OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: July 20, 2010

Agenda Item No. 14(A)(26)

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

From: George M. Burgess
County Manager

Resolution No. R-841-10

Subject: Award recommendation for Luggage Wrapping Services at Miami International Airport ("MIA") Concession Agreement Miami-Dade Aviation Department RFP No. MDAD-01-09, to Sinapsis Trading USA, LLC.

RECOMMENDATION

It is recommended that the Board of County Commissioners ("Board") approve the award of a Non-Exclusive Lease and Concession Agreement ("Agreement") for Luggage Wrapping Services at MIA to Sinapsis Trading USA, LLC ("Sinapsis" or the "Concessionaire") and authorize the Mayor or his designee to execute the Agreement attached hereto, with the exhibits on file with the Clerk of the Board.

SCOPE

Miami International Airport is located primarily within Commission District 6, Rebeca Sosa. However, the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset.

DELEGATED AUTHORITY

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

FISCAL IMPACT/FUNDING SOURCE

This project generates revenue for the Miami-Dade Aviation Department. Payment provisions to the Miami-Dade Aviation Department include a monthly rent, and a Minimum Annual Guarantee ("MAG") of $11,100,000.00 or a percentage fee of 56.5% of monthly gross revenues, whichever is greater. The Concessionaire shall also pay a Construction Permit Fee of one percent (1%) equal to the estimated construction costs for improvements, and a Concession Marketing Fee of one half (1/2) of one percent (1%) of gross revenues which will be assessed on an annual basis by the Department for marketing the concessions at MIA. There is no additional fiscal impact to current or future budgets from this item.

TRACK RECORD/MONITOR

Sinapsis does not have a current contract with Miami-Dade County. The Miami-Dade Aviation Department staff member responsible for monitoring this project is Adrian Songer, Chief, Airport Business Development & Retention, MDAD.

COMPLIANCE DATA

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

BACKGROUND

Miami-Dade County ("County"), through the Miami-Dade Aviation Department, solicited proposals from interested parties to finance, design, furnish, manage and operate Luggage Wrapping Services at MIA. The Concessionaire is anticipated to operate twenty-three (23) luggage wrapping locations at MIA. In addition, Concessionaire must have the ability to rewrap luggage in post TSA inspection areas and comply with the required TSA Guidelines.

Request for Proposals No. MDAD-01-09 (the "RFP"), for Luggage Wrapping Services at MIA, was advertised on September 15, 2009.

Responses were received from the following two (2) firms:

Sinapsis Trading USA, LLC ("Sinapsis")
Secure Wrap of Miami, Inc. ("Secure")

The Evaluation/Selection Committee (the "Committee") held a Prescreening Meeting on January 26, 2010. The Committee invited the firms to a Public Hearing on March 23, 2010, reviewed proposals submitted by the two (2) proposers, and heard presentations from the submitting firms. The two firms were deemed responsible and having met the minimum qualification requirements. The selection process consisted of two parts, technical and price. The Committee proceeded with the technical proposal evaluation. Following the technical proposal ranking, the sealed price envelopes were opened and read aloud. MDAD proceeded to apply the formula for calculation of the prices score, as provided in the RFP and determined an overall ranking based on technical and price combined for each proposer respectively. As a result, the Committee recommended award of the agreement to the highest ranked responsive, responsible firm which was Sinapsis Trading USA, LLC.

The overall ranking is as follows:

PROPOSER	PROPOSED MINIMUM ANNUAL GUARANTEE (MAG)	PROPOSED PERCENTAGE FEE	OVERALLSCORE (Technical & Price)
Sinapsis Trading USA, LLC	$11,100,100	56.50%	6355
Secure Wrap of Miami, Inc.	$4,100,000	35.00%	4719

During the oral presentations of March 23, 2010, the question associated with the hiring of Secure Wrap's employees and transition plan was presented by a committee member. Sinapsis responded that they intend to provide the first hiring opportunities to Secure Wrap's existing staff since Secure Wrap's employees have first-hand knowledge of the Airport, and understand and know the customer base. In addition, Sinapsis intends to train Secure Wrap's employees on their respective equipment and maintain an on-going training program for all employees. Any additional staffing requirements will be handled through local universities, governmental agencies, and/or other resources.

PROJECT: Luggage Wrapping Services at MIA

PROJECT NO. RFP No. MDAD-01-09

USING AGENCY:	Miami-Dade Aviation Department
COMPANY NAME:	Sinapsis Trading USA, LLC
COMPANY PRINCIPAL(S):	Fabio Talin, President
LOCATION OF COMPANY:	95 Merrick Way, Suite 250 Coral Gables, Florida 33134
GENDER/ETHNICITY:	Sinapsis Trading USA, LLC is a limited liability company, owned by Sinapsis Trading S.L. (81.08%), TrueStar Group S.p.A, (9.46%) and Secure Bag Italia, S.r.A. (9.46%)
YEARS IN BUSINESS:	1 year (Sinapsis Trading USA, LLC) 11 years (Sinapsis Trading S.L., TrueStar Group S.p.A, Secure Bag Italia, S.r.A.)
CONTRACT MEASURES:	Thirty percent (30%) Airport Concession Disadvantaged Business Enterprises (ACDBE) goal.
CONTRACT MEASURE ACHIEVED:	
ACDBE:	Crown Global Services Corp. (30%)
ADVERTISEMENT DATE:	September 15, 2009
PREVIOUS AGREEMENTS: WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:	No previous agreements with the County.
TERM:	Five (5) years
OPTION(S) TO RENEW:	The term of the Agreement shall be for five (5) years with one (1), two (2) year option to extend. The term shall start on the effective date of the Agreement.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: July 20, 2010

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

SUBJECT: Agenda Item No. 14(A)(26)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

✓ **No committee review**

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

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

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 14(A)(26)
7-20-10

RESOLUTION NO. R-841-10

RESOLUTION APPROVING AWARD OF A LEASE AND CONCESSION AGREEMENT FOR THE LUGGAGE WRAPPING SERVICES AT MIAMI INTERNATIONAL AIRPORT, BETWEEN SINAPSIS TRADING USA, LLC AND MIAMI-DADE COUNTY, WITH A MINIMUM ANNUAL GUARANTEE OF $11,100,000, AND FOR A TERM OF FIVE YEARS, WITH A TWO-YEAR OPTION TO RENEW; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME, AND TO EXERCISE RENEWAL AND TERMINATION PROVISIONS THEREOF

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the award of a Lease and Concession Agreement for the Luggage Wrapping Services at Miami International Airport Project No. MDAD-01-09, between Sinapsis Trading USA, LLC and Miami-Dade County, with a minimum annual guarantee of $11,100,000, and for a term of five (5) years with a two (2) year option to renew, in substantially the form attached hereto and made a part hereof, with Exhibits on file with the Clerk, and authorizes County Mayor or Mayor's designee to execute same and to exercise renewal and termination provisions thereof.

The foregoing resolution was offered by Commissioner **Audrey M. Edmonson** who moved its adoption. The motion was seconded by Commissioner **Barbara J. Jordan** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	**aye**		
Jose "Pepe" Diaz, Vice-Chairman	**absent**		
Bruno A. Barreiro	**aye**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**absent**
Barbara J. Jordan	**aye**	Joe A. Martinez	**aye**
Dorrin D. Rolle	**absent**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**absent**
Sen. Javier D. Souto	**nay**		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of July, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency.

David M. Murray

Memorandum

MIAMI-DADE COUNTY

Date: May 21, 2010

To: Pedro J. Betancourt, Chairperson
Evaluation/Selection Committee
Miami-Dade Aviation Department

From: George M. Burgess
County Manager

Subject: MDAD RFP for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09

With reference to your report of March 26, 2010 (copy attached) concerning the above captioned subject, this is to advise you that pursuant to Administrative Order 3-38, I hereby authorize the Department to forward the Agreement for the above referenced project for execution by the first ranked firm listed below:

1. **Sinapsis Trading USA, LLC ("Sinapsis")**
2. **Secure Wrap of Miami, Inc. ("Secure")**

The Request for Proposals Section 5 entitled "Evaluation Process", Sub-section 5.7 entitled "Negotiations" states ".....The County may award the Agreement the attached Agreement on the basis of initial offers received, without discussion or negotiation." The Committee has determined that negotiations are not necessary. Therefore, the Department is authorized to proceed to obtain execution of the advertised Agreement with the first ranked firm above. The Department will transmit with the signed agreement, a cover memorandum to include the below listed information:

1. A general description of the services.
2. The payments to the County.
3. The term of the Agreement.
4. A brief description of the selection process.

Attachments

c: Clerk of the Board of County Commissioners

EVALUATION / SELECTION COMMITTEE
Pedro J. Betancourt, MDAD (Non-voting, Chairperson)
Ray Diaz, MDAD
Dickie Davis, MDAD
Ariel Rodriguez, MDAD
Lance Llewelyn, Seaport
Levi Thomas, MDFR
Ric Arner, American Airlines
Betty Alexander, SBD

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MIAMI INTERNATIONAL AIRPORT

MIAMI-DADE COUNTY

Contracts Administration Division

TRACKING DOCUMENT

DATE:	March 26, 2010
SUBJECT:	CMO approval to proceed to award and Selection Committee Report -
PROJECT NAME / NUMBER	Request for Proposals for Luggage Wrapping Services at MIA RFP No. MDAD-01-09
BACKGROUND:	The RFP was advertised for a qualified firm to provide the above referenced services. The Selection Committee conducted the evaluation/selection process and, as provided in the RFP, is recommending award of an agreement to the first ranked responsive, responsible firm Sinapsis Trading USA, LLC. Included with this package are the items checked below:
	[X] Selection Committee Report
	[X] Summary Minutes of Meeting(s)
	[X] Overall and individual ranking forms (if more than 1 proposer)
	[X] Price proposal evaluation form
	[X] Contract measure compliance memo
	[ ] CAO responsiveness opinion
	[X] Inventory of each proposer
	[X] Financial capacity memo
	[X] memo for approval by CMO to proceed to award
TERM:	The term of the Agreement shall be for five (5) years with one (1), two (2) year option to extend. The term shall start on the effective date of the Agreement
CONTRACT AMOUNT:	$11,100,000.00 minimum annual guarantee (MAG) or a percentage fee of 56.5% of monthly gross revenues, whichever is greater
RECOMMENDATION:	That the attached memorandum be approved by the County Manager.

	APPROVAL	DATE
Marie Clark-Vincent, Division Director	for Marie Clark	3/26/10
Bobbie Jones-Wilfork, Assistant Aviation Director	B Jones-Wilfork	3/26/10

Comments: _____

Please return to: Marie Clark-Vincent **Location:** Contracts Administration, Bldg. 5A, 4th Floor

Memorandum

MIAMI-DADE COUNTY

Date: March 26, 2010

To: George M. Burgess
County Manager

From: Pedro J. Betancourt, Chairperson
Evaluation/Selection Committee
Miami-Dade Aviation Department

Subject: Evaluation/Selection Committee Report – Miami-Dade Aviation Department Request For Proposals for Luggage Wrapping Services at MIA RFP No. MDAD-01-09

As authorized by Administrative Order No. 3-38 and your memorandum date January 25, 2010, the designated Evaluation/Selection Committee ("Committee") met and conducted the selection process for the subject project on January 26, 2010, and March 23, 2010, for both the prescreening and public hearing meetings. This process was conducted in accordance with the procedure specified by the Request for Proposals ("RFP") as described in the attached summary minutes.

PRESCREENING MEETING OF JANUARY 26, 2010 (9:00AM)

As announced in the Metro Calendar, the Committee met on January 26, 2010 at the Miami-Dade County Aviation Department, Bldg. 5A, 4th Floor, 4200 NW 36 Street, Conference Room F, Miami, Florida. At this meeting, the Committee reviewed the Proposals submitted by the following firms:

Sinapsis Trading USA, LLC ("Sinapsis")
Secure Wrap of Miami, Inc. ("Secure")

The Committee was advised that a thirty percent (30%) Airport Concessions Disadvantaged Business Enterprise (ACDBE) goal was established. The Committee was also informed that the two (2) firms were responsive and met the Minimum Qualifications Requirements as set forth in the RFP. The firms were then invited to make a presentation before the Committee at the scheduled March 23, 2010 public hearing.

PUBLIC HEARING MEETING OF MARCH 23, 2010 (9:00 AM)

As advertised in the Metro Calendar, the Committee met on March 23, 2010 at the Miami-Dade County Aviation Department, Bldg. 5A, 4th Floor, 4200 NW 36 Street, Conference Room F, Miami, Florida. At this meeting, the Committee heard oral presentations from:

Sinapsis Trading USA, LLC ("Sinapsis")
Secure Wrap of Miami, Inc. ("Secure")

Representatives from the firms made presentations and demonstrated their respective equipments to the Committee, followed by a questions and answers. Upon conclusion of the presentations, the Committee found the firms responsible and having met the Minimum Qualification requirements as

set forth in the RFP and then undertook an evaluation and ranking process based on the technical proposals and oral presentations. Following the technical proposal ranking as provided in the RFP, the sealed price envelopes were opened and read aloud. MDAD staff proceeded to apply the formula for calculation of the price score, as defined in the RFP, to determine the ranking based on price. Staff then proceeded to determine the overall ranking by adding the technical proposal score and the price proposal score for each proposer. The overall ranking is as follows:

1. **Sinapsis Trading USA, LLC**
2. **Secure Wrap of Miami, Inc.**

The Committee recommended that the highest ranked responsive and responsible firm be forwarded to the County Manager for recommendation to award an agreement.

