Default, and advising the Concessionaire that such default must be cured immediately or this Agreement with the Department may be terminated. The Concessionaire can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Concessionaire's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Concessionaire 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 Concessionaire shall discontinue the services.

12.06 UNAMORTIZED INVESTMENT EXTINGUISHED: Termination of this Agreement

based upon **Sub-Article 12.07 "Termination for Abandonment"**, **Sub-Article 12.02 "Payment Default"**, **Sub-Article 12.03 "Other Defaults"**, **Sub-Article 12.04 "Habitual Default"**, or **Sub-Article 12.08 "Termination for Cause"**, shall extinguish any unamortized investment amounts owed the Concessionaire by the Department, for the slippage in Location Turnover Dates.

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Concessionaire of the Locations or the voluntary discontinuance of Concessionaire'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 Concessionaire from providing services on the Locations for the purposes authorized in **Article 2 "Use of Locations"**. The foregoing shall not include periodic Sub-tenant vacancies in individual Locations that may occur from time to time during the Interim Term and Operational Term of this Agreement, including any Extension.

12.08 TERMINATION FOR CAUSE: The County may terminate this Agreement, effective immediately if: (i) the Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Concessionaire is convicted of a felony during the Interim Term, Operational 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 Concessionaire 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 Concessionaire's ability to perform the work or any portion thereof, the Department may request that the Concessionaire, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Concessionaire's ability to perform in accordance with terms of this Agreement. In the event that the Concessionaire fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

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

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

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

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

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

ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Concessionaire 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 Concessionaire 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 Concessionaire's receipt of such decision, the Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Concessionaire 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 Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the Concessionaire 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 Concessionaire shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

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

(B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the

Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Concessionaire 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 Concessionaire's provision of services for a period of one hundred eighty (180) Days.

ARTICLE 14 – VOLUNTARY AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

14.01 ACDBE REQUIREMENTS: The Department has established a Voluntary ACDBE participation for Packages Four (4), Five (5) and Six (6) for certified ACDBE's in connection with this Agreement.

If the Concessionaire elects to participate, they will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, on or before the tenth (10^{th}) 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 Agreement; the subcontract agreement or other agreements 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: The Concessionaire may satisfy a part of the ACDBE goal by Joint Venturing with an 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 a Concessionaire 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 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 RFP and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be Store-specific with regards to tasks and Locations. The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. 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.

2. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
3. 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 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 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 Interim Term, Operational Term and any Extension of this Agreement.

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS: The Concessionaire acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Subpart F, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Concessionaire under the terms of the 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 Airport Concession 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 Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Concessionaire 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 Concessionaire, to terminate this Agreement, pursuant to the default language referenced in the Agreement.

The Agreement is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23, Subpart F. The Concessionaire 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 lease and concession agreement covered by 49 CFR Part 23, Subpart F.

The Concessionaire agrees to include the above statements in any subsequent lease and concession agreements.

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 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 Concessionaire and the Sub-tenant(s) shall be maintained at the principal office and shall be open for inspection by the Department or the ACDBE Sub-tenant(s) or joint venture(s), upon reasonable prior written notice, during business hours.

b. The Concessionaire books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Concessionaire 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 Agreement, an un-audited operating (i.e., income) statement for the preceding month and for the year to date.

c. Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, 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 Concessionaire shall contract with those firm(s) as are listed on the Concessionaire'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 Concessionaire with the requirements of this provision as referenced in **Sub-Article 14.01 "ACDBE Requirements"** during the Interim Term, Operational 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 Concessionaire and ACDBEs, and other records pertaining to the ACDBE Participation Plan.

If at any time the Department has reason to believe that the Concessionaire 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 Agreement in whole or in part, unless the Concessionaire demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the Department upon the Concessionaire 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 Concessionaire shall comply and cause its Sub-tenants to 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 Agreement.

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Concessionaire agrees to pay, on behalf of the County, any liquidated damage, 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 Concessionaire, its agents, employees, Sub-tenants 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 Concessionaire 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 agreements which the Concessionaire may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement 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 Agreement prohibiting or limiting assignments, subletting or subleasing.

15.03 PERMITS AND LICENSES: The Concessionaire 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. The Concessionaire shall cause its Sub-tenants to do the same.

