

MEMORANDUM

Agenda Item No. 8(J)(1)

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

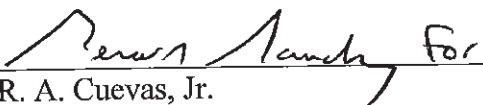
DATE: June 30, 2015

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

SUBJECT: Resolution approving and authorizing the County Mayor to execute a Preferential Berthing Agreement between Miami-Dade County and Virgin Cruises Intermediate Limited; delegating authority to the County Mayor to approve or deny additional vessel berthing requests, cruise terminal improvement requests up to \$1.5 million, and early commencement requests; and authorizing the County Mayor to exercise all cancellation, termination, and other rights therein

Resolution No. R-576-15

The accompanying resolution was prepared by the Port of Miami Department and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.


R. A. Cuevas, Jr.
County Attorney

RAC/lmp

Memorandum



Date: June 30, 2015

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving and Authorizing Execution of a Preferential Berthing Agreement between Miami-Dade County and Virgin Cruises Intermediate Limited

Recommendation

It is recommended the Board of County Commissioners ("Board") approve the accompanying resolution approving and authorizing the execution of a Preferential Berthing Agreement between Miami-Dade County ("County") and Virgin Cruises Intermediate Limited ("Virgin").

Scope

PortMiami is located within District 5, which is represented by Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

Fiscal Impact/Funding Source

Commencing during Fiscal Year 2019/20, Virgin will homeport its first 2,800 passenger newbuild vessel at PortMiami with year-round service. In consideration of the County providing Virgin with preferential berthing rights, Virgin shall guarantee the County minimum passenger annualized revenues ranging from \$2.9 million in Fiscal Year 2019/20 (to be prorated based on actual commencement date) to \$3.6 million in Fiscal Year 2023/24 based on minimum annual passenger guarantees of 233,000 passenger moves to 256,000 passenger moves per fiscal year. As Virgin is anticipated to make 52 calls per year, actual Port gross revenues from passenger wharfage and dockage are expected to range from \$5.2 million in Fiscal Year 2019/20 (as prorated to actual commencement date) to \$7.1 million in Fiscal Year 2023/24, subject to Virgin's early termination rights described below.

The recommended Agreement is for an initial term of five (5) years, with Virgin having one (1) option to extend for an additional five (5) years. Should Virgin extend the term, anticipated Port gross revenues are expected to range from \$7.2 million to \$8.1 million during each of the extension years.

In exchange for Virgin's guarantees, the County shall pay Virgin an annual incentive payment from passenger parking revenues (paid quarterly) based on the proportion of Virgin's multi-day passenger embarkations to the Port's overall multi-day passenger embarkations (similar to other cruise agreements). Based on Virgin's anticipated annual passenger throughput, the amount of this County parking revenue incentive payment to Virgin is estimated to be in the range of \$775,000 per fiscal year.

Thus, should Virgin's renewal rights be exercised, potential net revenues to the County (after deducting parking incentive payments) would total approximately \$63 million over the Agreement's potential ten (10) year term.

This Agreement also authorizes the Port Director to approve and undertake, in accordance with applicable procurement requirements and procedures, up to \$1.5 million of non-structural cruise terminal improvements to the terminal ultimately selected by the Port Director for Virgin's use, to be paid from Seaport revenues. The determination of whether to make such requested improvements shall be delegated to the Port Director and decided no later than twenty-four (24) months prior to the arrival of Virgin's first Miami vessel call.

Virgin has a limited opt-out right to terminate this Agreement in the sole event that Virgin is unable to execute a written contract with a vessel shipyard by January 15, 2016. Additionally, in consideration of Virgin being a start-up company, after the first year of operation, Virgin shall have a limited and conditioned right to terminate this Agreement upon twenty-seven (27) months prior notice to the County.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring the Agreement are Juan Kuryla, Port Director; Kevin Lynskey, Deputy Port Director; and Hydi Webb, Acting Assistant Director, Business Development & Marketing.

