

Memorandum



Date: May 17, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

Agenda Item No. 8(A)(7)

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez".

Subject: Award Recommendation for Airport Network Media Programming Services RFP
No. MDAD-02-14

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the award of a License Agreement for Airport Network Media Programming Services to AC Holdings, Inc. (ACH) and authorize the County Mayor or the County Mayor's designee to execute the Agreement in substantially the form attached hereto, with the Exhibits on file with the Clerk of the Board.

Scope

Miami International Airport (MIA) is located primarily within District 6, which is represented by Commissioner Rebeca Sosa; however, the impact of this agenda 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 Agreement, the Miami-Dade Aviation Department (MDAD) Director or the Director's designee has the authority to exercise the renewal options and to terminate the Agreement.

Fiscal Impact/Funding Source

ACH will pay to MDAD the greater of a Minimum Annual Guarantee (MAG) of \$150,000.00 or 50 percent of the net local advertising revenue sold exclusively by the company for airing exclusively at the Airport, and not by third parties or MDAD. Finally, for any ads displayed as part of a national campaign, ACH will pay to MDAD a percentage of net revenues not to exceed 15 percent, calculated by the percentage of the size of the viewing audience at the Airport, as compared to the total viewing audience at the company's eligible airports. Eligible airports are those contracting with ACH that receive a portion of net revenues.

Track Record/Monitor

ACH has performed in a satisfactory manner on the existing contract. MDAD's Chief of Telecommunications, Pedro Garcia, will monitor the contract.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted to determine the responsibility of ACH, including verifying corporate status and that there are no performance or compliance issues. The lists reviewed include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal-excluded parties. There were no adverse findings relating to the responsibility of ACH.

Background

A Request for Proposals was advertised on March 26, 2015 for an operator to provide, install, maintain, manage and operate first-class Airport Network Media Programming Services throughout MIA.

While MDAD owns the infrastructure distribution system that provides the power and connectivity to distribute programming throughout the Airport, ACH will be responsible for the electrical/cable outlets outward to the display equipment, which includes screens, monitors, speakers, brackets, wall mounts, and any related components necessary to provide the services. Those services include provision of professionally produced news, information and entertainment television programming, and the ability to interrupt a program to broadcast "live" breaking news or special events.

MDAD will be provided with up to six (6), one-minute segments per hour, which may be used as two (2) 30-second spots, per day free of charge. MDAD may use that airtime to promote the local area, concessions or services at the Airport or in the County for public service announcements or to sell to advertisers.

The Selection Committee met and reviewed the one (1) proposal submitted by ACH on September 17, 2015. The committee members found the firm responsible and having met the minimum qualifications. Clear Channel had expressed interest but neglected to submit a proposal. The \$150,000.00 MAG submitted by ACH was read aloud and, after discussion by the Committee, determined to be acceptable.

| | |
|---|--|
| PROJECT: | Airport Network Media Programming Services |
| PROJECT NO.: | RFP No. MDAD-02-14 |
| PROJECT LOCATION: | Miami International Airport |
| COMPANY NAME: | AC Holdings, Inc. |
| TERM OF AGREEMENT: | Eight (8) years |
| OPTION(S) TO RENEW: | One (1), two-year extension |
| CONTRACT MEASURES: | Voluntary Airport Concession Disadvantaged Business Enterprise (ACDBE) Goal. AC Holdings, Inc, elected not to participate. |
| COMPANY PRINCIPALS: | Deborah L. Cooper, President |
| GENDER, ETHNICITY & OWNERSHIP BREAKDOWN: | AC Holdings, Inc, is a wholly owned subsidiary of Turner Private Networks, Inc. |

Honorable Chairman Jean Monestime
and Members, Board of County Commissioners
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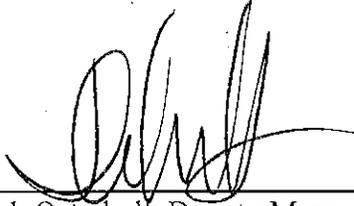
COMPANY LOCATION: One CNN Center, SE07
Atlanta, GA 30303-2762

HOW LONG IN BUSINESS: 25 years

**PREVIOUS AGREEMENTS
WITH THE COUNTY WITHIN
THE PAST FIVE (5) YEARS:** Current

INSPECTOR GENERAL: Provisions included

USING DEPARTMENT: Miami-Dade Aviation Department



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: May 17, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(A)(7)

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor'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)(7)
5-17-16

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF LICENSE AGREEMENT FOR THE AIRPORT NETWORK MEDIA PROGRAMMING SERVICES, RFP NO. MDAD-02-14 TO AC HOLDINGS, INC., WITH MINIMUM ANNUAL GUARANTEE OF \$150,000.00 AS MAY BE ADJUSTED ANNUALLY TO ENSURE THAT THE GUARANTEE TO MIAMI INTERNATIONAL AIRPORT IS AT PAR WITH OTHER SIMILARLY-TIERED ELIGIBLE AIRPORTS, AND FOR A TERM OF EIGHT YEARS, WITH ONE TWO YEAR OPTION TO RENEW; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN, INCLUDING RENEWAL AND TERMINATION PROVISIONS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, 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 approves the award of the License Agreement for Airport Network Media Programming Services, RFP No. MDAD-02-14, between Miami-Dade County and AC Holdings, Inc., in substantially the form attached hereto and made a part hereof, with a Minimum Annual Guarantee (MAG) of \$150,000.00, to be adjusted annually to ensure that the MAG is at par with payments to similarly tiered eligible airports, and for a term of eight years, with one two-year option to renew, all as more particularly set forth in the attached memorandum; and authorizing the County Mayor or County Mayor's designee to execute the Agreement, for and on behalf of the County, and to exercise all provisions therein, including the renewal and termination provisions.