15.04 RESOLUTION NO. 456-07 PROHIBITING COUNTY AND PUBLIC HEALTH TRUST EMPLOYEES FROM USING PRODUCTS CONTAINING TRANS FATS: The Concessionaire shall not market or distribute at the designated Premises under this Agreement any pre-packaged, prepared or other foods, including catered foods, derived from or containing trans-fats (see Exhibit M). The Concessionaire shall, periodically review existing inventories and projected products, to assure that only trans-fat free products are being offered for public consumption.

Except for the aforementioned modifications, and in all other respects, the Agreement shall remain in full force and effect in accordance with the terms and conditions specified therein.

ARTICLE 16 – GOVERNING LAW

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

16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION: In the event that the County or the Concessionaire commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Concessionaire 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 Concessionaire agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Concessionaire has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Concessionaire, 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.

16.03 LABOR PEACE REQUIREMENT: Pursuant to Resolution No. R-148-07, the Concessionaire provided a signed copy of the labor peace agreement for their employees as part of their Proposal to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). See Appendix M. Furthermore, the County has the right, in the event of a labor disruption, to suspend it's obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Concessionaire is unable to reach an agreement with a labor organization regarding the terms of a labor peace agreement, the dispute between the Concessionaire and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration but no later than five (5) days prior to the date the proposal is due. The Concessionaire and the labor organization shall equally share the costs of arbitration.

ARTICLE 17 – TRUST AGREEMENT

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

17.02 ADJUSTMENT OF TERMS AND CONDITIONS: If at any time during the Interim Term, Operational Term or any Extension thereto, as applicable, a court of competent

jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other Concessionaires under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the County, shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Concessionaire.

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

17.04 **INDEPENDENT PRIVATE SECTION INSPECTOR GENERAL REVIEW:** Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of this Proposal, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Proposer shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Proposal or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Proposer's cost/price for this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Proposer, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Proposer in connection with this RFP or any contract issued as a result of this Proposal. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the Proposer or third party.

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

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

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

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

ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES: The Concessionaire shall pay all taxes lawfully assessed against its interests in the Locations and any support/storage spaces and its services hereunder, provided however, that the Concessionaire shall not be deemed to be in default of its obligations under this 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 CONCESSIONAIRE: The Concessionaire shall not alter or modify the Locations and or any support/storage spaces, except in accordance with **Article 4 "Improvements to the Locations"** herein, without first obtaining written approval from the Department.

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

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.09 "Addition, Deletion and Modification of Locations", Sub-Article 18.02 "Alterations by Concessionaire", Sub-Article, 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**.

18.05 SECURITY: The Concessionaire acknowledges and accepts full responsibility for the security and protection of the Locations. The Concessionaire fully understands and

acknowledges that any security measures deemed necessary by the Concessionaire for protection of the Locations shall be the sole responsibility of the Concessionaire 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 Concessionaire 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 Concessionaire shall be liable for any physical damage caused to the Locations by the Concessionaire, its employees, agents, contractors, subcontractors, suppliers, or it's Sub-tenants. The liability shall encompass: (i) the Concessionaire's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the physical damage caused by the Concessionaire or its Sub-tenants 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 Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

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

To the County:
(Mailing Address)

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

or (physical address):

Miami International Airport
Terminal Building
Director's Office

Concourse E-5th floor
Miami, FL 33122

To the Concessionaire:

Project Horizon, Inc. dba In Motion Entertainment
4801 Executive Park Court, Suite 100
Jacksonville, FL 32216

with copies to:

(Address Here)

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

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

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

18.13 AUTHORIZED USES ONLY: The Concessionaire shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Concessionaire under this 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 Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Concessionaire unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Concessionaire.

18.15 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY: The Concessionaire acknowledges and accepts full responsibility for

compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Transportation Security Administration (TSA), Homeland Security, FAA, CBP and MDAD as set forth from time to time relating to Contractor's activities at the Miami International Airport (MIA).

In order to maintain high levels of security at MIA, the Concessionaire must obtain MDAD photo identification badges for all the Concessionaire employees working in the Secured/AOA/Security Identification Display Area (SIDA) Sterile Areas or any other restricted areas of the Airport. All Concessionaire employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

The Concessionaire shall be responsible for requesting MDAD to issue identification badges to all employees who the Concessionaire requests to be authorized access to the Secured/AOA/SIDA/Sterile Areas and any other restricted areas of the airport and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employer of the Concessionaire or upon final acceptance of the work or termination of this Agreement. The Concessionaire will be responsible for fees associated with lost and unaccounted for badges as well as the fee(s) for fingerprinting and ID issuance.