Attached are the following items to substantiate the actions taken to date:
Summary Minutes of the Evaluation/Selection Committee Meetings
Overall Results
Price Proposal Score Form
Technical Proposal Analysis

c: Clerk of the Board of County Commissioners

EVALUATION / SELECTION COMMITTEE
Pedro J. Betancourt, MDAD (Non-voting, Chairperson)
Ray Diaz, MDAD
Dickie Davis, MDAD
Ariel Rodriguez, MDAD
Lance Llewelyn, Seaport
Levi Thomas, MDFR
Ric Arner, American Airlines
Betty Alexander, SBD

REQUEST FOR PROPOSALS FOR LUGGAGE WRAPPING SERVICES AT MIAMI INTERNATIONAL AIRPORT RFP NO. MDAD-01-09

SUMMARY MINUTES OF SELECTION COMMITTEE MEETING

January 26, 2010

An Evaluation/Selection Committee Meeting was held on Tuesday, January 26, 2010, at 9:00 a.m. at the Miami-Dade Aviation Department, 4200 N.W. 36th Street, Building 5A, 4th Floor Conference Room "F", Miami, Florida, to review the proposals submitted.

EVALUATION/SELECTION COMMITTEE
Pedro J. Betancourt, MDAD (Non-voting Chairperson)
Ray Diaz, MDAD
Dickie Davis, MDAD
Ariel Rodriguez, MDAD
Henry Perez, Ft. Lauderdale Int. Airport
Lance Llewelyn, Seaport
Levi Thomas, MDFR
Ric Arner, American Airlines
Betty Alexander, SBD
Art Ambruster, Swissport (not present)

OTHER ATTENDEES
Cynji Lee, CAO
David Murray, CAO
Michael Henry, OIG
Milton Collins, MDAD
Abebe Tecle, MDAD
Adrian Songer, MDAD
Sarah Abate, MDAD

PRESCREENING MEETING

Mr. Pedro Betancourt opened the public meeting, and noted that the meeting was being videotaped. The Evaluation/Selection Committee (Committee) was asked to make introductions. Also, each of the Committee members completed and signed the neutrality form, with the exception of Ms. Betty Alexander with Small Business Development ("SBD"). Ms. Alexander requested an opinion from the Commission on Ethics ("COE"), which was rendered on February 26, 2010 **(Attachment C).** COE opined that Ms. Alexander could proceed to participate as a Committee member. Ms. Alexander provided MDAD with the respective neutrality affidavit after Ethics rendered their opinion on the matter. The various supporting project documentation and the evaluation process and forms were also discussed at this time.

The Committee reviewed the proposals submitted by the two (2) proposers that responded to the public notice: Sinapsis Trading USA, LLC, and Secure Wrap of Miami, Inc.

The Committee was advised that an Airport Disadvantaged Business Enterprises (ACDBE) thirty percent (30%) goal of gross revenues was established by MDAD Minority Affairs for this project. Each of the two (2) proposers, were found by the MDAD Minority Affairs Division to be in compliance with the goal requirements. Furthermore, the Committee was provided the financial viability review performed by the MDAD Finance Division for two (2) proposers, were also in compliance with the requirements set forth in the RFP.

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Ms. Sarah Abate, Commercial Operations, discussed the scope of services with the Committee in order to provide the Committee a clear understanding of MDAD's operational needs.

The Committee was then reminded of their responsibilities as Committee members pursuant to the County Manager's appointment memorandum. Mr. Betancourt then directed the Committee's attention to the inventory of the submitted proposals. The Committee members were advised that it was their responsibility to determine whether the two (2) responding proposers were responsible and met the minimum qualifications requirements as set forth in the RFP. Mr. Betancourt informed the Committee that they had the option to invite the firms to oral presentations and request additional information, or if they determined that they had sufficient information, they would have to take a motion on responsibility and minimum qualifications prior to ranking the firms.

The Committee recommended to conduct oral presentations, in order to assess the qualifications and experience of the two (2) proposing firms.

The Committee proceeded with the following action:

Moved:	Ray Diaz
Motion:	The Evaluation/Selection Committee recommends to invite, the two proposing firms, Sinapsis Trading USA, LLC and Secure Wrap of Miami, Inc to a public hearing.
Seconded:	Ric Arner
Action:	Adopted unanimously

Prior to concluding the meeting, all present were informed that the videotape is a public record and available through the Miami-Dade Communications Department. Attendees were instructed that a Cone of Silence remains in effect.

Pedro J. Betancourt, MDAD (Non-voting Chairperson)

PJB/

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REQUEST FOR PROPOSALS FOR LUGGAGE WRAPPING SERVICES AT MIAMI INTERNATIONAL AIRPORT RFP NO. MDAD-01-09

SUMMARY MINUTES OF SELECTION COMMITTEE MEETING

March 23, 2010

An Evaluation/Selection Committee Meeting was held on Tuesday, March 23, 2010, at 9:00 a.m. at the Miami-Dade Aviation Department, 4200 N.W. 36th Street, Building 5A, 4th Floor Conference Room "F", Miami, Florida, to review the proposals submitted.

EVALUATION/SELECTION COMMITTEE
Pedro J. Betancourt, MDAD (Non-voting Chairperson)
Ray Diaz, MDAD
Dickie Davis, MDAD
Ariel Rodriguez, MDAD
Henry Perez, Ft. Lauderdale Int. Airport (not present)
Lance Llewelyn, Seaport
Levi Thomas, MDFR
Ric Arner, American Airlines
Betty Alexander, SBD
Art Ambruster, Swissport (not present)

OTHER ATTENDEES
Cynji Lee, CAO
David Murray, CAO
Michael Henry, OIG
Milton Collins, MDAD
Abebe Tecle, MDAD
Sarah Abate, MDAD

PUBLIC HEARING MEETING

Mr. Pedro Betancourt opened the public hearing, and noted that the meeting was being videotaped. The Evaluation/Selection Committee (Committee) was asked to make introductions. Mr. Betancourt informed the Committee that the Office of Inspector General ("OIG") had confirmed verbally that for Sinapsis Trading USA, LLC ("Sinapsis") there "was nothing that could prohibit Sinapsis from participating in this solicitation." A copy of the email verifying the conversation with Mr. Tony Ferris, Special Agent, OIG, was provided to the Committee. Mr. Michael Henry, Special Agent with the OIG, reported that Sinapsis had pending litigation involving employment issues, however, that Mr. Ferris verbal report was accurate.

The Committee then heard presentations from the submitting firms. Sinapsis Trading USA, LLC presented first, followed by Secure Wrap of Miami, Inc.

The Committee proceeded with the following action:

Moved: Ray Diaz

Motion: The Committee finds Sinapsis Trading USA, LLC to be responsible and to meet the Minimum Qualifications.

+5

Second: Levi Thomas

Action: Adopted unanimously

Moved: Ric Arner

Motion: The Committee finds Secure Wrap of Miami, Inc. to be responsible and to meet the Minimum Qualifications.

Second: Ray Diaz

Action: Adopted unanimously

The Committee found the two (2) proposers responsible and having met the Minimum Qualification requirements as set forth in the RFP and then undertook an evaluation and ranking process based on the technical proposals. The scores were reviewed and verified aloud with each Committee member and the final technical scores were also read aloud. Upon concluding the technical proposal ranking, the sealed price envelopes were opened and read aloud. The Chairperson and MDAD staff proceeded to apply the formula for calculation of the price/scores, as defined in the RFP and ranked the firms accordingly, (see Attachment B). The Chairperson and staff then proceeded to determine the overall ranking by adding the technical proposal score and the price proposal score for each proposer (see Attachment A). As a result, the Committee recommended award of the agreement to the highest ranked responsive, responsible firm which was Sinapsis Trading USA, LLC.

The Committee proceeded with the following action:

Moved: Ric Arner

Motion: The Committee recommends to the Mayor of Miami-Dade County award of the Luggage Wrapping Services Agreement to Sinapsis Trading USA, LLC.

Second: Ray Diaz

Action: Adopted unanimously

Prior to concluding the meeting, all present were informed that the videotape is a public record and available through the Miami-Dade Communications Department. Attendees were instructed that a Cone of Silence remains in effect.

Pedro J. Betancourt, MDAD (Non-voting Chairperson)

PJB/

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ATTACHMENT A

REQUEST FOR PROPOSALS FOR LUGGAGE WRAPPING SERVICES AT MIA

RFP NO. MDAD-01-09

OVERALL RESULTS

March 23, 2010

FIRM	SCORE INDIVIDUAL EVALUATORS 1	2	3	4	5	6	7	(A) TOTAL TECH POINTS	(B) RANK BASED ON TECHNICAL	(C) PROPOSED MAG	(D) PROPOSED PERCENTAGE FEE	(E) PRICE PROPOSAL SCORE (PPS)	(F) RANK BASED PPS	(G) ADJ. SCORE	OVERALL COMM. ADJ. RANKING
Sinapsis Trading USA	330	395	410	480	450	455	335	2855	2	$11,100,000	56.50%	3500	1	6355	1
Secure Wrap	487	445	440	495	400	460	340	3067	1	$4,100,000	35.00%	1652	2	4719	2

EVALUATORS
Pedro J. Betancourt, MDAD (Chairperson) NON-VOTING
1. Dickie Davis, MDAD
2. Ray Diaz, MDAD
3. Ariel Rodriguez, MDAD
4. Levi Thomas, MDFR
5. Rick Arner, AA
6. Lancelot Llewelyn, Seaport
7. Betty Alexander, SBD

ATTACHMENT B

MIAMI-DADE AVIATION DEPARTMENT
REQUEST FOR PROPOSALS FOR
LUGGAGE WRAPPING SERVICES AT MIA
RFP-MDAD-01-09
(March 23, 2010)

PRICE PROPOSAL SCORE FORM
(Combined MAG & Percentage Fee)

(SINAPASIS) $11,100,000.00 (Proposer Proposed MAG) ÷ $11,100,000.00 (Highest Proposed MAG) = 1 x 300 (Total Points) x = 300 (MAG Score)

(SINAPSIS) 56.50% (Proposer Proposed Pct. Fee) ÷ 56.50% (Highest Proposed Pct. Fee) = 1 x 200 (Total Points) x = 200 (% Fee Score)

(SINAPSIS) 300 (MAG Score) + 200 (% Fee Score) x 7 (# Comm. Members) = **3500 Total Price Proposal Score**

(SECURE) $4,100,000.00 (Proposer Proposed MAG) ÷ $11,100,000.00 (Highest Proposed MAG) = .37 x 300 (Total Points) x = 111 (MAG Score)

(SECURE) 35.00% (Proposer Proposed Pct. Fee) ÷ 56.50% (Highest Proposed Pct. Fee) = .625 x 200 (Total Points) x = 125 (% Fee Score)

(SECURE) 111 (MAG Score) + 125 (% Fee Score) x 7 (# Comm. Members) = **1652 Total Price Proposal Score**

Minimum MAG $1,500,000
Minimum percentage fee 25%

ATTACHMENT C

ETHICS COMMISSIONERS

Kerry E. Rosenthal, CHAIRPERSON
Dawn E. Addy, VICE CHAIRPERSON
Magda Abdo-Gomez
Judge Seymour Gelber
Erica Wright

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

February 26, 2010

Betty Alexander
Division Director
Project Review and Analysis
Department of Small Business Development
111 N.W. First Street
19th Floor
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION-RQO 10-5

Dear Ms. Alexander:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 26, 2010 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether whether you are barred from serving on a selection committee when your former department head is serving as a subconsultant for one of the proposers.

In your letter, you advised the Ethics Commission that the Aviation Department is currently in the process of reviewing proposals for a firm to provide luggage wrapping services at Miami International Airport. The scope of services provides that the firm will install, operate and maintain luggage wrapping and other necessary machines for the provision of services at MIA. The machines shall be operational 365 days a year and available in all concourses and terminals as well as curbside. The RFP requires the participation of an airport concession disadvantaged business enterprise (ACDBE).

ATTACHMENT C

The firm of Sinapsis Trading submitted a proposal to provide luggage wrapping services. The proposal provides that the firm of Crown Global Services shall serve as the ACCBE entity and be responsible for recruiting, training and managing machine operators. The proposal also provides that the Vailon Group headed by Marsha Jackman, who served as department head for the Department of Business Development (now Small Business Development), shall serve as ACDBE and Living Wage compliance officer. In that capacity, Jackman will be responsible for ensuring that the DBE firm performs the required percentage of the work and that all workers are paid in accordance with county living wage guidelines.

Administrative Order 3-34 governs the formation of county selection committees. The administrative order requires all county selection committees to contain a representative from the Department of Small Business Development. All selection committee members are also required to sign a neutrality affidavit regarding their compliance with various provisions of the Conflict of Interest ordinance. One of the statements contained in the neutrality affidavit states that "I certify that I and the members of my immediate family are not now employed and have not been employed by any entity or affiliate of such entity with regard to any contract or subcontract on this project."

You were appointed to serve as SBD's representative on the luggage wrapping selection committee. You worked as an employee and a division director under Marsha Jackman during her tenure as department head of the Department of Business Development. Marsha Jackman served as department head until 2007. Most of the current employees of Small Business Development served under Jackman during her tenure as department director.

ATTACHMENT C

The Ethics Commission found you may serve as a member of the selection committee for the luggage wrapping agreement. The Conflict of Interest ordinance only prohibits employees from serving as members of selection committees under Section 2-11.1(n) (actions prohibited where financial interests involved) or Section 2-11.1(x) (barring employees from performing any contract related duties regarding a former employer for two years after they leave the private entity).

The language of the neutrality affidavit tracks the restriction contained in Section 2-11.1(x) (reverse two-year rule). Section 2-11.1(x) provides that " no person included in subsections (b)(5) (departmental personnel and (b)(6) (employees) who was previously employed by or held a controlling financial interest in a for-profit firm, partnership or other business entity may perform any County contract related duties regarding the business entity or any successor in interest where the business entity is a County bidder, proposer, service provider, contractor or vendor." Under Section 2-11.1 (x), contract related duties include service on an evaluation or selection committee.

In the first instance, Section 2-11.1(x) is limited to former employment by business entities and not county departments. A county employee is not prohibited from serving on a selection committee because their former department head serves as a bidder, proposer, consultant or subconsultant on an agreement.

Further, the plain language of the ordinance and the affidavit refer to former employment by one of the entities seeking the contract rather than a particular individual who may be providing services under the agreement. You are not a former employee of the Vailon Group or any other entity that will be providing services under the contract.