Background

Virgin is a leading international investment group and one of the world's well recognized consumer brands. Created in 1970 by Sir Richard Branson, the Virgin Group has grown successful businesses in sectors ranging from mobile phones, travel, financial services, leisure, music, holidays, and health and wellness. Virgin employs more than 50,000 people around the world and operates in more than 50 countries.

Virgin Cruises is the Virgin Group's newest venture and plans to build and operate world-class ships. Virgin Cruises has an exciting new build program and intends to introduce its first large ship (yet to be named and details forthcoming) in early 2020. Should this Agreement be approved, PortMiami will be the year-round homeport for Virgin's first vessel. The company intends to announce further deployment details for this vessel in 2018.

Virgin, based in South Florida, aims to broaden the appeal of cruise vacations to attract new travelers to the industry. The company is committed to great quality and value, all delivered with the famed Virgin service.

Virgin's lead investment partner is Bain Capital, one of the world's leading private, alternative asset management firms, with approximately \$80 billion in assets under management. The company's CEO and President is industry veteran Tom McAlpin, who was part of the founding management team at Disney Cruise Line and formerly President of The World (Residences At Sea).

Substantive Contract Terms:

Under the terms of this proposed Agreement, Virgin will homeport its first cruise ship in Miami with year-round sailings no later than February 9, 2020. However, there are contract provisions that allow for both earlier and later delivery of the vessel. These provisions include notification deadlines and additional Virgin payment obligations in the event the Virgin vessel arrives late without proper notice to the Port.

The County shall provide Virgin with preferential berthing rights at either Terminal F or G on Sundays for the operating term of this Agreement. The choice of terminal F or G shall be determined by the Port Director in consultation with Virgin. Should Virgin not include the use of the selected terminal on a Sunday in its deployment schedule, the County shall have the right to allow other cruise vessels use of the facility. Should Virgin wish to berth additional cruise vessels at the Port, Virgin must submit an additional vessel berthing request to the Director, who may grant or deny such request in his sole discretion, provided that if the requested durational term of the request exceeds the amount of time left in the term of the Agreement, then, as to the post-contract portion of said request, the Director shall only have discretion to either deny the post-contract portion or approve same at standard Port Tariff rates, without discounts or incentives.

Virgin commits PortMiami as its exclusive year-round homeport in South Florida for its first cruise vessel, which includes Broward, Palm Beach, Monroe, Brevard, and Miami-Dade Counties.

Virgin shall pay passenger wharfage and dockage rates as set forth in the Port of Miami Terminal Tariff No. 010 ("Tariff") during Fiscal Year 2015 subject to annual increases of three percent (3%) per year compounded. The passenger wharfage rate chargeable to Virgin to the County in Fiscal Year 2019/20 (when Virgin's new vessel is expected to arrive in Miami) is expected to be \$12.74 per each passenger embarkation and each passenger debarkation (based on increases of current wharfage rates of three percent (3%) per year). The dockage rate chargeable by the County to Virgin in Fiscal Year 2019/20 is expected to be \$.39 per gross registered ton (based on increases of current dockage rates of three percent (3%) per year). The County may increase the annual passenger wharfage and dockage rates that apply to Virgin no more than three percent (3%) per year (compounded) and such rate shall not be increased more than one time in a twelve month period. Aside from wharfage and dockage rates, all other applicable Port fees due to the County from Virgin shall be billed as per Tariff.

Beginning FY 2019/20 and continuing through the Term, Virgin commits to a Minimum Annual Passenger Wharfage Guarantee to the County based on the then-existing passenger wharfage rate times a stipulated number of annual passengers and a load factor as follows: 233,000 passenger moves in FY 2019/20; 238,784 passenger moves in FY 2020/21; 244,608 passenger moves in FY 2021/22; 250,432 passenger moves in Fiscal Year 2022/23; and 256,256 passenger moves in FY 2023/24 through the remaining fiscal years of the term. Should Virgin fail to meet its Minimum Annual Passenger Guarantee in any fiscal year,

Virgin shall make a shortfall payment to the County within thirty (30) days of the end of this fiscal year in which the annual passenger wharfage guarantee was not met.