All employees of the Concessionaire who must work within MDAD Secured/ AOA/SIDA/Sterile areas or any other restricted areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the referenced secured areas. Badges shall be worn on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular company area. Each employee must complete the SIDA training program conducted by MDAD and comply with all other TSA, Homeland Security, FAA, CBP and MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued. At the present time, MDAD Security and Safety ID Section regularly provide SIDA Training.

Concessionaire Ramp Permits will be issued to the Concessionaire authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department guard gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. Theses permits will be only issued to company owned vehicles or company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicles.

All vehicles operating within the AOA must be provided with the Automobile Liability Insurance required elsewhere in this Agreement. Proof of such insurance is provided to MDAD Airside Operations Division upon request.

Only Concessionaire staff with pictured MDAD ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Concessionaire shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

The Concessionaire agrees that its personnel, vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter, leave or while on the AOA. It is further agreed that the MDAD has the right to prohibit an individual, agent, or employee of the Concessionaire from entering the AOA, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage, or other unlawful activities, including repeated failure to comply with MDAD's or the TSA, Homeland Security, FAA, CBP, SIDA access control policies, rules and regulations. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA should be advised, in writing, of the reason for such denial.

The Concessionaire acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts cargo tampering, aircraft sabotage, and other unlawful activities at the Airport and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control policies and procedures.

The Concessionaire understands and agrees that vehicle and equipment shall not be parked/stored on the AOA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices, or pavement markings.

The Concessionaire understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Concessionaire in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Concessionaire.

Notwithstanding the specific provisions of this Article, the Owner shall have the right to add to, amend, or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the TSA/Homeland Security/FAA/Federal Inspection Services agencies.

The Concessionaire shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.

Concessionaire agrees that it will include in all contracts and subcontracts with its MIA sub-consultants, service providers, and suppliers an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. The Concessionaire agrees that in addition to all remedies, liquidated damages, and sanctions that may be imposed by TSA, Homeland Security, FAA, Federal Inspection Services Agencies or MDAD upon Concessionaire sub-consultants, suppliers, and their individual employees for a violation of applicable security provisions. The Concessionaire shall be responsible to the Owner for all such violations and shall indemnify and hold the Owner harmless for all costs, fines and liquidated damages arising there from, such costs to include reasonable attorneys' fees.

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

18.17 **MODIFICATIONS:** This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.04 "Administrative Modifications", Sub-Article 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

18.18 **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 Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Concessionaire and the Department, on behalf of the Department granting the Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer

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

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

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

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

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

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

tenants or as a consequence of the existence of Concessionaire's interest under this Lease.

ARTICLE 19 – NOT USED

ARTICLE 20 - WAIVER OF CLAIMS

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

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

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

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

21.03 CONCESSIONAIRE COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

1. Concessionaire on behalf of itself, its Sub-tenants, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Concessionaire 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, Concessionaire 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 Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Concessionaire shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Concessionaire shall furnish the original or a true copy of such agreement to Department.

2. Concessionaire will provide and cause its Sub-tenants to 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 Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of

Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

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

6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Concessionaire 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 agreement covered by 49 CFR Part 23, Subpart F.

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

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

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Interim Term, Operational Term and/or Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Concessionaire from contesting said rulings or opinions, but the Concessionaire shall abide by the unilateral change while such a challenge is pending.

Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS: The Concessionaire 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 Concessionaire and delivery to the Department of an election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System.

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

21.07 NOT USED

21.08 REGULATIONS OF DEPARTMENT: The rights and privileges granted to the Concessionaire hereunder and the occupancy and use by the Concessionaire and the Concessionaire's Sub-tenants of the Locations 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 Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

21.10 MISCELLANEOUS PROVISIONS: The Concessionaire, its Sub-tenants 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 Concessionaire or to its services or operations hereunder.

1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Interim Term, Operational 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 Concessionaire 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 Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Concessionaire herein, on the Locations and on any and all equipment installed on the Locations and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.

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

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

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

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

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

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

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

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

10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements

of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

21.11 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Concessionaire, 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 AGREEMENT: This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Concessionaire hereby affirms the completeness and accuracy of the information provided by Concessionaire to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Concessionaire to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

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

CONCESSIONAIRE

(Project Horizon, Inc. dba In Motion Entertainment)

ATTEST:

Secretary _____
(Signature and Seal)

J.E. McCORMACK, SECRETARY
(Type Name & Title)

By: _____
Signature

Name: P. Jeremy Smith Jr

President
(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: _____
Mayor

Approved for Form
and Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____