ATTACHMENT C

Accordingly, you may sign the neutrality agreement and serve as a member of the selection committee.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS
Executive Director

cc: Marie Clark, Miami-Dade Aviation Department

FIRM: SINAPSIS	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	TOTAL SCORE
CRITERIA	A. RODRIDUEZ	L. LLEWELYN	D. DAVIS	R. DIAZ	R. ARNER	L. THOMAS	B. ALEXANDER	H. PEREZ	
Financial Capacity to Perform/Financing (Max 150 points)	120.00	140.00	100.00	125.00	150.00	150.00	100.00	N/A	
Experience, qualifications, capabilities, and past performance in providing the type of services described in this RFP (Max 100 points)	50.00	90.00	50.00	90.00	50.00	90.00	70.00	N/A	
Managing, Operating and Maintenance Plan (Max 100 points)	100.00	95.00	50.00	70.00	100.00	90.00	65.00	N/A	
Equipment Design and Function (Max 100 Points)	90.00	90.00	90.00	80.00	100.00	100.00	60.00	N/A	
ACDBE Plan and participation (Max 50 points)	50.00	40.00	40.00	30.00	50.00	50.00	40.00	N/A	
TOTAL	410.00	455.00	330.00	395.00	450.00	480.00	335.00	N/A	2855.00

FIRM: SECURE WRAP	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	COMMITTEE	TOTAL SCORE
CRITERIA	A. RODRIDUEZ	L. LLEWELYN	D. DAVIS	R. DIAZ	R. ARNER	L. THOMAS	B. ALEXANDER	H. PEREZ	
Financial Capacity to Perform/Financing (Max 150 points)	120.00	130.00	140.00	125.00	100.00	150.00	100.00	N/A	
Experience, qualifications, capabilities, and past performance in providing the type of services described in this RFP (Max 100 points)	100.00	95.00	100.00	100.00	100.00	100.00	75.00	N/A	
Managing, Operating and Maintenance Plan (Max 100 points)	100.00	95.00	100.00	90.00	100.00	95.00	60.00	N/A	
Equipment Design and Function (Max 100 Points)	70.00	95.00	97.00	80.00	50.00	100.00	60.00	N/A	
ACDBE Plan and participation (Max 50 points)	50.00	45.00	50.00	50.00	50.00	50.00	45.00	N/A	
TOTAL	440.00	460.00	487.00	445.00	400.00	495.00	340.00	N/A	3067.00

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Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Secure Wrap of Miami, Inc.
Address: 4050 NW 29 Street
Miami, Florida 33142
Contact Person/Title: Radames Villalon, President
Phone: (305)870-9720
Fax: (305)870-9824

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
		OVERVIEW REQUIREMENTS		
1	1.3	**Minimum Qualifications** A. The Proposer should have **three (3) or more years of experience within the last five (5) years** in the majority ownership (at least 50%) of an entity that financed, designed, installed, maintained and operated luggage wrapping services in International Airports. B. The Proposer should submit documentation to evidence gross revenues totaling **no less than $700,000 per year** derived from luggage wrapping services revenues. As Evidenced by the Questionnaire and Minimum Qualification Requirements Form (Appendix A)	Y Y Y	User Division verified Page iv and Part A Proposal User Division verified MDAD Finance (attached)
2	1.4	Airport Concession Disadvantaged Business Enterprises (ACDBE) Certified	Y	Firm is 100% certified SBD Cert. No. 4157
3	2.3	**Contents of Proposal (Part A)**		
4	a	Table of Contents	Y	Page ii Proposal
5	b	Questionnaire & Minimum Qualifications Requirements Form (Appendix A)	Y	Appendix A Proposal
6	c	Executive Summary	Y	Page 1 Proposal
7	d	Proof of Minimum Qualifications (Appendix A)	Y	One (1) contract (MDAD) listed.Page iv and Part A Proposal
8	e	Technical Information	Y	Part III Page 5 Proposal

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Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Secure Wrap of Miami, Inc.
Address: 4050 NW 29 Street
Miami, Florida 33142
Contact Person/Title: Radames Villalon, President
Phone: (305)870-9720
Fax: (305)870-9824

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
9	e) 1	Specific policies, plans procedures or techniques to be used in providing services.	Y	Part III Page 5 Proposal
10	e) 2	Organizational Chart	Y	Part III Page 5 Proposal
11	e) 3	Key personnel experience, qualifications, functions to be performed and other vital information including relevant experience on previous similar projects.	Y	Part III Page 6 and Part G Proposal
12	e) 4	Luggage Wrapping Machines Specifications	Y	Part III, C Page 10 Proposal
13	e) 5	Managing, Operating, and Maintenance Plan	Y	Part III, D, Page 15 Proposal
14	f) 1	PROPOSER'S EXPERIENCE 1) Experience: The Proposer shall provide a history of its background and experience in providing similar services and shall state the number of years that it has been in existence, the current number of employees, and the primary markets served.	Y	Page 46, Proposal.
15	f) 2	2) Specific Project Experience: The Proposer shall provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer has either ongoing or completed within the past three (3) years.	Y	Page 47, Proposal.
16	f) 3	3) Additional Experience: The Proposer shall describe any other experiences or information related to the Services described in Section 1.3, "Scope of Services".	N	
17	f) 4	4) Past Performance: List of all contracts which the Proposer has performed for Miami-Dade County.	Y	One (1) contract (MDAD) listed Part A, Proposal.

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Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Secure Wrap of Miami, Inc.
Address: 4050 NW 29 Street
Miami, Florida 33142
Contact Person/Title: Radames Villalon, President
Phone: (305)870-9720
Fax: (305)870-9824

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
18	f) 5	6) Litigation: The Proposer shall Describe any prior or pending litigation, in which (i) the Proposer, (ii) any member of a joint venture, (iii) Subcontractors, (iv) any of those entities' subsidiaries, affiliates or parent companies, or (v) any of those entities' employees is or has been involved within the last ten (10) years which arise out of their employment.	Y	Appendix D, Page 50
19	f) 6	7) CONVICTIONS, INDICTMENTS, OR INVESTIGATIONS. Has the organization of the Proposer or any of its directors, officers, partners or supervisory personnel including those of any Joint Venture ever been party to any criminal action relating directly or indirectly to the general conduct of the business of the Proposer. Identify any criminal convictions or civil judgments for the last ten (10) years, and pending criminal indictments or governmental/regulatory investigations. Information must include: (i) nature of the offense; (ii) sentence, fines, restitution, or probation imposed; (iii) jurisdiction of occurrence; (iv) indicting or investigative authority; and (v) status of indictment or investigation.	Y	Appendix E, Page 51 State of Florida revealed no issues. Federal database revealed no issues.
20	f) 7	8) Affiliations: Please state whether the Proposer, any Principal of Proposer, any family member of any Principal, or any person or entity with which such person has a business relationship, has had or had within the last ten (10) years (a) directly or indirectly a business relationship with Miami-Dade County (including Miami-Dade Aviation Department), (b) directly or indirectly receives or received revenues from Miami-Dade County (including Miami-Dade Aviation Department) or (c) directly or indirectly receives or received revenue from the result of conducting business on County property or pursuant to any contract with the County.	Y	Page 51

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Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%
Name of Proposer: Secure Wrap of Miami, Inc.
Address: 4050 NW 29 Street
Miami, Florida 33142
Contact Person/Title: Radames Villalon, President
Phone: (305)870-9720
Fax: (305)870-9824

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
21	f) 8	References: The Proposer shall provide customer references for similar projects, in scope and magnitude preferably in an airport environment, which the Proposer has either ongoing or completed within the last three (3) years.	Y	Listed only one (1) contract – reference letters were included. User Division confirmed – no issues reported. Additional references Appendix U.
22	g)	Financial Capacity to Perform (information required as outlined in RFP MDAD 01-09, p. RFP-21)		MDAD Finance report reveals no issues – findings.
23	h)	Subcontractors/Sub-consultants Performing Services: List of the names and addresses of all major first tier subcontractors, sub-consultants, and describe extent of work to be performed by each one. Include resumes for the subcontractors or sub-consultants' key personnel.	Y	Part VI Page 55
24	i)	**Submission of Required Documents: Executed Affidavits (Appendix A through I)**	Y	Appendix E Proposal
25	2.3	Minimum Qualifications Form and Technical Proposal Questionnaire Form (Appendix A)	Y	Appendix A Proposal
26	2.4	Acknowledgment of Addenda (Appendix C)	Y	10/16/2009 10/21/2009 Appendix C Proposal
27	2.3	Lobbyist Registration For Oral Presentation (Appendix D)	Y	Appendix D Proposal
28	2.3	Single Execution Affidavits: • Public Entity Crimes Affidavit • Criminal Record Affidavit • Disclosure of Ownership Affidavit	Y	State of Florida & Federal databases reveal no infractions, suspensions, convictions.
29	2.3	Condition of Award Requirements Single Form Execution Affidavits • Affirmation of Vendor Affidavits* • Subcontracts/Supplier Listing • Proof of Authorization to do Business Florida and Occupational License	Y	*Aff. Vendor Affidavits – pending reg. w/ DPM Appendix E Appendix O & P Appendix Q, Occupational License in Appendix F

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Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Secure Wrap of Miami, Inc.
Address: 4050 NW 29 Street
Miami, Florida 33142
Contact Person/Title: Radames Villalon, President
Phone: (305)870-9720
Fax: (305)870-9824

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
30	2.3	Local Business Preference (Appendix F)	Y	Met Local Preference
31	2.3	Proposal Guaranty Bond (Appendix G)	N	Bank of America Cashier's Check No. 7240695, in lieu of Proposal Guaranty Bond
32	2.3	ACDBE Forms	Y	Appendix S
33	2.8	Proposal Guarantee Deposit ($10,000) Attached to Appendix A	Y	Bank of America Cashier's Check No. 7240695 ($10,000)
34	App. A	**Corporate Information:**		
35	App. A	Business: Individual Corporation, Partnership, Joint Venture, Other		Corporation
36	App. A	Is Proposer a subsidiary?		No
37	App. A	If yes, Name/Address of parent company		No
38	App. A	Date of Organization		5/25/1994
39	App. A	Registered in Florida (date)		5/25/1994
40	App. A	Date of Incorporation		5/25/1994
41	App. A	State of incorporation		Florida
42	App. A	Names of Officers		Radames Villalon, Pres. Enrique A. Ramos, VP
43	App. A	If Joint Venture (JV) consisting of following entities		Not applicable
44	App. A	Name of person legally authorized to bind JV		Not applicable

Notes:

1) Firm included Certification of Compliance with TSA Guidelines as required in RFP 2.2.
2) Firm returned original TSA Guidelines as required in RFP 2.2.
3) Tamperproof Certificate included with Proposal.

Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Sinapsis Trading USA, LLC.
Address: 95 Merrick Way – Suite 250
Miami, Florida 33134
Contact Person/Title: Fabio Talin, President & CEO
Phone: (305)799-5760
Fax: (305)351-2217
Email: FABIO.TALIN@TRUESTARGROUP.COM

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
		OVERVIEW REQUIREMENTS		
1	1.3	**Minimum Qualifications** A. The Proposer should have **three (3) or more years of experience within the last five (5) years** in the majority ownership (at least 50%) of an entity that financed, designed, installed, maintained and operated luggage wrapping services in International Airports. B. The Proposer should submit documentation to evidence gross revenues totaling **no less than $700,000 per year** derived from luggage wrapping services revenues. As Evidenced by the Questionnaire and Minimum Qualification Requirements Form (Appendix A)	Y Y Y	User Division verified Appendix A User Division verified Appendix A
2	1.4	Airport Concession Disadvantaged Business Enterprises (ACDBE) Certified		Firm met 30% ACDBE goal (see attached MA Compliance Rpt.)
3	2.3	**Contents of Proposal (Part A)**		
4	a	Table of Contents	Y	Page 4
5	b	Questionnaire & Minimum Qualifications Requirements Form (Appendix A)	Y	Appendix A
6	c	Executive Summary	Y	Page 8
7	d	Proof of Minimum Qualifications (Appendix A)	Y	Page 14
8	e	Technical Information	Y	Page 56

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Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Sinapsis Trading USA, LLC.
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Contact Person/Title: Fabio Talin, President & CEO
Phone: (305)799-5760
Fax: (305)351-2217
Email: FABIO.TALIN@TRUESTARGROUP.COM

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
9	e) 1	Specific policies, plans procedures or techniques to be used in providing services.	Y	Pages 56-63
10	e) 2	Organizational Chart	Y	Page 83
11	e) 3	Key personnel experience, qualifications, functions to be performed and other vital information including relevant experience on previous similar projects.	Y	Pages 83-107
12	e) 4	Luggage Wrapping Machines Specifications	Y	Pages 109-170
13	e) 5	Managing, Operating, and Maintenance Plan	Y	Page 177-178
14	f) 1	PROPOSER'S EXPERIENCE 1) Experience: The Proposer shall provide a history of its background and experience in providing similar services and shall state the number of years that it has been in existence, the current number of employees, and the primary markets served.	Y	Pages 275-292
15	f) 2	2) Specific Project Experience: The Proposer shall provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer has either ongoing or completed within the past three (3) years.	Y	Pages 293-301 User Division verified
16	f) 3	3) Additional Experience: The Proposer shall describe any other experiences or information related to the Services described in Section 1.3, "Scope of Services".	Y	Pages 302-306
17	f) 4	4) Past Performance: List of all contracts which the Proposer has performed for Miami-Dade County.	Y	Page 307 No contracts with County

Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Sinapsis Trading USA, LLC.
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Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
18	f) 5	6) Litigation: The Proposer shall Describe any prior or pending litigation, in which (i) the Proposer, (ii) any member of a joint venture, (iii) Subcontractors, (iv) any of those entities' subsidiaries, affiliates or parent companies, or (v) any of those entities' employees is or has been involved within the last ten (10) years which arise out of their employment.	Y	Page 307 Firm lists respective litigation
19	f) 6	7) CONVICTIONS, INDICTMENTS, OR INVESTIGATIONS. Has the organization of the Proposer or any of its directors, officers, partners or supervisory personnel including those of any Joint Venture ever been party to any criminal action relating directly or indirectly to the general conduct of the business of the Proposer. Identify any criminal convictions or civil judgments for the last ten (10) years, and pending criminal indictments or governmental/regulatory investigations. Information must include: (i) nature of the offense; (ii) sentence, fines, restitution, or probation imposed; (iii) jurisdiction of occurrence; (iv) indicting or investigative authority; and (v) status of indictment or investigation.	Y	Proposer responded on Page 309 NOTE: State of Florida revealed no issues. NOTE: Federal database revealed no issues.
20	f) 7	8) Affiliations: Please state whether the Proposer, any Principal of Proposer, any family member of any Principal, or any person or entity with which such person has a business relationship, has had or had within the last ten (10) years (a) directly or indirectly a business relationship with Miami-Dade County (including Miami-Dade Aviation Department), (b) directly or indirectly receives or received revenues from Miami-Dade County (including Miami-Dade Aviation Department) or (c) directly or indirectly receives or received revenue from the result of conducting business on County property or pursuant to any contract with the County.	Y	Page 310 Marsha Jackman, former SBA Director (County Employee) listed as ACDBE & Wage Compliance Officer in TO page 83, however, was not listed under 'Affiliations'.

Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

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Fax: (305)351-2217
Email: FABIO.TALIN@TRUESTARGROUP.COM

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
21	f) 8	References: The Proposer shall provide customer references for similar projects, in scope and magnitude preferably in an airport environment, which the Proposer has either ongoing or completed within the last three (3) years.	Y	Page 310
22	g)	Financial Capacity to Perform (information required as outlined in RFP MDAD 01-09, p. RFP-21)	Y	MDAD Finance Compliance Rpt & Page 312
23	h)	Subcontractors/Sub-consultants Performing Services: List of the names and addresses of all major first tier subcontractors, sub-consultants, and describe extent of work to be performed by each one. Include resumes for the subcontractors or sub-consultants' key personnel.	Y	Page 328
24	i)	**Submission of Required Documents: Executed Affidavits (Appendix A through I)**	Y	Page 340
25	2.3	Minimum Qualifications Form and Technical Proposal Questionnaire Form (Appendix A)	Y	Appendix A
26	2.4	Acknowledgment of Addenda (Appendix C)	Y	Appendix C 10/16/2009 10/21/2009
27	2.3	Lobbyist Registration For Oral Presentation (Appendix D)	Y	Appendix D
28	2.3	Single Execution Affidavits: • Public Entity Crimes Affidavit • Criminal Record Affidavit • Disclosure of Ownership Affidavit	Y	Appendix E State of Florida & Federal databases reveal no infractions, suspensions, convictions. Criminal Record Affidavit was not checked by Proposer.

Request for Proposals for Luggage Wrapping Services at MIA
RFP No. MDAD-01-09
Proposal Submission Requirements
Proposal Due Date: October 30, 2009
Contract Goals: ACDBE 30%

Name of Proposer: Sinapsis Trading USA, LLC.
Address: 95 Merrick Way – Suite 250
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Phone: (305)799-5760
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Email: FABIO.TALIN@TRUESTARGROUP.COM

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
29	2.3	Condition of Award Requirements Single Form Execution Affidavits • Affirmation of Vendor Affidavits • Subcontracts/Supplier Listing • Subcontracting Policies Statement • Proof of Authorization to do Business Florida and Occupational License	Y	Appendix E
30	2.3	Local Business Preference (Appendix F)	Y	Appendix F was submitted – pending review.
31	2.3	Proposal Guaranty Bond (Appendix G)	N	Bank of America Cashier's Check No. 7164978 , in lieu of Proposal Guaranty Bond
32	2.3	ACDBE Forms	Y	Appendix I
33	2.8	Proposal Guarantee Deposit ($10,000) Attached to Appendix A	Y	Bank of America Cashier's Check No. 7164978 ($10,000)
34	App. A	**Corporate Information:**		
35	App. A	Business: Individual Corporation, Partnership, Joint Venture, Other		Sinapsis Trading USA, is an LLC, owned by Sinapsis Trading S.L. is a Limited Liability Company Spanish Corporation Fabio Talin authorized to bind LLC
36	App. A	Is Proposer a subsidiary?		The respective Proposal states in Attachment A to Appendix A, that Sinapsis S.L. (Spanish Corporation) is the Parent company with an ownership of 81.08%, TrueStar Group S.p.A owns 9.46%, and SecureBag Italia S.r.l, owns 9.46%.

Request for Proposals for Luggage Wrapping Services at MIA
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Address: 95 Merrick Way – Suite 250
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Contact Person/Title: Fabio Talin, President & CEO
Phone: (305)799-5760
Fax: (305)351-2217
Email: FABIO.TALIN@TRUESTARGROUP.COM

Item No.	RFP Section	Submission Requirements	Y/N	COMMENTS
37	App. A	If yes, Name/Address of parent company		Following addresses on record for Sinapsis Trading S.L. **Sinapsis Trading S.L.** **Calle Macarena, 27** **28016 - Madrid** **Phone (913.010.135)** **Sinapsis Trading S.L.** **Aeport. Barajas** **Munoza, s/n** **28042 Madrid (Madrid),** **Spain**
38	App. A	Date of Organization		Date: 5/2/2008
39	App. A	Registered in Florida (date)		5/2/2008
40	App. A	Date of Limited Liability Company (LLC)		5/2/2008 LLC in State of Florida
41	App. A	State of LLC		Sinapsis Trading USA, LLC registered in Florida
42	App. A	Names of Officers		Fabio Talin, Pres. & CEO
43	App. A	If Joint Venture (JV) consisting of following entities		Not Joint Venture
44	App. A	Name of person legally authorized to bind LLC		Fabio Talin, Pres. & CEO

Notes:

1) Firm included Certification of Compliance with TSA Guidelines as required in RFP 2.2.
2) Firm returned original TSA Guidelines as required in RFP 2.2.
3) Tamperproof Certificate included with Proposal.
4) Due Diligence Report – Office of Inspector General (Pending)

Memorandum

MIAMI-DADE COUNTY

Date: November 03, 2009

To: Pedro J. Betancourt
MDAD Contracts Administration Division

From: Milton Collins
MDAD-Minority Affairs Division

Subject: Project: Luggage Wrapping Services at Miami
Project No. RFP No. MDAD-01-09
ACDBE Compliance Review

HAND DELIVERED

The Minority Affairs Division has completed its compliance review of the above-referenced project for compliance with the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program as per the requirements of the Code of Federal Regulations (49 CFR Part 23). The contract measure applicable to this project is ACDBE goal of 30.0%.

On November 2, 2009, the Minority Affairs Division received from the MDAD Contracts Administration Division Bid documents for two (2) firms for ACDBE Compliance Review (Attachment 1).

1) **Secure Wrap of Miami, Inc.**

Secure Wrap of Miami, Inc (Secure Wrap) submitted the required ACDBE Utilization Form, the Schedule of Participation (SOP), and the ACDBE Letter of Intent (LOI) committing to utilize: Secure Wrap of Miami, Inc., for 100.0% (which is an ACDBE itself) to provide baggage wrapping services. Additionally, Secure Wrap noted in its ACDBE Plan that it will enter into a Mentor Protégé Program with Direct Airline Services, Inc., (which is also an ACDBE firm) to provide day-to-day management services which will award 20% of profits under a contract as detailed in Table 1.

Table 1

Bidder	Luggage Wrapping Services at Miami ACDBE Compliance Review Chart					
Secure Wrap of Miami	**DBE %**	**Certified ***	**Utilization**	**SOP**	**LOI**	**Type**
Secure Wrap of Miami	100.0%	5/13/2010	YES	YES	YES	Direct ACDBE
Total ACDBE Participation	**100.0%**	* Source: SBD and Florida UCP data base				

Secure Wrap has met and exceeded the goal of 30.0 (thirty) percent and is in compliance with the ACDBE Participation Provisions and the Code of Federal Regulations 49 CFR Part 23 (Attachment 2).

2) Sinapsis Trading USA, LLC

Sinapsis Trading USA, LLC submitted the required ACDBE Utilization Form, the Schedule of Participation (SOP), and the ACDBE Letter of Intent (LOI) committing to utilize Crown Global Services Corp for 30.0 (thirty) percent in subcontract agreement to recruit, train and manage machine operators, assist in revenue collection and machine maintenance.

Table 2

Luggage Wrapping Services at Miami Bidder ACDBE Compliance Review Chart						
Sinapsis Trading USA, LLC	**DBE %**	**Certified ***	**Utilization**	**SOP**	**LOI**	**Type**
Crown Global Services Corp.	30.0%	8/11/2010	YES	YES	YES	Subcontract
Total ACDBE Participation	**30.0%**	* Source: SBD and Florida UCP data base				

Sinapsis Trading USA, LLC has met the subcontractor goal of 30 (thirty) percent and is in compliance with the ACDBE Participation Provisions and the Code of Federal Regulations 49 CFR Part 23 (Attachment 3).

If any of the ACDBE firms listed on the Schedule of Participations as ACDBEs are found not to be eligible after award, it must be substituted in accordance with Section IV of the ACDBE Participation Provisions contained in the project Bid documents.

Please note that Minority Affairs staff only reviewed and addressed compliance with the ACDBE Program.

Should you have any questions or need additional information, please contract me at (305) 876-7221 or Abebe Tecle at (305) 876-7386.

Attachments (3)

cc:

- Abebe Tecle
- Project File.

MIAMI INTERNATIONAL AIRPORT

MIAMI-DADE COUNTY

MINORITY AFFAIRS

2009 NOV -2 AM 10:12

Contracts Administration Division

TRACKING DOCUMENT

DATE:	**November 2, 2009**
	Abebe Tecle, Aviation Spec. Asst. 2, MDAD Minority Affairs
SUBJECT:	ACDBE Compliance Review - Request for Proposals for Luggage Wrapping Services at MIA RFP No. MDAD-01-09
BACKGROUND:	The RFP was advertised on September 15, 2009, following approval by the County Manager pursuant to Aviation Expedite Ordinance No. 95-138. The RFP is to solicit the services of one (1) qualified firm(s) to provide the above referenced services. The Proposal Due Date was October 30, 2009. As a result, two (2) Proposals were submitted by the respective firms: 1) Sinapsis 2) Secure Wrap
TERM:	The term of the Agreement issued as a result of this RFP shall be for five (5) years with one (1), two (2) year option to extend. The term shall start on the Effective Date of the Agreement.
CONTRACT AMOUNT:	The Proposer shall propose to pay a MAG of at least One Million Five Hundred Thousand Dollars ($1,500,000), and at least twenty-five percent (25%) of its Monthly Gross Revenues or the Minimum Monthly Guarantee (MMG), inclusive of the Location Annual Rent (excluding support space).
RECOMMENDATION:	Please provide an ACDBE Compliance Review for both Proposers; 1) Secure Wrap and 2) Sinapsis Trading.

Comments: Upon completion of your review, please return the Technical Proposals. Should you require a set, please advise and we will provide PDF file for your records.

Please return to: Pedro J. Betancourt **Location:** Contracts Administration, Bldg. 5a, 4th Floor

NOTE: The Cone of Silence is in effect for this solicitation.

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DEMONSTRATION OF GOOD FAITH EFFORTS
ACDBE UTILIZATION FORM

[Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

X The bidder/offeror is committed to a minimum of 100 % ACDBE utilization in this Contract.

___ The bidder/offeror (if unable to meet the ACDBE goal of _____%) is committed to a minimum of _____% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: Secure Wrap of Miami, Inc.

State Registration No. 4157

By: _____ Title: President
(Signature)

Radames Villalon Date: 10/23/2009
(Print Name)

SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to "certified" ACDBE firms who will be participating in this contract.

NAME OF ACDBE FIRMS	DESCRIPTION OF SERVICES	% OF BID/PROPOSAL
Secure Wrap of Miami, Inc.	Baggage Wrapping Services at MIA	100%

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

		10/23/2009
Signature of Proposer		**Date**
Radames Villalon	President	Secure Wrap of Miami, Inc.
Print Name	**Title**	**Company Name**

LETTER OF INTENT
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

To: Miami-Dade Aviation Department

Project: Luggage Wrapping Service at MIA- RFP No. MDAD 01-09

Contract Number: RFP No. MDAD 01-09 Total % of Bidder/Proposal: 100%

The undersigned holds ACDBD Certificate No. 4157 expiring on, May 13th 20 10.

The undersigned intends to perform the following work in connection with the above Bid/ Proposal (Describe): Implement, Manage, Operate & Maintain

Description of Services	% of Bid/Proposal
Implement, Manage, Operate & Maintain Luggage Wrapping Service at MIA	100%

Total% 100%

Signature ACDBE Date 10/23/2009

Print Name Radames Villalon Title President

ACDBE Firm Secure Wrap of Miami, Inc.

ACDBE Participation Plan

Explanation of ACDBE Participation (Management)

Secure Wrap of Miami, Inc is an ACDBE firm and will handle all of the day-to-day management and operation under this contract*

Explanation of ACDBE Participation (Financial)

Secure Wrap of Miami, Inc is an ACDBE firm and will have 100% financial participation under this contract.**

*Even though Secure Wrap of Miami, Inc is an ACDBE firm, we will enter into a Mentor Protégé Program with Direct Airline Services, Inc (DAS) which is also an ACDBE. Direct Airline Services, Inc will assist with day-to-day management.

** Even though Secure Wrap of Miami, Inc is an ACDBE firm, we will enter into a Mentor Protégé Program with Direct Airline Services, Inc (DAS) which will award DAS 20% of the profits under this contract.

T

Small Business Development
111 NW 1st Street • 19th Floor
Miami, Florida 33128-1906
T 305-375-3111 F 305-375-3160

miamidade.gov

MIAMI-DADE COUNTY

Alvarez, Mayor

May 19, 2009

CERT. NO: 4157
APPROVAL DATE(s): 05/13/2009 - DBE
05/13/2009 - ACDBE
ANNIVERSARY DATE: 05/13/2010

Radames Villalon
SECURE WRAP OF MIAMI, INC.
4050 NW 29th St
Miami, FL 33142

Dear Radames Villalon:

Small Business Development (SBD) has completed the review of your application and the attachments submitted for certification. Your firm is officially certified as a Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Busn Ent (ACDBE) In accordance with the State of Florida Unified Certification Program (UCP) approved by the U.S. Department of Transportation (FDOT) in the categories listed below.