Virgin shall commit to year-round Miami service with its first vessel. If Virgin has less than fifty (50) vessel calls in any fiscal year during the Operating Term (or fewer than the prorated number of calls in the first fiscal year), then the County has the option to terminate this Agreement upon twenty-seven (27) months written notice to Virgin. If such notice is given to Virgin, however, Virgin may activate a Minimum Annual Guarantee Expansion by guaranteeing the County minimum annual dockage revenue each fiscal year through the Term and any exercised extension. This amount shall be calculated based on the then-existing Tariff dockage rate times the greater of (i) the gross registered tons (GRTs) of the Virgin vessel or (ii) 110,000 GRTs, times 42 vessel calls.

In exchange for Virgin's annual guarantee, the County shall pay Virgin an annual parking incentive. The parking incentive shall be based on the proportion of Virgin multi-day embarkations to the Port's overall total multi-day cruise embarkations. Parking revenue associated with port-of-call vessels, daily cruises, ferry services, or cruises less than 24 hours shall not be included in this calculation. The Port shall remit parking revenues to Virgin within sixty (60) days of the close of each fiscal quarter. This parking incentive is consistent with other cruise agreements previously approved by the Board.

Two (2) years prior to the ship's Miami arrival, Virgin may request non-structural terminal improvements, the cost of which may not exceed \$1.5 Million, for the Director's approval. If approved by the Director, the County shall work to complete such improvements no later than the anticipated date of the ship's arrival.

The initial operating term of this Agreement shall be for five (5) years and shall expire on May 4, 2025. Virgin shall have a conditional right to extend the term for an additional five (5) years by providing written notice to the Port Director by February 3, 2023. If exercised, the extension shall expire on May 5, 2030.

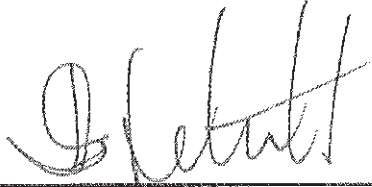
Virgin shall have a limited right to opt out of this Agreement in the sole event it is unable to execute a written contract with the shipyard for construction of its first cruise vessel, by January 15, 2016. Additionally, in consideration of Virgin's status of a new start-up company, commencing on the first anniversary of the Operating Term, Virgin shall have a limited and conditional right to terminate this Agreement upon twenty-seven (27) months prior written notice to the County (providing Virgin is in compliance with its payment obligations under this Agreement). In the event Virgin exercises its early termination right, Virgin may not homeport its vessel in another Florida or Cuban port for the remainder of the Term.

The effective date of this Agreement shall be upon the last of (i) its execution by an authorized Virgin representative, and (ii) the approval and execution of the Agreement by the Mayor or the Mayor's Designee following approval of the Agreement by this Board via a duly adopted and effective resolution.

Cruise start-ups with this degree of capitalization and brand awareness are a rarity. PortMiami prides itself on its diversity of cruise brands appealing to a broad range of passengers. The addition of Virgin to the Port's line-up will strengthen Miami's offerings with a well-recognized name and create much "buzz" of a new brand.

Delegated Authority

The resolution authorizes the County Mayor or County Mayor's designee to execute this Preferential Berthing Agreement on behalf of Miami-Dade County and to exercise, approve, or deny (as applicable) any cancellation rights, termination rights, berthing requests, terminal improvement requests (not to exceed \$1.5 million), early commencement requests, and/or other County rights conferred in the Agreement.