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:

| | |
|-------------------------------------|----------------------|
| Jean Monestime, Chairman | |
| Esteban L. Bovo, Jr., Vice Chairman | |
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Audrey M. Edmonson |
| Sally A. Heyman | Barbara J. Jordan |
| Dennis C. Moss | Rebeca Sosa |
| Sen. Javier D. Souto | Xavier L. Suarez |
| Juan C. Zapata | |

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of May, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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



LICENSE AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

AC HOLDINGS, INC.

FOR AIRPORT NETWORK MEDIA PROGRAMMING SERVICES

AT

MIAMI INTERNATIONAL AIRPORT

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

DEFINITIONS

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

The terms "**Agreement**" or "**Contract**" shall mean this License Agreement, including all attachments thereto and a part thereof entered into by the County and the Successful Proposer, including all of its terms and conditions, attachments, exhibits, and amendments.

The terms "**Airport**" or "**MIA**" shall mean Miami International Airport.

The terms "**Airport Concession Disadvantaged Business Enterprises**" or "**ACDBE**" shall have the meaning ascribed in entitled, "Airport Concession Disadvantaged Business Enterprises", (Voluntary).

The term "**AMS**" shall mean Airport Network Media Programming Services.

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

The terms "**Aviation Director**" or "**Director**" shall mean the Director of the Miami-Dade Aviation Department or his or her designee.

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

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

The terms "**Capital Improvement Program**" or "**CIP**" shall refer to the Department's construction program that involves the refurbishment of MIA's terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession spaces, and other improvements that may affect concession operations in the MIA terminal building and on the concourses.

The term "**Central Terminal**" shall refer to the area of the terminal building and concourses, within the central part of the MIA terminal area, landside and airside, which is known as Concourses E-G.

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

The terms "**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 South Region Average: All Items.)

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

The term "Date of Execution" shall mean the day upon which the Agreement is executed by the Mayor of Miami-Dade County or designee, and attestation by the Clerk of the Board.

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

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

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

The term "Effective Date" shall mean the (10th) tenth day after the Date of Execution.

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

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

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

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

The term "Measured Viewing Audience" shall be "the quantity of gate locations receiving the AMS at the Airport" with "the quantity of viewers at the Airport determined by using enplanement figures and projected growth percentages for the Airport from the Federal Aviation Administration and modifying those numbers on a consistent basis to consider and factor in the number of gates at the Airport actually receiving the AMS" and replacing "total number of gates at the Airport" with "the quantity of viewers at all Eligible Airports determined by using enplanement figures and projected growth percentages from the Federal Aviation Administration and modifying those numbers on consistent basis to consider and factor in the number of gates actually receiving the AMS each Eligible Airport".

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

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

The term "Net Revenues" as used in the Agreement, shall mean advertising revenue from the sale of advertising time by the Operator to third parties in a given quarter, less (i) the applicable advertising agency commission fees actually paid or payable by the Operator; and (ii) any sums collected for any federal, state, County and municipal taxes imposed by law upon the sale of services.

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

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

The term "**Opportunity Viewers**" are the number of ticketed passengers within the Airport with an actual opportunity to view the Airport Network Media Programming Services.

The term "**Percentage Payment**" shall be the amount calculated on a quarterly basis as described in Sub-Section 3.04 of the Agreement.

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

The term "**Proposal**" shall mean a Proposer's written response to the Solicitation document. RFP No. MDAD-02-14.

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

The terms "**Request for Proposal**" or "**RFP**" shall mean the solicitation document, and all associated addenda, exhibits, forms, affidavits and attachments.

The term "**Research Firm**" shall mean an independent, nationally recognized research and/or auditing firms familiar with the required supporting demographics and other information necessary for the sale of television advertising.

The term "**Special Programming**" is special programming coverage taken from National News, including scheduled Presidential debates, live press conferences, live sporting events and other programming not constituting coverage of day-to-day news.

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

The term "**Taps**" shall mean the electrical and/or cable outlets provided by the Department to provide a power signal source.

The term "**Terminal**" shall mean the area of the MIA consisting of the terminal buildings and concourses, within the North, Central and South Terminals, landside or airside and connecting concession and public spaces.

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

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

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

LICENSE AGREEMENT

FOR AIRPORT NETWORK MEDIA PROGRAMMING SERVICES
AT
MIAMI INTERNATIONAL AIRPORT

THIS LICENSE AGREEMENT is made and entered into as of this _____ day of _____, 2016, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and AC Holdings, Inc. ("Operator"), A Georgia Corporation authorized to do business in the State of Florida.

RECITALS:

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

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

WHEREAS, Request for Proposal, RFP No. MDAD-02-14 was issued by the Department and in response to the Request for Proposal, the County received Proposals, and an award has been made to the Operator,

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

ARTICLE 1 – TERM, EXTENSION AND LOCATION(S)

1.01 TERM: The term of this Agreement is eight (8) years after the Date of Execution.

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

In the event the Department elects to extend the Agreement, the Operator shall be notified, in writing, no less than one hundred twenty (120) Days prior to the expiration of the Term. The operator may elect not to agree to the extension, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