This certification affords your company the opportunity to participate in contracts throughout the State of Florida with ACDBE measures. While ACDBE certification qualifies your firm to bid and participate on projects with ACDBE participation requirements, please note that this certification does not allow you to participate on projects with Community Small Business Enterprise (CSBE), Small Business Enterprise (SBE) and/or Community Business Enterprise (CBE) program requirements unless certified in the specific program.

Your ACDBE certification requires you complete a Continuing Eligibility Form annually. To ensure timely processing the Continuing Eligibility Form is accessible at http://www.miamidade.gov/sba/forms.asp. A hard copy is available upon request and may be sent to you via mail or facsimile. Failure to complete the required form and submit with the required supporting documents on or before your anniversary date may subject your firm's removal from the Florida DBE Unified Certification Program.

If any changes occur within your company during the certified period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department in writing, immediately. It is of critical importance that the current information regarding your company be updated. All inquiries or changes related to this certification should be directed to the SBD Certification Unit.

Should you have questions regarding your firm's certification, please contact the Certification Unit at SBDcert@miamidade.gov or call (305) 375-3111.

We look forward to your participation and success in Miami-Dade County's small and/or disadvantaged business programs.

Sincerely,

Penelope Townsley, Director
Small Business Development

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)
CRATING AND CRATING (DBE, ACDBE)

SBDR0020 v20090316

DEMONSTRATION OF GOOD FAITH EFFORTS
ACDBE UTILIZATION FORM

[Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

✓ The bidder/offeror is committed to a minimum of 30 % ACDBE utilization in this Contract.

_____ The bidder/offeror (if unable to meet the ACDBE goal of _____%) is committed to a minimum of _____% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: SINAPSIS TRADING- USA, LLC

State Registration No. L08000044163

By: _____ Title: PRESIDENT
(Signature)

FABIO TALIN Date: OCTOBER 23, 2009
(Print Name)

SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to "certified" ACDBE firms who will be participating in this contract.

NAME OF ACDBE FIRMS	DESCRIPTION OF SERVICES	% OF BID/PROPOSAL
CROWN GLOBAL SERVICES CORP	RECRUIT, TRAIN AND MANAGE MACHINE OPERATORS, ASSIST IN REVENUE COLLECTION AND MACHINE MAINTENANCE	30 %
	ISSUES IN ACCORDANCE WITH THE AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN PROVISIONS	

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

Signature of Proposer — OCTOBER 23, 2009 — Date

FABIO TALIN — PRESIDENT — SINAPSIS TRADING USA LLC

Print Name — Title — Company Name

ACDBE APPENDIX 2

LETTER OF INTENT
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

To: MIAMI-DADE COUNTY, AVIATION DEPARTMENT, CONTRACTS DIVISION

Project: RFP FOR LUGGAGE WRAPPING SERVICES AT MIA

Contract Number: MDAD-01-09 **Total % of Bidder/Proposal:** 30%

The undersigned holds ACDBD Certificate No. 13467 **expiring on,** 8/11 **20** 10.

The undersigned intends to perform the following work in connection with the above Bid/ Proposal (Describe):

Description of Services	% of Bid/Proposal
SHOP STORE OPERATIONS: (1) PASSANGER PROFILE ANALYSIS (2) CASH HANDLING/SALES AUDIT (3) ENHANCING SALES (4) SELLING TO THE CUSTOMER. (5) STAFFING TO MEET CUSTOMER LEVELS (6) OPERATING AND CLOSING PROCEDURES	30%
PERSONNEL (1) EMPLOYMENT PRACTICES (2) COMPLIANCE WITH WAGES AND HOUR LAWS (3) COMPLIANCE WITH COUNTY AND AIRPORT REQUIREMENTS (4) DESIGNING COMPENSATION AND BENEFIT PLANS (5) MANAGEMENT AND STAFF TRAININ TO ENHANCE PRODUCT KNOWLEDGE AND CUSTOMER SERVICE (6) WAREHOUSING PACKAGING AND SALES REPORTING OF MERCHANDISE	
SHOP DESIGN AND DISPLAY (1) RETAIL LAYOUT (2) MERCHANDISING TECHNIQUES (3) VISUAL DISPLAY TECHNIQUES	
LOSS PREVENTION (1) EXTERNAL AND INTERNAL THEFT (2) SHOP SECURITY	
BOOKS, RECORDS AND REPORTS AND OTHER SERVICES AS MAY BE REQUIRED FOR THE EFFICIENT OPERATION OF BUSINESS.	
	Total% 30%

Signature of ACDBE _____ **Date** OCTOBER 23, 2009

Print Name TARIK KING **Title** PRESIDENT

ACDBE Firm CROWN GLOBAL SERVICES CORP.

MIAMI-DADE COUNTY

Carlos Alvarez, Mayor

Small Business Development
111 NW 1st Street • 19th Floor
Miami, Florida 33128-1906
T 305-375-3111 F 305-375-3160

miamidade.gov

August 18, 2009

CERT. NO: 13467
APPROVAL DATE(s): 08/11/2009 - DBE
ANNIVERSARY DATE: 08/11/2010

Tarik King
CROWN GLOBAL SERVICES CORP.
18224 Mediterranean Blvd, #1706
Miami, FL 33015-0000

Dear Tarik King:

Small Business Development (SBD) has completed the review of your application and the attachments submitted for certification. Your firm is officially certified as a Disadvantaged Business Enterprise (DBE) in accordance with the State of Florida Unified Certification Program (UCP) approved by the U.S. Department of Transportation (FDOT) in the categories listed below.

This certification affords your company the opportunity to participate in contracts throughout the State of Florida with DBE measures. While DBE certification qualifies your firm to bid and participate on projects with DBE participation requirements, please note that this certification does not allow you to participate on projects with Community Small Business Enterprise (CSBE), Small Business Enterprise (SBE) and/or Community Business Enterprise (CBE) program requirements unless certified in the specific program.

Your DBE certification requires you complete a Continuing Eligibility Form annually. To ensure timely processing the Continuing Eligibility Form is accessible at http://www.miamidade.gov/sba/forms.asp. A hard copy is available upon request and may be sent to you via mail or facsimile. Failure to complete the required form and submit with the required supporting documents on or before your anniversary date may subject your firm's removal from the Florida DBE Unified Certification Program.

If any changes occur within your company during the certified period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department in writing, immediately. It is of critical importance that the current information regarding your company be updated. All inquiries or changes related to this certification should be directed to the SBD Certification Unit.

Should you have questions regarding your firm's certification, please contact the Certification Unit at SBDcert@miamidade.gov or call (305) 375-3111.

We look forward to your participation and success in Miami-Dade County's small and/or disadvantaged business programs.

Sincerely,

Veronica Clark for

Penelope Townsley, Director
Small Business Development

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)
ADMINISTRATIVE MANAGEMENT AND GENERAL MANAGEMENT CONSULTING SERVICES (DBE)
PACKING AND CRATING (DBE)

DBDR0020 V20090710

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MDAD Notice of Prescreening Meeting

Luggage Wrapping Services, RFP No. MDAD-01-09

Date/Time:	January 26, 2010 9:00 a.m. - 11:00 a.m.
Address:	4200 NW 36 Street Building 5A, 4th Floor, Conference Room "F" Miami, FL 33122
Contact Person:	Pete J. Betancourt
Phone Number:	305-876-7345

The County Manager of Miami-Dade County thru the Aviation Department announces that a prescreening meeting will be held for the Luggage Wrapping Services at MIA. This meeting will be videotaped; for copies of this recording you may contact Nazreen Khan, Miami-Dade TV, phone number 305-375-3733, or via email at dubs@miamidade.gov. For ADA requests Monica Beltran MDAD, 305-876-7024.

Categories:
Aviation | Government Meetings |

Close Window

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SS

Add this to Outlook! Print!

MDAD Notice of Public Hearing Meeting

Luggage Wrapping Services, RFP No. MDAD-01-09

Date/Time:	March 23, 2010 9:00 a.m. - 3:00 p.m.
Address:	4200 NW 36 Street Building 5A, 4th Floor, Conference Room "F" Miami, FL 33122
Contact Person:	Pete J. Betancourt
Phone Number:	305-876-7345

The County Manager of Miami-Dade County thru the Aviation Department announces that a public hearing meeting will be held to select a qualified firm regarding the Request for Proposals for Luggage Wrapping Services at MIA. This meeting will be videotaped; for copies of this recording you may contact Nazreen Khan, Miami-Dade TV, phone number 305-375-3733, or via email at dubs@miamidade.gov. Public entities may also be recording this meeting.

Categories:
Aviation | Government Meetings |

If you need a sign language interpreter, or materials in accessible format for this event please call Monica Beltran or email MBELTRAN@MIAMI-AIRPORT.COM at least five days in advance.

Close Window

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RFP-01-09
Luggage Wrapping Services
Financial Compliance Review
Sinapsis Trading USA, LLC

Section 2.3 B.(g) Financial Capacity to Perform	*Submitted?*	*Reviewer Notes/Comments*
Proposer provided information on percentage of equity of any partnerships formed.	Y	Proposer is a limited liability company managed by Sinapsis Trading S.L. (81.08%), TradeStar Group (9.48%) and SecureBag Italia S.r.L (9.46%)
Proposer provided information on Equity shares.	Y	
Capital Investment:		
Submitted a Financial Plan which indicates: -source of funding to be used for start up costs and captial improvements, and	Y	Source of funding will come from the managing members.
-the amount of working capital and reserves the Proposer determines will be required to maintain operations.	Y	
Additional information includes: -estimated costs for improvements	Y	
-projected expenses for leasehold improvements and/or furniture, fixtures and equipment	Y	
References:		
Three letters of business references related to its business operations during the past three (3) years. Each reference will provide a contact name, title, phone number, fax number and email address.	Y	
Financial Background:		
(i)Audited or reviewed balance sheet and income statements for the last three fiscal years prepared in accordance with generally accepted acounting principles (GAAP), reflecting current financial conditions; if there are no audited or reviewed financial statements available, then provide the last three (3) federal income tax returns filed with the Internal Revenue Service (IRS).	Y	Submitted audited Financial Statements for Sinapsis Trading S.L. for 2006, 2007 & 2008 as well as audited statements for Sinapsis Trading USA for 2008 and 2009 (Sept.).
(ii)An interim balance sheet and income statement for any period of time in excess of six months of the financial statements submitted as part of (i) above, reflecting any significant financial events occurring subsequent to the closing date; if no significant events occurred, please state the fact.	Y	Statement submitted indicating no significant financial events have occurred.

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RFP-01-09
Luggage Wrapping Services
Financial Compliance Review
Sinapsis Trading USA, LLC

Section 2.3 B (g) Financial Capacity to Perform	*Submitted?*	*Reviewer Notes/Comments*
Subsidiaries:		
A statement indicating whether this company operates as a subsidiary of another company. If so, include the appropriate financial information such as the financial relationship and responsibilities to subsidiary or related companies for both the parent and subsidiary.	Y	Statement indicating company does not operate as a subsidiary.
State if the parent guarantees the Minimum Annual Guarantee and Agreement for the subsidiary. If so, provide a letter from an authorized representative of the parent company attesting to the parent company's intent to guarantee the Minumum Annual Guarantee and Agreement.	Y	Managing members have agreed to guarantee proposer but a letter was not submitted instead the guarantee is in the managing member's Board minutes.

Evelyn Campos, Professional Compliance Director — 12/4/09 — Date

Anne S. Lee, Chief Financial Officer — 12/4/09 — Date

The Financial Compliance Review verifies required RFP documentation under the Technical Proposal, Section 2.3 B (g) Financial Capacity to Perform, is submitted as requested. Submitted financial information is reviewed for compliance to the proposal. This review is not intended to make representations as to the creditworthiness of the proposer's financial position.