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

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

DATE: June 30, 2015

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

SUBJECT: Agenda Item No. 8(J)(1)

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 Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(1)
6-30-15

RESOLUTION NO. R-576-15

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A PREFERENTIAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND VIRGIN CRUISES INTERMEDIATE LIMITED; DELEGATING AUTHORITY TO THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO APPROVE OR DENY ADDITIONAL VESSEL BERTHING REQUESTS, CRUISE TERMINAL IMPROVEMENT REQUESTS UP TO \$1.5 MILLION, AND EARLY COMMENCEMENT REQUESTS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL CANCELLATION, TERMINATION, AND OTHER RIGHTS THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves the Preferential Berthing Agreement ("Agreement") between Miami-Dade County and Virgin Cruises Intermediate Limited ("Virgin") in substantially the form attached hereto; and

Section 2. Authorizes the County Mayor or the County Mayor's designee to execute this Agreement in substantially the form attached hereto for and on behalf of Miami-Dade County after review and approval by the County Attorney's Office and to exercise, approve, or deny (as applicable) any cancellation rights, termination rights, additional vessel berthing requests, cruise terminal improvement requests (not to exceed \$1.5 million), early commencement requests, and/or other County rights contained in the Agreement.

**REFERENTIAL BERTHING AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND VIRGIN CRUISES INTERMEDIATE
LIMITED**

THIS AGREEMENT is made and entered into this _____ day of _____, 2015, by and between Virgin Cruises Intermediate Limited, a Bermuda exempted company registered and authorized to transact business in Florida (hereinafter "Virgin"), and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter "the County"). Virgin and the County are hereinafter collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (hereinafter the "Port") is located; and

WHEREAS, the County operates the Port through the Miami-Dade County Seaport Department, which is a department of the County; and

WHEREAS, Virgin is a Bermuda exempted company registered and authorized to transact business in Florida; and

WHEREAS, Virgin has entered the cruise business with initial plans to design, build, and operate new state-of-the-art cruise vessels, all with a capacity of over 2,800 cruise passengers; and

WHEREAS, Virgin desires to exclusively Home-Port its first new cruise vessel at PortMiami, for Year-Round weekly service during the Operating Term (as defined herein) as may be extended in accordance with the terms and conditions set forth herein; and

WHEREAS, Virgin desires its vessels to call on PortMiami with such frequency that Virgin has requested the County to enter into a preferential berthing agreement; and

WHEREAS, in consideration of Virgin's commitment to Home-Port a new Virgin Vessel Year-Round at the Port as set forth in detail below, and other good and valuable consideration, the County finds it to be in its best interest to enter into a preferential berthing agreement with Virgin on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants, term and conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the Parties hereto do and hereby mutually agree and bind themselves as follows:

1. RULES OF CONTRACT INTERPRETATION

For all purposes of this Agreement, unless otherwise expressly provided:

- (a) A defined term has the meaning assigned to it;
- (b) An accounting term not otherwise defined has the meaning ordinarily given to it by accountants in accordance with generally accepted accounting principles;
- (c) Words in the singular include the plural, and words in the plural include the singular;
- (d) A pronoun in one gender includes and applies to other genders as well;
- (e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the County or Virgin;
- (f) All exhibits and appendices attached hereto shall be deemed incorporated here; and,
- (g) All recitals set forth above shall be deemed incorporated herein.

2. DEFINITIONS

- (a) "**Affiliate**" An "affiliate" of, or a person "affiliated" with, a specified person is a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (b) "**Agreement**" means this Preferential Berthing Agreement between the County and Virgin.
- (c) "**Applicable Laws**" means those applicable federal, state and local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs, orders and Seaport Department policies and procedures which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.
- (d) "**Berth**" shall mean that portion of the Terminal(s) utilized for the berthing of Virgin Vessels.
- (e) "**County**" means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof,

including, without limitation, the Miami-Dade County Seaport Department.