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

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

1.04 ADMINISTRATIVE OFFICE/SUPPORT SPACE: - NOT USED

- 1.05 **NONEXCLUSIVITY:** This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other operators and/or others in other locations at the Airport during the Term and any Extension of this Agreement.
- 1.06 **ADDITION, DELETION AND RELOCATION OF LOCATIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Location(s) pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Location(s) in **Sub-Articles 1.03 Approved Installation Areas (Location(s)), 1.04 Administrative Office/Support Space**, and total payments due the Department in accordance with **Article 3, "Rentals, Payments and Reports"** and **Article 2 "Use of Location(s)"**.
- The Operator shall not add, remove or change the Location without the prior written approval of the Department.
- 1.07 **CAPITAL IMPROVEMENT PROGRAM:** The Capital Improvement Program (CIP) involves the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM AND EXTENSION OF THIS AGREEMENT.**
- 1.08 **REQUEST FOR PROPOSAL INCORPORATED:** The Operator acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal (RFP), that was the basis for the award of this Agreement and upon which the County relied. The RFP and the Proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF THIS AGREEMENT SHALL GOVERN, FOLLOWED BY THE RFP AND THEN THE PROPOSAL.**

ARTICLE 2 – USE OF LOCATION(S)

2.01 USE OF LOCATION(S):

- A. **Location(s):** The Operator shall use the Location(s) to place Display Equipment for the purposes of providing Airport Network Media Programming Services as depicted in Exhibit A.

There are 95 total display system installations at MIA covering 132 gates and 7 other areas. A detailed description can be found in Exhibit A. If Operator is in violation of any law, rule, or regulation, the County may require Operator to comply with same, irrespective of the failure of an Authority Having Jurisdiction to issue a citation, notice to cure, or other advisory document.

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

- B. **CATV Head-End Room:** The Department will make available rack space and the use of this room to the Operator. The CATV Head-end room, Exhibit C, is located in room C3134 on the third floor of the Terminal Building, D within the Department's

Information Systems Division. This room is shared between the Operator and MDAD. This room serves as the head-end for all programming on the CATV system.

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

- 2.02 SCOPE OF SERVICES:** The Operator shall provide, install, maintain, manage and operate a first class Airport Network Media Programming Service (AMS) throughout the Airport as required.

AMS will provide high definition local insertion equipment and services for insertion of local spots and advertising. MDAD has the option to sell local spots and/or to work with AMS or a third party to sell local spots as well.

The Operator will provide MDAD's airport customers with high quality national and local commercials and the ability for MDAD to provide local advertising messages and informational programming to its passengers.

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

The Programming shall be delivered by Satellite feed or through fiber cable and IP based equipment unless approved in writing by the Department.

Displays Type: The size of all monitors shall be approximately 42 inches (LCD or similar flat panel display screen) and be capable of providing a HD picture from a digital signal.

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

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

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

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

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

Installation and Maintenance: The Operator shall be solely responsible for the installation and maintenance of all equipment necessary to provide the AMS including the insertion equipment. The Operator shall evaluate audio levels (both ambient noise and program

volume) to ensure the system is tracking properly on a regular basis, and shall respond to any maintenance or repair requests within 48 hours. An installation plan must be submitted within thirty (30) days of the Date of Execution and shall include drawings, the method of installation and placement of equipment for Department approval for Locations.

Future Improvements: At the request of MDAD, the operator will be responsible for upgrading the monitors or other AMS components should new technology becomes available.

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

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

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

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

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

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

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

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

Service, Marketing and Other Related Research: The Selected Proposer shall select an Independent, nationally recognized research and/or auditing firm(s) familiar with the required supporting demographics and other information necessary for the sale of television advertising.

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

ARTICLE 3 - RENTALS, PAYMENTS AND REPORTS

- 3.01 MINIMUM ANNUAL GUARANTEE:** As consideration for the privilege to engage in business at Miami International Airport, the Operator shall pay the Department a Minimum Annual Guarantee (MAG) \$150,000.00 as may be adjusted to ensure that the MAG paid to MIA is at par with other similarly-tiered Eligible Airports. The MAG shall be adjusted pursuant to Sub-Article 3.03 "Adjustment of the Minimum Annual Guarantee"

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

- 3.02 NO NEGOTIATIONS:** The Operator understands and agrees, as a condition precedent to the County's consideration of the Proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"** 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 21.11 "Force Majeure"**, nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term and any extension of this Agreement.

- 3.03 ADJUSTMENT OF THE MINIMUM ANNUAL GUARANTEE:** The Minimum Annual Guarantee (MAG) will be reviewed annually to ensure that the MAG paid to MIA is at par with the annual guarantee paid to other similar tiered Eligible with similar traffic and viewership

If the MAG is adjusted upward for any similarly tiered Eligible Airport under contract with the Operator, then the MAG for MIA shall be adjusted upward as of the first day of the month immediately following the anniversary of the Effective Date and ever year thereafter.

- 3.04 NET REVENUE PAYMENT:** The Operator shall pay the Department a Percentage Payment of the Quarterly Net Revenue or the Minimum Annual Guarantee prorated Quarterly; whichever is greater. These Payments shall be due on the fifteen (15th) calendar day following the end of each quarter.

On a quarterly basis, the Operator shall pay the Department 50% of the net local advertising revenue sold exclusively by the Operator for airing exclusively at the Airport, and not by third parties or MDAD.

Additionally, with respect to any ads displayed as part of national campaigns, the Operator shall pay to MDAD a percentage of net revenues not to exceed 15% calculated by the percentage of the size of the viewing audience at the Airport as compared to the total viewing audience at the Operator's Eligible Airports.

- 3.05 CAPITAL INVESTMENT:** The Operator shall submit to the Department an updated financial plan demonstrating its proposed Capital Investment for Display Equipment, Reception Units and any other associated capital costs under this Agreement in an amount not less than the amount stated in its Proposal.
- 3.06 ANNUAL RENTAL: - NOT USED**
- 3.07 ADMINISTRATIVE OFFICE/SUPPORT SPACE RATE ADJUSTMENT: - NOT USED**
- 3.08 PERFORMANCE BOND FOR MAG REQUIREMENTS:** Within thirty (30) Days from the Date of Execution of the Agreement, the Operator shall provide the Department a Performance Bond to guarantee payment of the MAG. Operator shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and, thereafter, until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Performance Bond shall initially be in the amount equal to seventy-five percent (75%) of the MAG provided for in **Sub-Article 3.01**.