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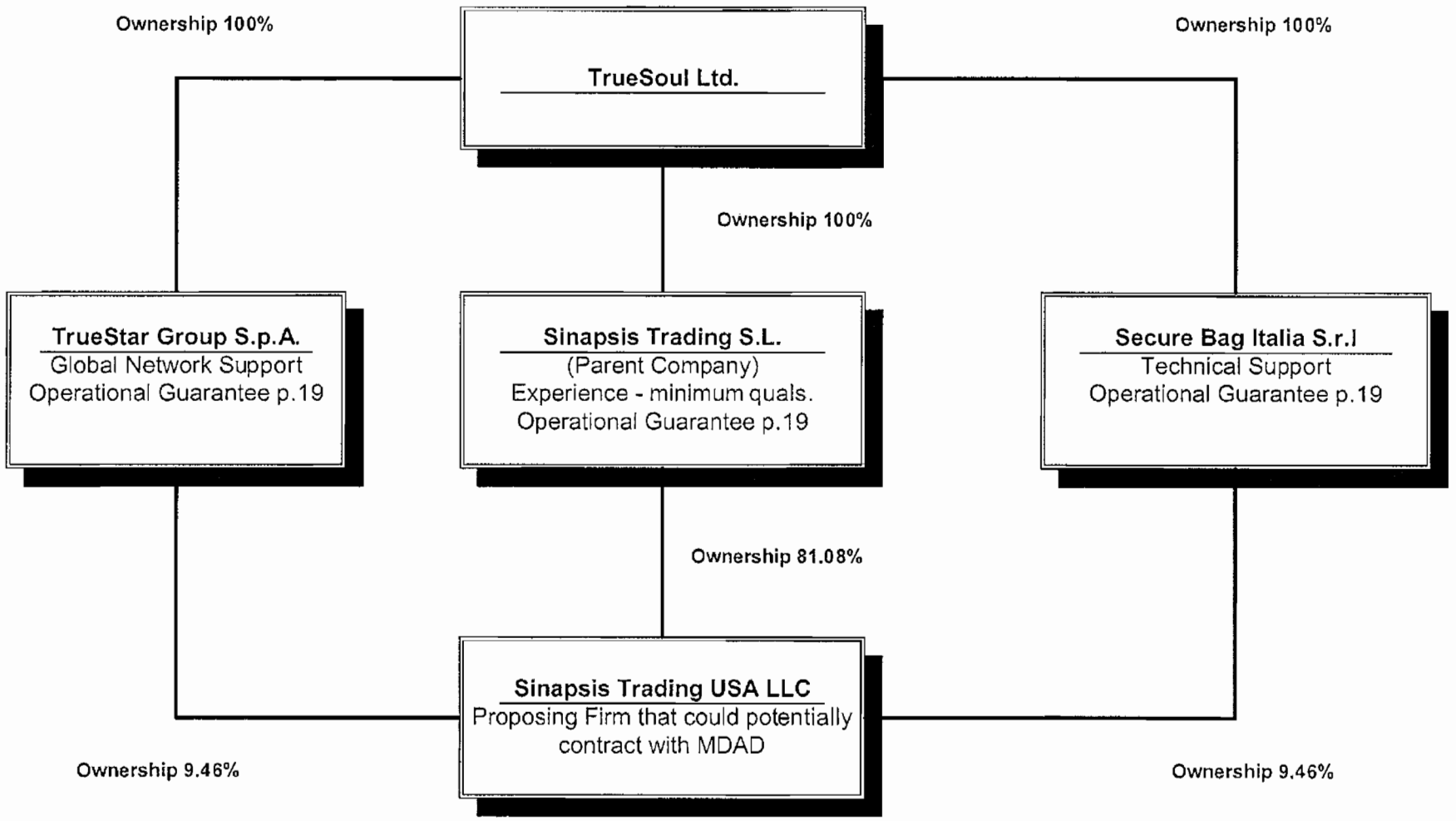
SINAPSIS TRADING USA, LLC CORPORATE STRUCTURE



FORM OF LEASE AND CONCESSION

AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

SINAPSIS TRADING USA, LLC

CONCESSIONAIRE

FOR LUGGAGE WRAPPING SERVICES

AT

MIAMI INTERNATIONAL AIRPORT

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Exhibit G: Independent Audit Report
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Exhibit J: Tenant Handbook
Exhibit K: Scope of Services
Exhibit L: Standards of Operation
Exhibit M: Executed Affidavits

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 Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Concessionaire.

The term **"Airport"** or **"MIA"** shall mean Miami International Airport and any facilities controlled by MDAD.

The term **"Airport Concession Disadvantaged Business Enterprises"** or **"ACDBE"** shall have the meaning described in entitled "Airport Concession Disadvantaged Business Enterprises", Article 14 of this Agreement.

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

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

The term **"Beneficial Occupancy"** shall mean the date the Location is turned over by the Department to the Concessionaires for business, or when a Permit or Certificate of Occupancy or Temporary Certificate of Occupancy has been issued.

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

The term **"Capital Improvement Program"** or **"CIP"** shall refer to the Department's construction program that will involve the refurbishment of MIA's terminal interiors, airline re-location, 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 terminal area, landside or airside, which is now known as Concourses E-G.

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

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

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

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

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

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

The term "**Department**" or "**MDAD**" shall mean the Miami-Dade Aviation Department. Wherein in this Solicitation document, rights are reserved to the County, MDAD may exercise such rights. MDAD may only exercise such rights through the specific positions listed in the Solicitation or Contract documents.

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

The term " **Enplanement"** shall mean airline passenger(s) who departs MIA from the North Terminal, Central or South Terminal to a destination including International and Domestic travelers.

The term **"Gross Revenues",** as used in this Agreement, shall mean all monies paid or payable to or consideration of determinable value received by the Concessionaire in operation under the Agreement, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term "Gross Revenues" shall not include: (i) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (ii) promotional discount and coupon offers issued to customers as a result of a Departmental approved marketing plan, or (iii) any sums collected for any federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services.

The term **"Location (s), Facilitie(s),** and **Premises"** shall mean the areas which are used by the Concessionaire for actual placement and operation of Luggage Wrapping Machines, as defined in Exhibit A.

The term "**Luggage Wrapping Machines"** or "**Machines"** shall mean the equipment used by the Successful Proposer to perform its services, pursuant to the Scope of Services.

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

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

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

The term **"Proposal"** shall mean a proposer's written response to the Solicitation document.

The term "**Request For Proposals**" or "**RFP"** shall mean this solicitation document and all associated addenda and attachments.

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

The term **"Scope of Services"** shall mean as reflected in the RFP, Section 1.2, and attached to this Agreement as Exhibit K.

The term "**Small Business"** shall mean a business with annual gross sales of three million dollars or less, regardless of the number of employees, and with its principal place of business in Miami Dade County, Florida. (Ord. No. 79-35 paragraph 2, 6-5-79)

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

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

The terms "**Subcontractor/Subconsultant**" shall mean any person, firm, entity or organization, other than the employees of the Concessionaire, who contracts with the Concessionaire to furnish labor, or labor and materials, in connection with the services that will be provided to the County, whether directly or indirectly, on behalf of the Successful Proposer.

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

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

The terms "**Work", "Services", "Program", "Project**" or "**Engagement"** shall mean all matters and things that will be required by the Concessionaire in accordance with the Scope of Services and the terms and conditions of this Agreement.

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FORM OF LEASE AND CONCESSION AGREEMENT FOR A NON-EXCLUSIVE LUGGAGE WRAPPING SERVICES AT MIAMI INTERNATIONAL AIRPORT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this _____ day of _____, 2010, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and Sinapsis Trading USA, LLC, ("Concessionaire"), a Limited Liability Company, 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 Luggage Wrapping Services program will provide the airline passengers and Airport patrons with a high level of service, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

WHEREAS, Request for Proposal, RFP No. MDAD-01-09 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 Concessionaire,

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

ARTICLE 1 – TERM, EXTENSION AND LOCATIONS

1.01 TERM: The Department hereby leases to the Concessionaire the Locations, Exhibit A, commencing upon the Effective Date of this Agreement; and shall expire at 11:59 o'clock P.M. on the fifth (5th) year unless sooner terminated. In no event shall this Agreement afford Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, or termination of this Agreement.

1.02 EXTENSION: At the sole discretion of the Department, the initial five (5) year Term may be extended for a maximum of one two (2) year Term period, provided the extension is mutually agreed to by the Department and the Concessionaire in writing.

In the event the Department elects to extend the Agreement, the Concessionaire shall be notified, in writing, no less than sixty days (60) calendar days prior to the expiration of the initial term. The Concessionaire may elect not to agree to the extension, and, if so, must notify the Department thirty (30) calendar 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.

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

1.03 LOCATIONS: The Department hereby identifies to the Concessionaire the Locations as depicted in **Exhibit A "Locations"**.

1.04 SUPPORT SPACE: The Department shall offer the Concessionaire administrative and support space, if needed; at the current terminal rates in place, which are subject to change. The Locations are depicted in **Exhibit C "Support Space**."

1.05 ADDITION, DELETION, RELOCATION AND ALTERNATIVE LOCATIONS:

The Department may add, delete, relocate, change or provide alternate Locations by providing to the Concessionaire an administratively revised **Exhibit A**. The Department reserves the right, without limitation, at all times during the Term of this Agreement and any extension thereof, following thirty days advance written notice to the Concessionaire, to require the addition, deletion, relocation, alternate , or change of Location. In the event the Department requires a change of Location, the Concessionaire shall return the original Location to its original condition as it was at the Effective Date. If an alternate Location is requested by the Department, the Department will bear the cost of providing electrical outlet power at the alternate Location. If an alternate Location is requested by the Concessionaire, the Concessionaire will bear the cost of providing electrical power at the alternate Location.

The Concessionaire may request to add, remove, request alternate or change a Location; however, the Concessionaire must obtain written approval from the Department.

ADMINISTRATIVE REVISIONS: This Agreement shall be administratively revised to reflect any additions, deletions, relocations, or modifications to the Locations pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in **Sub-Article 1.03 "Locations**" or **Sub-Article 1.04 "Support Space"** and total payments due to the Department in accordance with **Article 3, "Rentals, Payments and Reports**" and "**Article 2 Use of Locations**".

1.06 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 at the Airport during the Term of this Agreement.

1.07 CONDITION OF THE LOCATIONS: CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATIONS TO THE CONCESSIONAIRE ON AN "AS IS" BASIS AND THAT THE CONCESSIONAIRE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE LOCATIONS including: (i) the quality, nature, adequacy and physical condition and aspects of the Locations, including utility systems; (ii) the existence, quality, nature,

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adequacy and physical condition of utilities serving the Locations; (iii) the development potential of the Locations, the use of the Locations, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Locations for any particular purpose; (iv) the zoning or other legal status of the Locations or any other public or private restrictions on use of the Locations; (v) the compliance of the Locations or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Locations; (vii) the quality of any labor and materials used in any improvements on the Locations; (viii) the condition of title to the Locations; (ix) the agreements affecting the Locations; and (x) the Proposal submitted by Concessionaire to the Department, including any statements relating to the potential successor profitability of such Proposal. The

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

1.08 CAPITAL IMPROVEMENT PROGRAM: The Capital Improvement Program is currently underway and will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the Terminal Building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations and any demolition of existing Locations.

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

ARTICLE 2 – USE OF LOCATIONS

2.01 USE OF LOCATIONS: The Locations as referenced in **Exhibit A, "Locations"** shall be used solely for its assigned and approved purpose unless otherwise modified pursuant to **Sub-Article 2.03 "Concessionaire Services and Sales Rights".** The Concessionaire shall

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use the Locations for the installation, management and operation of Luggage Wrapping Services. The Concessionaire shall not use or permit the use of the Locations for any purpose other than as set forth in this Agreement.

Furthermore, the Concessionaire shall provide, install, maintain and operate luggage wrapping machines to re-wrap luggage.

The Concessionaire agrees during the term of this Agreement, at its own costs to maintain, use and operate the Locations and all improvements including a clean, sanitary condition and to be in compliance with any and all present and future laws, ordinances and regulations relating to public health, safety or welfare.

2.02 NOT USED

2.03 CONCESSIONAIRE SERVICES AND SALES RIGHTS: The Concessionaire shall not allow any services or the sale of any item or product not specifically approved in this Agreement. Any sales by the Concessionaire of services, products, or items not specifically approved herein, in writing by the Department, shall constitute a violation. In the event of such violation, the Concessionaire shall discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Concessionaire to discontinue such sales within 24 hours shall subject the Concessionaire to liquidated damages pursuant to **Sub-Article 3.22 "Liquidated Damages".**

2.04 SCOPE OF SERVICES: The Scope of Services is as reflected in Section 1.2 of the RFP and attached to this Agreement as **Exhibit K**.

2.05 ANNUAL PLAN SUBMISSION: The Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) calendar days prior to the commencement of each lease year, and shall represent the upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) calendar days after receipt of the foregoing plan to approve or disapprove the same in its reasonable discretion. If MDAD disapproves the plan, the Concessionaire shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

The Department reserves the right to request at any time further submission of plans.

2.06 PROHIBITED ACTIVITIES: Without limiting any other provision herein, Concessionaire shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the Terminal Building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board , or the appearance of the Airport; or (f) construct any improvement

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on or attach any equipment to the roof of the Airport. Except as required to permit Concessionaire to perform its maintenance and repair obligations under this Agreement, Concessionaire shall not gain access to the roof of the Terminal Building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

3.01 MINIMUM ANNUAL GUARANTEE: As consideration for the privilege to engage in business at MIA, Concessionaire shall pay the Department a Minimum Annual Guarantee of **Eleven Million One Hundred Thousand Dollars ($11,100,000.00)**, inclusive of the Annual Rental of the Locations pursuant to **Sub-Article 3.06** "**Annual Rental**".

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

After the first year, on the anniversary of the Effective Date, and every year thereafter, during the term of the Agreement including any extensions thereto, the MAG will be adjusted in accordance with **Sub-Article 3.03 "Recalculations of Minimum Annual Guarantee".**

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS: The Concessionaire understands and agrees, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**,and **Sub-Article 3.04 "Percentage Fee to the Department"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 20.11 "Force Majeure".** The County shall not 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 of this Agreement, including any extensions. If the Concessionaire's Locations are so damaged by an event as defined in **Sub-Article 20.11 "Force Majeure"** to significantly impact the Concessionaire's operations for a period in excess of seventy two (72) hours, the Department shall provide a proportionate abatement of the MAG for that portion of the Locations rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01 "Department Services".**

3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall be recalculated at the anniversary of the Effective Date. An appropriate adjustment will be made to reflect the change in the Consumer Price Index.

3.04 PERCENTAGE FEE TO THE DEPARTMENT: The Concessionaire shall pay the Department the percentage fee of **Fifty-Six and One-Half Percent (56.5%)** for luggage wrapping activities gross revenue, or the Minimum Monthly Guarantee; whichever is greater. The monthly percentage fee shall be due on the fifteenth (15th) day of the month

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following the month during which the monthly gross revenues were received or accrued. Percentage fees are non-taxable.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, as determined by the annual audit required pursuant to **Sub-Article 3.17 "Annual Audit",** are considered as having been due on the tenth (10th) day of the month during which the unreported Gross Revenues were received or accrued.

3.05 NOT USED.

3.06 ANNUAL RENTAL: The Concessionaire shall be required to pay rent as of the date of Beneficial Occupancy at the prevailing Class VI Terminal rates for the lease of the Locations identified in **Exhibit A**. The amount is to be included in the MAG calculation and will be, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Sub-Article 3.15**, Address for Payments.

The Terminal Class VI rental rate for Locations in Exhibit A is $71.08 per square foot based on rates in effect as of October 1, 2009, plus any applicable taxes.