- (f) "**DERM**" means the Miami-Dade County Department of Environmental Resources Management.
- (g) "**Dockage**" means the charge assessed for dockage under Port of Miami Terminal Tariff No. 010 per 24-hour period.
- (h) "**Effective Date**" shall have the meaning set forth in Section 4 hereof.
- (i) "**Fiscal Year**" means the County's fiscal year, which begins October 1 and ends September 30.
- (j) "**Force Majeure**" has the meaning set forth in Section 22.
- (k) "**Home-Port**" means the port from which a vessel embarks and disembarks passengers as the point of origination and conclusion.
- (l) "**Limited Opt Out Right**" shall have the meaning provided in Section 4(d) hereof.
- (m) "**Minimum Annual Passenger Wharfage Guarantee**" shall have the meaning set forth in Section 3(c)(i) hereof.
- (n) "**Minimum Annual Guarantee Expansion**" shall have the meaning set forth in Section 3(c)(ii) hereof.
- (o) "**Minimum Annual Guarantee Expansion Election**" shall have the meaning set forth in Section 3(e) hereof.
- (p) "**Operating Term**" shall have the meaning provided in Section 4(b) hereof.
- (q) "**Operating Term Commencement Date**" shall have the meaning provided in Section 4(b) hereof.
- (r) "**Parking Revenues**" means total vehicle parking revenue collected by the Port from overnight multi-day cruise passengers, expressly excluding any and all parking revenues arising from auto or other ferry services, non-overnight cruise services, non-revenue cruises, cruise to nowhere, any cruises less than 24 hours in duration, and any other non-multi-day cruise vessel services.
- (s) "**Passenger Movements**" means a cruise ship passenger either embarking or disembarking from a cruise ship.

- (t) **"Port"** or **"PortMiami"** means the Dante B. Fascell Port of Miami-Dade County.
- (u) **"Port Director"** means the Director of the Miami-Dade County Seaport Department.
- (v) **"Selected Terminal"** shall have the meaning set forth in Section 3(a)(i) hereof.
- (w) **"Shortfall Payment"** means a payment due from Virgin to the County in any one Fiscal Year in an amount representing the shortfall, if any, between Virgin's total passenger wharfage payments to the County in such Fiscal Year and the Minimum Annual Passenger Wharfage Guarantee, as further described in sub-section 3(c)(i) hereof.
- (x) **"Tariff"** or **"Port Tariff"** means the Port of Miami-Dade Terminal Tariff No. 010, Rates, Rules, and Regulations for the Seaport Facilities of Miami-Dade County, Florida, in effect on the effective date of this Agreement, which includes tariffs for dockage, wharfage, harbor, water fee, and rental, among others. The parties acknowledge and agree that the County may unilaterally revise or amend the terms and rates contained in the Tariff from time to time and at the County's sole discretion.
- (y) **"Term"** means the period commencing with the Effective Date (as defined in Section 4 hereof) and expiring on the Expiration Date (as defined in Section 4 hereof).
- (z) **"Terminal(s)"** means any and all land, facilities, buildings, gangways and improvements at the Port, excluding associated parking garages, described in Section 3.
- (aa) **"Vessel Call Deficiency"** shall have the meaning set forth in Section 3(e) hereof.
- (bb) **"Vessel Call Deficiency Notice"** shall have the meaning set forth in Section 3(e) hereof.
- (cc) **"Vessel Call Deficiency Termination Right"** shall have the meaning set forth in Section 3(e) hereof.
- (dd) **"Virgin Deployment Schedule"** shall mean the proposed annual Virgin vessel deployment schedule that Virgin shall submit to the Port each Fiscal Year during the Term, which Virgin must submit at least twelve months in advance of the earliest vessel call listed therein.