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

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

| <u>Bond (Total Contract) Amount</u> | <u>Best's Rating</u> |
|-------------------------------------|----------------------|
| \$ 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 |

B. Surety companies not otherwise qualifying with this paragraph may optionally qualify by:

- 1) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
- 2) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under ss. 31 U.S.C. 9304-9308.

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.

- C. For bonds in excess of \$500,000 the above provisions will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- D. The attorney-in-fact or other officer who signs the 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 bonds 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 Bonds shall be delivered to the Department as indicated above.

In the event the Surety on the Bond given by the Concessionaire becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law the Concessionaire must provide a good and sufficient replacement bond.

Cancellation of any bond or non-payment by the Concessionaire of any premium for any bond required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Department at its sole option may terminate this Contract.

- 3.09 PAYMENT SECURITY:** Within thirty (30) Days of the Date of Execution of this License Agreement, the Operator shall provide the Department with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an amount equal to twenty-five percent (25%) of the MAG amount provided for in **Sub-Article 3.01 "Minimum Annual Guarantee"**. Thereafter the amount shall be adjusted as necessary to reflect any increases in the MAG. This requirement shall be met no later than thirty (30) Days after the Date of Execution of the Agreement. The payment security shall be kept in full force throughout the Term and any Extension of

this Agreement thereof. The Department may draw upon such payment security instrument if the Operator fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Operator shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) shall constitute a default of this Agreement as set forth in Sub-Article 12.02 "Payment Default", entitling Department to all available remedies.

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

3.11 REPORT OF REVENUE PAYMENT: On or before the fifteenth (15th) calendar day following the end of each quarter throughout the Term and any Extension of this Agreement, the Operator shall furnish to the Department, Exhibit I "Quarterly Report of Net Revenue". This report shall provide the Net Revenues, the Revenue, Revenue Payment, the calculations used to determine those amounts, and the total amount paid to and/or owed to all Eligible Airports. The report shall be prepared and attested to by an independent, nationally recognized accounting firm. The report shall include all information relevant for purposes of determining and explaining the Airport's Revenue Payment, including the amount of any payments made to other Eligible Airports.

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

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

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

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

3.14 DISHONORED CHECK OR DRAFT: In the event the Operator delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Operator shall incur and pay a service fee of TWENTY-FIVE DOLLARS (\$25.00), if the face value of the dishonored check or draft is fifty dollars (\$50.00) or less, THIRTY DOLLARS (\$30.00) if the face value of the dishonored check or draft is more than

fifty dollars (\$50.00) and less than three hundred dollars (\$300.00), or FORTY DOLLARS (\$40.00), if the face value of the dishonored check is three hundred dollars (\$300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus 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.

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

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

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

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

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

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

By Credit Card: Miami-Dade Aviation Department
Finance Division-Cashier's Office
305-876-0652

3.16 ANNUAL AUDIT: Within one hundred and twenty (120) Days of the beginning of each calendar year following the Effective Date of this Agreement and within one hundred and twenty days (120) Days following expiration or earlier termination of this Agreement, the Operator shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report as detailed in **Exhibit G "Independent Auditor's Report"** summarizing the Operator's quarterly Net Revenues, Revenue Payment, the calculations used to determine those amounts, and the total amount paid to and/or owed to all Eligible Airports, including the Airport for the preceding year. The report shall be prepared and attested to by an independent, nationally recognized accounting firm. This report shall be prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required

hereunder without the specific prior written approval of the Department. If such schedules indicate that the payments for such period audited have been underpaid, the Operator shall submit payment therefore within forty-five (45) days after the completion of the reports to the Department as stated in **Sub-Article 3.15 "Address for Payments"** together with interest on any underpaid percentage fees at the rate set forth in **Sub-Article 3.13 "Late Payment"**.

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

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

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

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

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

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

1. Operator's bank account statements;

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

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

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

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

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

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

Violation

Fee (Per Occurrence)

| | |
|--|-----------------------------|
| Failure to complete Installation of the Locations Within one hundred twenty (120) days after the Turnover Date. | \$ 50 per Day/per Location |
| Violation of Permitted Use of a Location | \$100 per Day/per Location |
| Failure to Maintain Required Hours of Operation | \$ 25 per hour/per Location |
| Failure to Submit Required Documents and Reports* | \$ 50 per Day/per Location |
| Failure to Install Timely within 60 days of Receipt of the Permit for Technical Approval of the Plans for Locations turned over for Installation | \$ 25 per Day/per Location |
| Failure to correct a TV Monitor out of order Condition within 48 Hours of Reported by MDAD | \$75 Per Day Per Location |
| Violations of other Terms and Conditions | \$75 per Day/per Location |

*Up to \$750 a month

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

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

ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

- 4.01 IMPROVEMENTS TO LOCATIONS:** The Operator shall be solely responsible for all hardware and infrastructure as well as signal distribution cabling from the taps on the Infrastructure Distribution System to the Display Equipment necessary to provide Airport Network Media Programming Services, all of which shall be at Operator's expense, and in accordance with plans approved by the Department. All installations shall be designed to comply with the Americans with Disabilities Act (ADA), and all other applicable codes including but not limited to the South Florida Building Code and the NFPA Life Safety Code.
- 4.02 REPLACEMENT OF DISPLAYS BY OPERATOR:** The Department by notice pursuant to Sub-article 18.06 of this Agreement may require the Operator to replace inoperable Display Equipment. If the Department does require a replacement of Display Equipment, then the Operator shall make this replacement within 48 hours of the notice.
- 4.03 IMPROVEMENTS FREE AND CLEAR:** The Improvements made by the Operator, from the electrical/cable outlets (taps) outward to the Display Equipment, upon completion, shall become the property of the Operator. The Operator agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed shall be in writing and shall

contain provisions to protect the Department from the claims of any laborers, subcontractors or material men against the locations or improvements.