The Concessionaire shall be required to pay rent as of the date of Beneficial Occupancy at the corresponding Terminal rates for the lease of the Support Space identified in **Exhibit C**. The amount will be prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.15, "Address for Payments".**

3.07 NOT USED

3.08 ANNUAL RENTAL RATE ADJUSTMENT: On October 1 of each year of the Agreement, the cost-based rental rates, pursuant to **Article 3.06, "Annual Rental"**, applicable to the Locations rented hereunder, shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1 date. Such adjusted rental rates shall be reflected by letter amendment. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten calendar days of same.

3.09 PERFORMANCE BOND FOR MAG RENT REQUIREMENTS: Within thirty (30) calendar days from the Date of Execution of the Agreement, the Concessionaire shall provide the Department a Performance Bond to guarantee payment of the MAG and annual rent, and if any, of Administrative office or support space. Concessionaire 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 Surety shall initially be in an amount equal to seventy-five percent (75%) of the MAG (which includes the Annual Rent for the Locations) provided for in **Sub-Article 3.01**, and any annual rent due for the Support Space as provided for in **Sub-Article 3.06**, "**Annual Rental**", which is equal to **$8,373,138.93**. Thereafter, the Performance Bond shall be increased as necessary to reflect any increases in the MAG and Annual Rent for the Administrative Office and Support Space.

The Department may draw upon such payment security instrument, if the Concessionaire fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Provided Concessionaire is not in default and fully complies with all the requirements of this Agreement, the Bond will be returned to Concessionaire within one hundred eighty (180) calendar days after the end of the Term or any Extension of the Term.

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

3.11 REPORTS OF GROSS REVENUES: On or before the fifteenth (15th) calendar day following the end of each month throughout Term of this Agreement, or any extension hereof, the Concessionaire shall furnish to the Department, a statement of monthly gross revenues, using **Exhibit I "Monthly Report of Gross Revenues".** The statement shall report each Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department".** The Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) days written notice to the Concessionaire. The statement must be signed by an officer (if the Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Concessionaire, and identify all Gross Revenues reported to the Concessionaire during such month. Failure to comply within fifteen (15) calendar days following the due date of the report shall result in a late fee penalty of $50 per day, as provided in **Sub-Article 3.22 "Liquidated Damages".**

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

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

3.14 DISHONORED CHECK OR DRAFT: In the event the Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service fee of Twenty-Five Dollars ($25.00), if the face value of the dishonored check or draft is fifty dollars ($50.00) or less, Thirty Dollars ($30.00) if the face value of the dishonored check or draft is more than fifty dollars ($50.00) and less than three hundred dollars ($300.00), and Forty Dollars ($40.00) or five percent (5%), of the face value of such dishonored check or draft, whichever is greater, plus liquidated damages imposed by law (Fla. Stat. 832.08 and Fla. Stat. 125.0105) if the face value of the dishonored check is three hundred dollars ($300.00) or more,. 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 Concessionaire shall pay all monies payable, as required by this Agreement, to the following:

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

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

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

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

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

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

3.17 ANNUAL AUDIT: Within ninety (90) calendar days of each anniversary of the Effective Date of this Agreement and within ninety (90) calendar days following expiration or earlier termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees separately stating its Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in **Exhibit G "Independent Auditor's Report",** shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

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

The Department shall further have the right, upon reasonable written notice to the Concessionaire at the sole cost of the Department except as specified below, to examine or designate a representative to examine the books and records of the Concessionaire which relate to its operations on the Locations to determine the correctness of the percentage fees paid by the Concessionaire to the Department for any or all of the Agreement periods immediately preceding such examination. At least ten (10) days prior written notice shall

be provided by the Department to the Concessionaire to examine any such books and records which may be located in offices of the Concessionaire, which are not located in the Airport. If, as a result of such examination, it is established that the percentage fees for any period examined have been underpaid to the Department, the Concessionaire shall forthwith, upon written demand from the Department, pay the difference to the Department, together 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 Concessionaire has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Concessionaire.

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

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

The Concessionaire shall account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Concessionaire and which supports the amounts reported to the Department in the Concessionaire's monthly schedules. At a minimum, the Concessionaire's accounting for such receipts shall include the following:

1. Concessionaire's bank account statements;
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Concessionaire's monthly "Revenue Reports"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Concessionaire's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Concessionaire shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection on the Locations will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Concessionaire's business.

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

3.21 UTILITIES: The cost of all utilities used or consumed on the Locations shall be borne by the Concessionaire; except with respect to the Concessionaire's Support Space as per **Sub-Article 1.04, "Support Space"**. Unless the Locations are provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. The Department encourages the Concessionaire to provide and install meters for utilities used at the Concessionaire's expense. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Concessionaire hereby agrees to pay the same within thirty (30) calendar days after it has received Department's invoice thereof. The Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

The Department shall have no obligation to provide additional utilities to the Locations listed in **Sub-Article 1.03 "Locations"** and **Sub-Article 1.04 "Support Space".**

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

Violation	Fee
Violation of Permitted Use of a Location	$100 per day/per Location
Failure to Maintain Required Hours of Operation	$50 per day/per Location
Failure to Submit Required Documents and Reports	$50 per day/per Location
Unauthorized Advertising	$50 per day/per Location
Failure to maintain Location clean	$50 per day/per Location
Failure to maintain Competitive Pricing, or to conduct the surveys as required	$50 per day/per Location
Installation of Unapproved Items in Locations	$50 per day/per Location
Violation of other terms and conditions	$75 per day/per Location

The foregoing is due and payable from the Concessionaire.

3.23 PAYMENT SECURITY: The Concessionaire shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an amount equal to twenty-five percent (25%) of the MAG (which include the Annual rental for the Locations) provided in **Sub-Article 3.01**, and if any annual rent due for the Administrative Office or Support Space provided for in **Sub-Article 3.06**, which is equal to **Two Million Seven Hundred Ninety-One Forty Six Dollars and Thirty One Cents ($2,791,046.31).** Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and annual rent as per the above. 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 and any Extension of this Agreement or extension thereof. The Department may draw upon such payment security instrument if the Concessionaire fails to make payments secured by this Sub-Article. Upon notice of any such draw, Concessionaire shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Concessionaire is not in default and fully complies with all the payment requirements pursuant to this Article of the Agreement, the surety will be returned to the Concessionaire within one hundred eighty (180) calendar days after the end of the Term or any Extension of the Term.

ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

4.01 IMPROVEMENTS TO LOCATIONS: Any and all improvements to Locations will be performed in accordance with the **Exhibit F, "Tenant Airport Construction – Non Reimbursable Procedures TAC-N".**

4.02 DESIGN OF IMPROVEMENTS: Any design and construction specifications and documents must be reviewed and approved in writing by the Department.

Furthermore, planning and design must be in accordance with **Exhibit E, "Retail Concessions Design Guidelines", Exhibit F ,"Tenant Airport Construction Non-**

Reimbursable Projects (TAC-N) Design and Construction Procedures" or **Exhibit K ,"Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures"**, as applicable, the "MDAD Life Safety Master Plan" and the "MDAD Design Guidelines Manual" (www.Miami-Airport.com) as may be established for the Terminal Retail Program.

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

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

4.04 IMPROVEMENTS FREE AND CLEAR: The improvements, upon completion, shall immediately become the property of the Department, free and clear of any liens or encumbrances whatsoever. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the Department from the claims of any laborers, subcontractors or material men against the Locations or improvements.

4.05 OTHER REQUIREMENTS: The Concessionaire shall apply for and obtain a building permit from the Department for all appropriate inspections and a Certificate of Occupancy upon completion. Within **sixty (60) Days** following the completion of construction of the improvements, the Concessionaire shall furnish the Department one complete set each of legible prints (black line) of construction drawings, one copy of construction drawings and construction project drawings in electronic file format and in full compliance with Autodesk's DWG file format and standard revised to "as built". Based upon submission date, the AutoCad.dwg must be in the latest version, MDAD will not accept the submission of any AutoCAD drawing deliverable which contains references to external source drawing files. Copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Concessionaire does not disseminate such information refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security.

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

Department.

4.07 CONSTRUCTION PERMIT FEE: The Concessionaire shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Concessionaire to the Department is an amount equal to one per cent (1%) of the construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Concessionaire's plans/specifications. Such fee shall be non-refundable.

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

1) Concessionaire improvements

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

2) Design and Construction Coordination

a. Concessionaire shall:

1. Be responsible for construction management and coordination of all improvements to the Locations and administrative support space.
2. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N Procedures, as well as all other applicable codes and regulations.
4. Provide and coordinate access to Location's as necessary.

3) Construction

Concessionaire shall:

1. Attend pre-construction meetings, construction meetings, coordinate construction, and monitor schedule with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to MDAD's TAC-N Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.

4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all shell and core Locations including, but not limited to, inspections, delivery, coordination and reporting.
6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for all Locations.
11. Organize and have available upon request completed project files.
12. Coordinate access to the Location to allow staff training and equipment testing.
13. Obtain Certificate of Occupancy for each Location.
14. Submit Record Drawings (As-Built drawings) as per the TAC-N or TAC-R requirements within sixty (60) days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

ARTICLE 5 – STANDARDS OF OPERATION

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

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

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

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

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to **Exhibit L "Standards of Operation",** as may be amended from time to time. Failure to perform any of the services under this Agreement may result in damages being imposed pursuant to **Sub-Article 3.22 "Liquidated Damages"**.

5.02 COMPETITIVE PRICING POLICY: A price sheet detailing proposed prices for all services must be submitted annually or whenever the Concessionaire would like to modify them. All prices and subsequent changes must be approved by the Department prior implementation. Prices for the first year of operation must be submitted for approval prior to Date of Execution.

Any request for an increase in prices, must be accompanied by a competitive pricing survey of at least three (3) Airports of similar size demonstrating that the proposed pricing is consistent with the request.

Prices must be visible on the machines. A sample of the sign and sign holder needs to be submitted to the Department for approval prior to implementation.

The Concessionaire who are not in compliance with the provisions of this Sub-article shall be given seven (7) days to bring all charges or pricing into compliance. Failure to do so shall subject the Concessionaire to liquidated damages pursuant to **Sub-Article 3.22 "Liquidated Damages".**

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the Terminal Building, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the Terminal Building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the Terminal Building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment

installed by the Concessionaire, and further provided that the Concessionaire shall reimburse the Department, within ten (10) calendar days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, licensees, or invitees. The Concessionaire shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

B. The Department will provide air conditioning and electrical service as presently existing for the Locations, such electrical services shall be billed to the Concession. All new services, extensions, and/or reLocations of existing utilities in order to properly meet the Concessionaire's operational needs shall meet all code requirements and such services, extensions and/or reLocations shall be provided at no expense to the Department.

The Department encourages the Concessionaire to provide and install meters for utilities used at the Concessionaire's expense.

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

Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labour related controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department as set forth in **Sub-Article 20.11 "Force Majeure".** If the Concessionaire's Locations are of such a condition as to significantly impact the Concessionaire's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Concessionaire pursuant to this Agreement, the Department shall provide a rent abatement for that portion of the Locations rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services".**

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

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

ARTICLE 7–FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES, AND EQUIPMENT: Any equipment, furnishings, fixtures and signs installed in the Locations by the Concessionaire, shall be in keeping with the decor of the Terminal Building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Concessionaire, as provided in **Sub-Article 4.01 "Improvements to Locations"**, shall, except as provided in **Sub-Article 7.03(B) "Disposal of Furniture, Fixtures, and Equipment"**, be removed from the Locations within five (5) days following the expiration or earlier termination of this Agreement.

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

as the Department in its sole discretion deems reasonably necessary.

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

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

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

ARTICLE 8 – MAINTENANCE

8.01 CLEANING: The Concessionaire shall, at its cost and expense, keep the Locations clean, neat, orderly, sanitary and presentable at all times. If the Locations are not kept clean in the as provided in the **Standards of Operation, Exhibit L** the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action shall result in liquidated damages being assessed pursuant to **Sub-Article 3.22 "Liquidated Damages".**

8.02 REMOVAL OF TRASH: The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Locations and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Concessionaire enters into agreements for the janitorial and trash removal or service within the Locations, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. Any trash left or stored in any area visible to the public or edible items not properly contained shall result in liquidated damages being assessed pursuant to **Sub-Article 3.22 "Liquidated Damages".**

The Department reserves the right to back charge the Concessionaire for waste disposal at a proportionate share in a non-discriminatory manner either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.03 MAINTENANCE AND REPAIR: Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services",** the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Concessionaire specifically as a result of their operation shall remain with the Concessionaire. The Concessionaire shall repair or cause to be repaired, at or before the end of the Term of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to their original state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of the Concessionaire shall be required to be present, except in the case of real or perceived emergencies. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to the satisfaction of the Department within seven (7) calendar days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Concessionaire for such services.

8.04 FAILURE TO MAINTAIN: Upon failure of the Concessionaire to maintain the Locations as provided in this **Article 8 "Maintenance",** the Department may enter upon the Locations and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs. It shall be billed to and paid by the Concessionaire, in addition to any liquidated damages imposed by the Department pursuant to **Sub-Article 3.22 "Liquidated Damages".**

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

8.05 ENVIRONMENTAL RECYCLING: The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Concessionaires. Participation in this program, once established, will be mandatory. The Concessionaire shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

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

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8.06 FIRE PROTECTION AND SAFETY EQUIPMENT: The Concessionaire must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term of this Agreement, and extensions, if any.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

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

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

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

9.04 HOLDOVER:

A. With the Department's Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations or no less than seventy percent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter continue to pay the Minimum Monthly Guarantee; as such Minimum Monthly Guarantee is subject to an annual Consumer Price Index adjustment. Such adjustment will be calculated by dividing the most recent Consumer Price Index published immediately prior to the expiration of the Agreement and the most recent Consumer Price Index published one year immediately prior to the termination date and multiplying such amount by the Minimum Annual Guarantee. The recalculated Minimum Annual Guarantee will be used as the basis for calculating the Minimum Monthly Guarantee. Notwithstanding the adjustment, in no event will any adjustment by the Consumer Price Index cause the Minimum Annual Guarantee for any year to be lower than the amount of such Minimum Annual Guarantee for the Term. If the Consumer Price Index is discontinued or revised during the Term, any such other governmental index or

computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

In addition, the Concessionaire shall pay Monthly Percentage Fee, and monthly installment or rent for the Concessionaire's Office pursuant to Sub-Article 3.06 " Annual Rental" (if Concessionaire remains in such Space), on account of the holdover use and occupancy of the Locations. This provision shall survive the expiration or the termination of this Agreement.