- 4.04. OTHER REQUIREMENTS:** The Operator shall apply for and obtain a building permit(s) from the County for all appropriate inspections. Within thirty (30) calendar days following the completion of installation of the improvements, the Operator shall furnish to the Department copies of all releases of Operator claims.
- 4.05. REVIEW OF INSTALLATION:** During the design and installation process, the Department and Operator shall appoint a project manager. The project manager shall coordinate the rights and responsibilities of the Department and Operator hereunder. During such processes, all written notices required hereunder shall be submitted to the project manager as well as to the parties designated elsewhere herein. The Department's project manager shall coordinate the design review process with Operator's project manager. During installation, the Department's project manager (or his or her designee) shall have the right to inspect the progress of installation at any time and from time to time, but the Department's project manager shall not be permitted to order the Operator's contractor to make changes to the work. The Department agrees that all comments regarding the work shall be delivered to Operator's project manager.
- 4.06. INSTALLATION FEE:** The Operator shall be responsible for the payment of all permit fees required by the County's Building Department, Department of Planning and Zoning, and any other Department for which a permit(s) must be issued for the design, demolition, installation, operation or maintenance of the Display Equipment.
- 4.07. CONSTRUCTION SERVICES: (NOT USED)**

ARTICLE 5 – STANDARDS OF OPERATION

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

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

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

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

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

- A. The Operator must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Locations.
- B. Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department.
- C. No Other Obligation of Department: The Operator acknowledges that the Department has made no representations or warranties concerning the suitability of the Locations for the Operator's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Operator.
 1. The Operator hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of, fixtures, , , signs and equipment needed to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
 2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the

Operator by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.

3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Operator under or in connection with this Agreement.
4. The Department shall not be liable to the Operator for any loss of business or damages sustained by the Operator as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7 – EQUIPMENT

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

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

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

- (A) Require the Operator to remove such equipment, fixtures, or signs, from the Locations within ninety (90) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 "Improvements to Locations"**; or
- (B) Retain any portion of the equipment of the Operator (personal property as referred to in **Sub-Article 4.01 "Improvements to Locations"**) in accordance with the provisions of this Agreement;

ARTICLE 8 – MAINTENANCE

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

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

- 9.01 NO ASSIGNMENT:** The Operator shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Operator allow others to use the Locations, without the prior written consent of the Department.
- 9.02 OWNERSHIP OF THE OPERATOR:** Since the ownership, control, and experience of the Operator were material considerations to the County in the award of this Agreement, the Operator shall take no actions which shall serve to transfer or, sell majority ownership or control of the Operator without the prior written consent of the Department.
- 9.03 CHANGE OF CONTROL:** If Operator is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Operator to result in a change of control of Operator shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**. If the Operator is a partnership, transfer of any interest in the partnership, which results in a change in control of such Operator, shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**.

ARTICLE 10 – INDEMNIFICATION

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

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

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF OPERATOR: Within thirty (30) days after the Date of Execution, the Operator shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the Term and any Extension of this Agreement.

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

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

- A. Workers' Compensation as required by Chapter 440, Florida Statutes.
- B. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional Insured with respect to this coverage.

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

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

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

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

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

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

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

- 11.04 CANCELLATION OF INSURANCE OR BONDS:** Cancellation of any insurance or bonds, or non-payment by the Operator of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.
- 11.05 RIGHT TO EXAMINE:** The Department reserves the right, upon reasonable notice and at the County's sole cost and expense, to examine the original policies of insurance of the Operator (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Operator agrees to permit such inspection at the offices of the Operator. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Operator agrees to provide copies to the Department, at the Operator's sole cost and expense.
- 11.06 PERSONAL PROPERTY:** Any personal property of the Operator, or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Operator or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.
- 11.07 SURVIVAL OF PROVISIONS:** The provisions of Article 11 "Insurance" shall survive the expiration or earlier termination of this Agreement.

ARTICLE 12 – DEFAULT AND TERMINATION BY COUNTY

- 12.01 EVENTS OF DEFAULT:** A default shall mean a breach of this Agreement by the Operator (an "Event of Default"). In addition to those defaults defined in **Sub-Article 12.02 "Payment Default"**, **Sub-Article 12.03 "Other Defaults"**, and **Sub-Article 12.04 "Habitual Default"**, an Event of Default, may also include one (1) or more of the following occurrences:
- (A) The Operator has violated the terms and conditions of this Agreement;
 - (B) The Operator has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the installation, operation, or maintenance of the Operator's Services;
 - (C) The Operator has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Operator's creditors, or the Operator has taken advantage of any insolvency statute or debtor/creditor law, or the Operator's affairs have been put in the hands of a receiver;
 - (D) The occurrence of any act, which operates to deprive the County of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;
 - (E) Abandonment or discontinuance of operations by Operator of its business by any act(s) of Operator;
 - (F) Any persistent violation on the part of Operator, its agents or employees of the traffic rules and regulations of the County at Airport or disregard of the safety of persons using the Airport, upon failure by Operator to correct the same;
 - (G) Failure on the part of Operator to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Operator being unable for any reason to maintain in its employ the

personnel necessary to keep its service in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;

- (H) Failure by Operator to maintain its other equipment in a manner satisfactory to the Department;
- (I) The Operator has failed to obtain the approval of the Department where required by this Agreement;
- (J) The Operator has failed to provide adequate assurances as required under **Sub-Article 12.10 "Adequate Assurances"**;
- (K) The Operator has failed to comply with any provision of **Sub-Article 14 "Airport Concessions Disadvantaged Business Enterprise Participation Plan"**;
- (L) The Operator has failed in a representation or warranty stated herein; or
- (M) The Operator has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

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

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Operator to terminate this Agreement upon the occurrence of any act of default unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that the Department may, but is not required to, extend the time for cure as individual circumstances may warrant such extension not be construed as a waiver of any of the Department's rights hereunder. In the event of a specific provision of this Agreement provides for a shorter cure period in the event of a specific default, that shorter provision shall take precedence over this section.

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

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Operator has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Operator, regardless of whether the Operator has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Operator may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Operator a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Operator that there shall be no further notice or grace periods to correct any subsequent breach(s) or default(s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Director may terminate this Agreement upon the giving of written notice of termination to the Operator, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments

12.09 TERMINATION FOR CONVENIENCE: The Department, in addition to the rights and options to terminate for cause, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement upon thirty (30) days written notice at its sole option at any time for convenience, without cause, when in its sole discretion it deems such termination is in the best interest of the Department. In such circumstance, the County will solely be responsible for paying the amortized costs of any improvements constructed by Operator, but the County shall not be responsible for any other costs or damages, including but not limited to lost profits, loss of opportunity, borrowing costs, carrying the costs, damage to reputation, loss of goodwill, or loss of income.

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

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

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

- (A) Stop all work as specified in the notice to terminate;
- (B) Take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property; and
- (C) Vacate, quit and surrender, all Locations and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County, on or before the date of termination.

If terminated for cause, the Operator shall be liable to the County for all damages, direct and indirect, incurred by the County as a result of such termination, including but not limited to loss of future MAG payments, loss of revenue, loss of passengers, loss of opportunity, or loss of goodwill. The existence of a bond or letter of credit supplied pursuant to Article 3 "Rentals, Payments and Reports" of this Agreement shall not serve as a limitation on damages beyond the penal sum of the bond or letter of credit, and the County may avail itself of the bond or letter of credit, or both, and also all remedies as may be available at law or equity against Operator.

ARTICLE 13 - CLAIMS AND TERMINATION BY OPERATOR

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

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

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

- (A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.
- (B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Operator of the existence of such breach.
- (C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Operator's provision of services for a period of one hundred eighty (180) Days.

ARTICLE 14 - AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (VOLUNTARY)

14.01 ACDBE REQUIREMENTS: It is the policy of the Miami Dade Aviation Department (MDAD) that ACDBE's shall have the maximum practical opportunity to participate in the performance of Concession agreements. As used in the Bid Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations.

ACDBE participation is Voluntary, but not required for this contract. ACDBE participation can be achieved through the Proposer either being an ACDBE itself, a partnership or joint venture, or subcontracting a percentage of gross revenues.

If elected to participate, the Successful Proposer will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and the Monthly Activity Report commencing (30) days after beneficial occupancy and monthly thereafter, on or before the 10th of every month.

14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:

1. 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.
2. When an 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 clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in **Appendix I, "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision"** and ACDBE Joint Venture Guidance by the U. S. Department of Transportation, Federal Aviation Administration (USDOT-FAA) ACDBE Schedule 8.
3. Expenditures to an ACDBE concessionaire toward ACDBE goals, will be counted only if the ACDBE is performing a commercially useful function as defined below:
 - (a) An 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, or managing, or supervising the specific identified work.
 - (b) MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement, the sub-concession agreement or other agreements in accordance with industry practices.
 - (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 seventy (70%) percent 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 section, the ACDBE may present evidence to rebut this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
4. MDAD's decision on commercially useful function matters is final.

14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING: Proposers may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE as detailed in the

ACDBE Joint Venture Guidance by the U.S.DOT-FAA; ACDBE Schedule 8.

The Joint Venture agreement must specify the following:

- (1) 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 as specified in the Joint Venture Guidance by U.S. DOT-FAA (Schedule 8).

The work should be submitted as part of this solicitation 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 or as a distinct element of work be specified.

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 hours per week.

- (2) Each joint venture partner must submit a notarized Monthly Utilization Report and a notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:
 - a. Details of training sessions, including class rosters and lesson plans.
 - b. Deliverables and work products.
 - c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
 - d. Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).
- (3) 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.
- (4) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.

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

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

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS: The Successful Proposer acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, Provisions of Title VI of the Civil Rights Act of 1964, and 49 CFR Part 23, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Successful Proposer under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, U.S. Department of Transportation and the Federal Aviation Administration.

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 MDAD, 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 Successful Proposer has defaulted in the requirement to comply with the provisions of this section 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 Default language referenced in the Agreement.

The Successful Proposer shall include the following nondiscrimination language in concession and management contracts with MDAD which is an assurance and clarification clause requested by the DOT and approved by the Miami Dade Aviation Director:

"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor 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, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23".

"The concessionaire agrees to include the above statements in any subsequent concession agreement covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements".

The provisions of this Section shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964 applies.