B. Without Department Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Locations a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS Monthly Percentage Fee PLUS monthly installment of the administrative support space annual lease rental pursuant to **Sub-Article 3.06 "Annual Rental",** and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

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

The Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Concessionaire shall in no way

limit the responsibility to indemnify, keep and save harmless and defend the Department or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF CONCESSIONAIRE: Prior to execution of this Agreement by the County and commencement of the Term of this Agreement, the Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the Term and any Extensions of this Agreement.

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

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

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

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

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

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

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

11.02 CERTIFICATE OF CONTINUITY: All insurance policies required herein shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "VII" as to strength in accordance with the latest edition of "Best's Insurance Guide", published by

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A.M. Best Company, Inc., or its equivalent, subject to approval of MDAD Risk Management.

11.03 INSURANCE COMPANY RATING REQUIREMENTS: The Concessionaire shall furnish certificates of insurance and insurance policies to the Owner prior to commencing any operations under this Contract. Certificates and policies shall clearly indicate that the Concessionaire has obtained insurance, in the type, amount, and classifications, as required for strict compliance with this Article. The certificates and policies must provide that, in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the MDAD Risk Management.

11.04 CONCESSIONAIRE LIABLE: Compliance with the foregoing requirements as to the carrying of insurance shall not relieve the Concessionaire from liability under any other portion of this Contract.

11.05 CANCELLATION OF INSURANCE OR BONDS: Cancellation of any insurance or bonds, or non-payment by the Concessionaire of any premium for any insurance policies or bonds 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 or pay such premiums, and deduct the costs thereof from any amounts that are or may be due to the Concessionaire.

11.06 RIGHT TO EXAMINE: The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the Agreement. If insurance certificates are scheduled to expire during the Contract period, the Concessionaire shall be responsible for submitting new or renewed insurance certificates to MDAD's Risk Management Office at a minimum of thirty (30) calendar days before such expiration.

The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit such inspection at the offices of the Department.

ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

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

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

(B) The Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Concessionaire's creditors, or the Concessionaire has taken advantage of any

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

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

(D) Abandonment or discontinuance of operations by Concessionaire of its business by any act(s) of Concessionaire;

(E) Any persistent violation on the part of Concessionaire, 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;

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

(G) Failure by Concessionaire to maintain its equipment in a manner satisfactory to the Department;

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

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

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

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

(L) The Concessionaire has failed to comply with TSA Guidelines and/or to execute other documentation required by TSA.

(M) The Concessionaire has failed to comply with all Security Directives and all regulations. Failure to carry out all Security Directives and regulations may result in termination of the Agreement.

12.02 PAYMENT DEFAULT: Failure of the Concessionaire to make MAG/MMG payments and Percentage Fee payments or any other charges required to be paid herein when due and failure to cure the same within five (5) calendar days after written notice shall constitute a default, and the Department may, at its option, terminate this Agreement after five (5) calendar days notice in writing to the Concessionaire.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) calendar days written notice to the Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) calendar days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) day period, such cure period shall be

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extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) days after such written notice the Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

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

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

(C) Any Event of Default.

The notice of default shall specify the Termination Date by when the Concessionaire shall discontinue the services.

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Concessionaire may be determined by the Director to be an "habitual violator". At the time that such determination is made the Aviation Director shall issue to the Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Concessionaire, such termination to be effective upon the seventh (7) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.10 "Actions at Termination"** hereof.

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

period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Concessionaire shall discontinue the services.

12.06 NOT USED

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated by the County upon the abandonment by the Concessionaire of the Locations or the voluntary discontinuance of Concessionaire's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Concessionaire from providing services at the Locations for the purposes authorized in **Article 2 "Use of Locations".** Such termination shall constitute an event of default, and the County shall be entitled all remedies for such default provided for in this Agreement.

12.08 TERMINATION FOR CAUSE: The Department may terminate this Agreement, effective immediately if: (i) the Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Concessionaire is convicted of a felony during the Term or any Extensions thereof if applicable. The Department may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the Department and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

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

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

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

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

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

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

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

ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) calendar days of the occurrence of the event to the Aviation Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Concessionaire at the address furnished in **Sub-Article 18.09 "Notices".** The decision of the Director will be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) calendar days of the Concessionaire's receipt of such decision, the Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Aviation Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults".** The failure of the Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of a claim and an abandonment of any claim arising out of the event.

13.02 TERMINATION: The Concessionaire shall have the right, upon thirty (30) calendar days written notice to the Department to terminate this Agreement, without liability to the Department, 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) calendar days.

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

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

ARTICLE 14 - AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE)

14.01 ACDBE REQUIREMENTS: The Department has established an ACDBE goal of **thirty percent (30%)** of gross revenues in connection with this Agreement. The ACDBE goal can be achieved either through the Concessionaire being an ACDBE itself, a partner or joint venture, or subcontracting a percentage of gross revenues.

The Concessionaire will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE-revenue and, Monthly Activity Report, commencing on or before the twentieth (20) day of every month.

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

When a ACDBE performs as a participant in a joint venture, a portion of the total dollar value of the contract during the complete contract term, equal to the distinct clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in Appendix I "Airport Concession Disadvantage Business Enterprise Participation Plan/Provision" and ACDBE Joint Venture Guidance by the U.S. Department of Transportation, Federal Aviation Administration (USDOT – FAA). ACDBE, Appendix 8.

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

A. 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, 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 subcontract Agreement or other Agreement's 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 (D) of this Section, the ACDBE may present evidence to rebut this presumption. MDAD will determine whether the firm is performing a commercially useful function given the type of work involved and normal industry practices.

MDAD's decision on commercially useful function matters is final.

14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING: Concessionaire may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE as detailed in ACDBE Joint Venture Guidance by the U.S. DOT – FAA ACDBE Appendix 8, The Joint Venture Solicitation must specify the following:

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

B. The work should be submitted as part of this 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 including tasks and Locations; or a distinct element of work must 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 (10) hours per week.

Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), 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 ACDBE Joint Venture Guidance Appendix 8. This information should include, but not be limited to:

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

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

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

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

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

Without limiting the requirements of the Agreement, the Department will have the right to review and approve all agreements utilized for the achievement of these goals.

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 DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS: The Concessionaire acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23,Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Concessionaire under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the U.S. DOT - FAA.

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 Concessionaire has defaulted in the requirement to comply with the provisions of this article and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to the default language referenced in the Agreement.

The Concessionaire shall include the following nondiscrimination language in concession and management contracts with MDAD to include the following paragraph which is an assurance and clarification clause requested by the DOT and approved by the Aviation Director:

This agreement is subject to the requirements of the U.S. 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, or other agreement covered by 49 CFR Part 23.

The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include statements in further 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 **Sub-Article 14.07 "Airport Concession Disadvantaged Business Enterprise Participation Plan",** each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to, the following specific duties and responsibilities:

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

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

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

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

5. Books, Records and Reports
   a. The books of account and supporting records of the joint venture(s) shall be maintained at the principal office and shall be open for inspection by

MDAD or the ACDBE joint venture(s), upon reasonable prior written notice, during business hours.

b. The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Concessionaire shall provide to the joint venture(s), within an agreed upon time after the end of each month during the term of the Agreement, an un-audited operating (i.e., income) statement for the preceding month and for the year to date.

c. Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and the Business Management Divisions, outlining the specific areas of training (i.e., components covered; total number of hours of training; training material covered; etc.).

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

MDAD shall monitor the compliance of the Concessionaire with the requirements of this provision as referenced in **Sub-Article 14.01 "ACDBE Requirements"** 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 Concessionaire and ACDBEs, and other records pertaining to the ACDBE Participation Plan.

If at any time MDAD has reason to believe that the Concessionaire 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 of this Agreement in whole or in part, unless the Concessionaire demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the Department upon the Concessionaire except pursuant to a hearing conducted by the ACDBELO and/or Director

ARTICLE 15- RULES, REGULATIONS AND PERMITS

15.01 RULES AND REGULATIONS: The Concessionaire shall comply with the Ordinances of the Department including the Rules and Regulations of the Department, Chapter 25, of the Code, as the same may be amended from time to time, Operational Directives issued hereunder, 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 which may be applicable to its operations or activities under this Agreement.

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15.02 VIOLATIONS OF RULES AND REGULATIONS: The Concessionaire agrees to pay, on behalf of the Department, any penalty, assessment or fine issued against the Department, or to defend in the name of the Department any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Concessionaire, its agents, employees, or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Concessionaire further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-lease and other agreements which the Concessionaire may enter into related to its activities under this Agreement and that any such Sub-lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

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

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 REGISTERED OFFICE/AGENT JURISDICTION: The Concessionaire, 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 Concessionaire 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. If Concessionaire is a joint venture and not a corporation, the parties to the joint venture 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 Concessionaire 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 the extensions thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other under other agreements of the Department for the lease or use of Locations used for similar purposes, are unjustly discriminatory, the Department, 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 Department shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like Locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the Department has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the Department, 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 Department to the Concessionaire.

17.03 INSPECTIONS: The authorized employees and representatives of the Department and of any applicable federal or state agency having jurisdiction hereof shall have the right of access to the Locations 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 Department to inspect and shall impart no liability on the Department should it not make such inspection(s).

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

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

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the foregoing, the Board may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.

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

ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES: The Concessionaire shall pay all taxes lawfully assessed against its interests in the Locations and its services hereunder, provided however, that the Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03 "Other Defaults"** hereof.

18.02 ALTERATIONS BY CONCESSIONAIRE: The Concessionaire shall not alter or modify the Locations, except in accordance with **Article 4 "Improvements to the Locations"** herein, without first obtaining written approval from the Department.

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

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.05 "Addition, Deletion, Relocation and Alternative Locations", Sub-Article 18.02 "Alterations by Concessionaire", Sub-Article, 20.02 "Right to Amend",** and **Sub-Article 20.04 "Right to Modify".**

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

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

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

fair market value replacement cost of the Locations; and (ii) any other such damages to the Department or the Airport arising from the physical damage caused by the Concessionaire and its employees, agents, contractors, subcontractors or suppliers. The Department may also initiate an action for specific performance and/or injunctive relief.

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

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

To the County:
(Mailing Address)

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

or (physical address):

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

To the Concessionaire:

Sinapsis Trading USA, LLC
95 Merrick Way, Suite 250
Coral Gables, Florida 33134

with copies to:
(Address Here)

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

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

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

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

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

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

18.15 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 Concessionaire or its services.

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

18.17 MODIFICATIONS: This Agreement may be modified and revised in writing and duly executed by the parties hereto, as permitted pursuant to **Sub-Article 18.04 "Administrative Modifications", Sub-Article 20.02 "Right to Amend",** and **Sub-Article 20.04 "Right to Modify".** Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

18.18 RADON DISCLOSURE: In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **"Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that**

exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

18.19 TRADEMARKS AND LICENSES: The Department may, from time to time, require the Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Concessionaire and the Department, on behalf of the Department granting the Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

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

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

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

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

18.24 OTHER LIENS: Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the Furniture, Fixtures and

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Equipment or any portion thereof. Concessionaire 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, Concessionaire may in good faith contest any such lien if Concessionaire provides a bond in an amount and form acceptable to the Department in order to clear the record of any such liens. Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any Furniture, Fixtures and Equipment or any part thereof or permit any of the foregoing to occur. Concessionaire shall assume the defense of and indemnify and hold harmless Department against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Concessionaire or as a consequence of the existence of Concessionaire's interest under this Agreement.

ARTICLE 19 - WAIVER OF CLAIMS

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

ARTICLE 20 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

20.01 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 Department, or the State of Florida, or their 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, or County funds for the development of the Airport, or any

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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.

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

20.03 CONCESSIONAIRE COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

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

2. Concessionaire will provide all information and reports required by said CFR, 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 the Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to the Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

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3. In the event of a breach of any of the above nondiscrimination covenants, the 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 the Department by the foregoing sentence shall not be effective until the procedures of Title 49, CFR, Part 21 are followed and completed, including exercise or expiration of appeal rights.

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

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

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

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

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

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

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

20.06 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.

20.07 WARRANTY OF CONCESSIONAIRE AS TO CONFLICTS OF INTEREST: The Concessionaire represents and warrants to the Department that, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Department has any interest, direct or indirect, in the business of the Concessionaire to be conducted hereunder, and that no such persons shall have any such interest at any time during the Term and extensions, as applicable.

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

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

20.10 MISCELLANEOUS PROVISIONS: The Concessionaire, and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable

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provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Concessionaire or to its services or operations hereunder.

1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Term and any extensions thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the Department hereunder, on the rights and privileges granted to the Concessionaire herein, on the Locations and on any and all equipment installed on the Locations and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.

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

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

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

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

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

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

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

9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the Department or the County, or if a determination or judgment is to be made by the Department or 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 Department 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 (see Appendix L). The Proposer shall comply with these requirements.

20.11 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, (i) strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Concessionaire, or (ii) 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.

20.12 ENTIRE AGREEMENT: This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Concessionaire hereby affirms the completeness and accuracy of the information provided by Concessionaire to the Department in the Form, and in all attachments thereto and enclosures therewith, submitted by Concessionaire to Department in connection with the award of this Agreement.

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

CONCESSIONAIRE

Sinapsis Trading USA, LLC

(Legal Name of Corporation)

ATTEST:

Secretary_____ By: _____
(Signature and Seal) Concessionaire - Signature

_____ Name: _____
(Type Name & Title)

_____
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

_____ _____
Legal Name Legal Name

By: _____ By: _____
Signature Signature

_____ _____
(Type Name & Title) (Type Name & Title)

Attest: _____

Name of Managing Joint Venturer:

_____ Witness: _____

By: _____
Signature of Authorized Representative of the Joint Venture

Corporate Seal

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

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BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
Mayor

Approved for Form
and Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____

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