The Successful Proposer 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 ACDBE's with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Section 4 "Voluntary Airport Concession Disadvantaged Business Enterprises"** 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:

A. Store Operations

- (1) Passenger profile analysis
- (2) Cash handling/sales audit
- (3) Enhancing sales
- (4) Selling to the customer
- (5) Staffing to meet customer levels
- (6) Opening and closing procedures

B. Personnel

- (1) Employment practices
- (2) Compliance with wage and hour laws
- (3) Compliance with County and Airport requirements
- (4) Designing compensation and benefits plans
- (5) Management and staff training to enhance product knowledge and customer service
- (6) Warehousing packaging and sales reporting of merchandise

C. Shop Design and Display

- (1) Retail layout
- (2) Merchandising techniques
- (3) Visual display techniques

D. Loss Prevention

- (1) External and internal theft
- (2) Shop security

E. Books, Records and Reports

- (1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.
- (2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Successful Proposer shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (i.e., income) statement for the preceding month and for the year-to-date.
- (3) 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 Successful Proposer shall contract with those firm(s) as are listed on the Successful Proposer's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (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.

MDAD shall monitor the compliance of the Successful Proposer with the requirements of this provision during the term and/or extension of this agreement.

MDAD 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, records, records of expenditures, agreements between the Successful Proposer and the ACDBE Participant, and other records pertaining to ACDBE Participation Plan.

If at any time MDAD has reason to believe that the Successful Proposer is in violation of this provision, the County may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination or cancellation of the agreement in whole or in part, unless the Successful Proposer demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by MDAD upon the Successful Proposer except pursuant to a hearing conducted by the ACDBELO and/or Director.

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

ARTICLE 15 - RULES, REGULATIONS AND PERMITS

- 15.01 RULES AND REGULATIONS:** The Operator shall comply with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued there under by the Department, all additional laws, statutes, ordinances, regulations and rules of the federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.
- 15.02 VIOLATIONS OF RULES AND REGULATIONS:** The Operator agrees to pay, on behalf of the County, any 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 Operator, its agents, employees, invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith.
- 15.03 PERMITS AND LICENSES:** The Operator shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services.

ARTICLE 16 - GOVERNING LAW

- 16.01 GOVERNING LAW - VENUE:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.
- 16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION:** In the event that the County or the Operator commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Operator agree to waive the procedures for initial service of process

mandated by Chapters 48 and 83 of the Florida Statutes, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Operator agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.06 "Notices"** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Operator has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Operator, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of state in accordance with Chapters 48 and 607 of the Florida Statutes.

- 16.03 REGISTERED OFFICE/AGENT JURISDICTION:** The Operator, if a Corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Operator is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement.

ARTICLE 17 – TRUST AGREEMENT

- 17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE:** Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15th day of December, 2002, as amended from time to time, by and between the County and JP Morgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Operator at the offices of the Department during normal working hours.
- 17.02 ADJUSTMENT OF TERMS AND CONDITIONS:** If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the MAG, fees and charges required to be paid hereunder to the Department by the Operator or by other Operators under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Operator and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Operator.
- 17.03 INSPECTIONS:** The authorized employees and representatives of the County and of any applicable federal or state agency having jurisdiction hereof shall have the right of access

to 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 SECTOR INSPECTOR GENERAL REVIEW: Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of the 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 Operator 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 Operator'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 Operator, 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 Operator in connection with this Agreement. The terms of the provision, are neither intended nor shall 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, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one (1) percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (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 (1/4) of one (1) percent 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 County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process,

including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 18 – OTHER PROVISIONS

- 18.01 RIGHTS TO BE EXERCISED BY DEPARTMENT:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
- 18.02 ADMINISTRATIVE MODIFICATIONS:** It is understood and agreed that the Department, upon written notice to the Operator, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.06 "Addition, Deletion and Relocation of Locations"**, **Sub-Article 21.01 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**.
- 18.03 RIGHTS OF DEPARTMENT AT AIRPORT:** The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Operator for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County its employees, or agents.
- 18.04 OTHER DEPARTMENT RIGHTS:** The Operator shall be liable for any physical damage caused to the Locations by the Operator, its employees, agents, contractors, subcontractors, suppliers. The liability shall encompass: (i) the Operator's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the physical damage caused by the Operator and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.
- 18.05 FEDERAL SUBORDINATION:** This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval

use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

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

To the County:

(Mailing Address)

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

Or (physical address):

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

To the Operator:

Deborah L. Cooper
AC Holdings, Inc.
One CNN Center, SE07
Atlanta, GA 30303

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

- 18.07 SEVERABILITY:** If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.
- 18.08 RIGHTS RESERVED TO DEPARTMENT:** All rights not specifically granted to the Operator by this Agreement are reserved to the Department.
- 18.09 COUNTY LIEN:** The County shall have a lien upon all personal property of the Operator in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.
- 18.10 AUTHORIZED USES ONLY:** The Operator shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance.

policies of the Department or any policies of insurance written on behalf of the Operator under this Agreement.

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

18.12 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY: The Operator 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 Operator must obtain MDAD photo identification badges for all the Operator employees working in the Secured/AOA/Security Identification Display Area (SIDA) Sterile Areas or any other restricted areas of the Airport. All Operator employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

The Operator shall be responsible for requesting MDAD to issue identification badges to all employees who the Operator 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 Operator or upon final acceptance of the work or termination of this Agreement. The Operator 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 Operator 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 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.

Operator Ramp Permits will be issued to the Operator 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. These 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 Operator staff with pictured MDAD ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Operator 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 Operator 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 MDAD has the right to prohibit an individual, agent, or employee of the Operator 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, 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 Operator 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 at the Airport and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control policies and procedures.

The Operator 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 Operator 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 Operator 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 Operator.

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 Operator 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.

Operator 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 Operator agrees that in addition to all remedies, liquidated damages, and sanctions TSA, Homeland Security, FAA, Federal Inspection Services Agencies or MDAD may impose that upon Operator sub-consultants, suppliers, and their individual employees for a violation of applicable security provisions. The Operator 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.

- 18.13 INTENT OF AGREEMENT:** This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.
- 18.14 MODIFICATIONS:** This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.02 "Administrative Modifications"**, **Sub-Article 21.01 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.
- 18.15 RADON DISCLOSURE:** In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **"Radon Gas:** Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- 18.16 TRADEMARKS AND LICENSES:** The Department may, from time to time, authorize the Operator as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Operator and the Department, on behalf of the Department granting the Operator the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.
- 18.17 HEADINGS:** The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 18.18 BINDING EFFECT:** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

- 18.19 GOVERNMENTAL DEPARTMENT:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.
- 18.20 INDEPENDENT CONTRACTOR:** The Operator shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Operator in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Operator under its sole discretion, and not employees or agents of the Department. Except as provided in § 2-11.1(s) of the Code, the Operator represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Operator to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.
- 18.21 OTHER LIENS:** Operator shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Operator shall not permit or suffer any liens, including mechanics', material men's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Operator may in good faith contest any such lien if Operator provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Operator further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Operator shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Operator or as a consequence of the existence of Operator's interest under this Agreement.

- 18.22 FIRST SOURCE HIRING REFERRAL PROGRAM ("FSHRP"):** Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the successful Proposer, prior to hiring to fill each vacancy arising under a County Contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Successful Proposer is free to fill its vacancies from other sources. Successful Proposers will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at: <https://tapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, extension 407. (Refer to Exhibit M)
- 18.23 EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY):** Consultant is required to enroll in the United States Citizenship and Immigration Services E-Verify system, and to utilize that system to verify the employment eligibility of all persons performing work for the Consultant under this Agreement. Consultant shall incorporate this requirement into all of its subcontracts as well.
- 18.24 RIGHT TO REGULATE:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the Department, as a political subdivision of the State of Florida, to regulate the Operator or its services.
- 18.25 AIRPORT SECURITY PROGRAM:** Operator agrees to observe all federal, state and local laws, rules and security requirements applicable to Operator's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations, and Title 49, Part 1542 of the Code of Federal Regulations. Operator agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County or the Department, and to take such steps as may be necessary or directed by County or the Department to insure that employees, invitees and guests observe these requirements. If required by the Department, Operator shall conduct background checks of its employees in accordance with applicable federal, state or local laws. The Department shall have the right to require the removal or replacement of any employee of Operator at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Operator, employees, invitees or guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Operator agrees to pay to County all such costs and expenses, including all costs of any administrative proceedings, court costs, and attorneys' fees and costs incurred by County in enforcing this provision. Operator further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Operator fails to remedy any such deficiency, County may do so at the cost and expense of Operator. Operator acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

ARTICLE 19 – NOT APPLICABLE**ARTICLE 20 - WAIVER OF CLAIMS**

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

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

- 21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY:** This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.
- 21.02 RIGHT TO AMEND:** In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Operator hereby consents to any and all such modifications and changes as may be reasonably required.
- 21.03 OPERATOR COVENANTS AND ASSURANCES:**
- A. Covenants Against Discrimination:**
1. Operator on behalf of itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity, or gender expression or status as victim of domestic violence, dating violence or

stalking 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 of race, color national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Operator shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Operator shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, national origin, religion, ancestry, sex, pregnancy age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking. Should Operator authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Operator shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Operator shall furnish the original or a true copy of such agreement to Department.

2. Operator will provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish this information, Operator shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations Part 21 are followed and completed, including exercise or expiration of appeal rights.
4. Operator assures County that no person shall be excluded on the grounds of race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender

expression or status as victim of domestic violence, dating violence or stalking, as applicable, from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Operator also assures County that it will require its covered sub-organizations to provide assurances to the same effect and provide copies thereof to the Department.

5. Operator further assures County that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Operator also assures County that it will require its contractors to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers, which are entered into in connection with Operator's services hereunder.
6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking, as applicable, in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.
b) Operator agrees to include the above statements in any subsequent agreements that it enters and cause those businesses to similarly include the statements in further agreements.
7. County may from time to time be required by the United States Government, one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport and Operator agrees that it will adopt such requirements as part of this Agreement.

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

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS: The Operator agrees to comply promptly with any applicable provisions of any federal tax statute, and all

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

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

21.07 NOT USED.

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

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

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

1. The Operator shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Operator to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Operator's property, on its services, on its Net Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Operator herein, on the Locations and on any and all equipment installed on the Locations and the Operator shall make and file all applications, reports, and returns required in connection therewith.
2. The Operator agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Operator or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.
3. The Operator is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and

nothing contained in this Agreement shall be deemed or construed by the County or the Operator or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Operator.

4. The County shall have the right during the Operator's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Operator located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.
 5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.
 6. Time is expressed to be the essence of this Agreement.
 7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.
 8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contained 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 Operator shall comply with these requirements.
- 21.11 FORCE MAJEURE:** Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Operator, embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.
- 21.12 MOST FAVORED NATIONS:** If the Operator offers a programming service to other Eligible Airports located in the United States, the Operator shall offer such services to the Airport.
- 21.13 ENTIRE AGREEMENT:** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with

respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Operator hereby affirms the completeness and accuracy of the information provided by Operator to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Operator to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.02 "Administrative Modifications"** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

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

OPERATOR

AC Holdings, Inc.

d/b/a Georgia AC Holdings, Inc.

By: _____

Deborah L. Cooper, Senior Vice President
and General Manager

ATTEST:

Seal)

Jim Nieves, Director of Operations

**BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

By: _____ Date
County Mayor

Attest: Harvey Ruvlin, Clerk

By: _____ Date
Deputy Clerk

Approved for Form
and Legal Sufficiency

Assistant County Attorney

Resolution No.: _____

Date: _____

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