- (ee) **"Virgin Vessel"** means any cruise vessel either owned, time or voyage chartered, or operated by Virgin. Any Virgin Vessel used to satisfy or partially satisfy any Virgin requirements herein must have a lower berth passenger capacity equal to or greater than ninety-five percent (95%) of the lower berth passenger capacity of Virgin's First Cruise Vessel.
- (ff) **"Virgin's First Cruise Vessel"** shall mean the first newbuild cruise vessel to be constructed for Virgin or any Virgin affiliate or parent entity, which vessel shall have a passenger capacity of no less than 2,800 passengers (based on double occupancy per cabin), and which Virgin shall Home-Port Year-Round at the Port of Miami.
- (gg) **"Virgin Operating Term Extension Option"** shall have the meaning set forth in Section 4(c) hereof.
- (hh) **"Virgin Preferential Berthing Right(s)"** shall have the meaning provided in Section 3(a)(i) hereof.
- (ii) **"Virgin Substitute Vessel"** shall mean a cruise vessel that Virgin elects, in writing, to use to replace Virgin's First Cruise Vessel's Home-Port operations at PortMiami, provided such substitute vessel must have a lower berth passenger capacity equal to or greater than ninety-five percent (95%) of the lower berth passenger capacity of Virgin's First Cruise Vessel.
- (jj) Intentionally deleted.
- (kk) **"Wharfage"** means the charge assessed for passenger wharfage under Port of Miami Terminal Tariff No. 010 per each embarkation and per each debarkation.
- (ll) **"Year-Round" or "Year-Round Service"** shall mean a minimum of fifty (50) Sunday Virgin PortMiami vessel calls per Fiscal Year of the Operating Term (as may be extended in accordance with the terms hereof), provided, however, for the first Fiscal Year of the Operating Term only, Year-Round Service shall be determined on a pro rata basis for purposes of calculating the minimum number of Virgin vessel calls required in that first Fiscal Year (eg, if the first Fiscal Year of the Operating Term contains only 44 weeks, the minimum number of Virgin PortMiami vessel calls required for such first Fiscal Year would be forty-two (42)).

3. VIRGIN AND PORT OF MIAMI PLEDGES

(a) Terminal Use.

(i) Preferential Berthing Rights to Selected Terminal on Sundays. In consideration of Virgin's faithful and timely performance of all Virgin payment and performance obligations contained in this Agreement, the County hereby grants to Virgin Preferential Berthing Rights to utilize either Terminal F or G to accommodate the berthing requirements of Virgin's First Cruise Vessel (the choice of which terminal will be determined by the Port Director in consultation with Virgin (the "Selected Terminal") for Virgin's First Cruise Vessel on Sundays commencing on the Operating Term Commencement Date and extending during the Operating Term, provided such Sundays are included in a properly submitted Virgin Deployment Schedule (hereafter, "Virgin Preferential Berthing Rights"). During the Term, Virgin shall provide the Virgin Deployment Schedule to the Port Director or his designee no later than twelve months prior to the earliest date Virgin's First Cruise Vessel or, if applicable, Virgin's Substitute Vessel is scheduled to call at the Port, and at least every twelve months thereafter. Virgin shall notify the County, in writing, of any changes to the Virgin Deployment Schedule not less than twelve (12) months prior to the earliest date affected by the change to such schedule. In addition, Virgin shall update the Virgin Deployment Schedule on an annual basis and provide a copy of same to the Port at least twelve months prior to the effective date of such schedule. The Parties acknowledge that it is in the best interests of the cruise lines and the Port to work together cooperatively concerning scheduling to maximize the use of the Port's cruise terminal(s).

(ii) Virgin's Potential Home-Port of Additional Virgin Vessels at PortMiami. During the Operating Term and any properly exercised extension thereof, if Virgin or any affiliate of Virgin wishes to Home-Port an additional Virgin Vessel to or from the South Florida market, as defined in Section 3(d) hereof (but, for purposes of this sub-section only, excluding Brevard County), Virgin shall first submit a written PortMiami vessel berthing request to the Director no later than twelve (12) months prior to the earliest vessel berth requested. Further, such additional Virgin Vessel berthing request shall (i) identify the proposed additional Virgin Vessel's name, length, beam, lower berth passenger capacity, gross registered tonnage, boarding requirements, deployment schedule and requested cruise terminal and berthing

day(s) required and (ii) confirm that, in the event the Director accepts said additional Virgin Vessel berthing request in writing, either for the Virgin requested terminal or an Acceptable Other Terminal (as defined below), then, in such event, the dockage and passenger wharfage rates then-applicable under Section 3(b)(i) and (ii) hereunder will apply to Virgin and the additional vessel for which a berthing request has been approved by the Director, which rates the County may increase by up to 3% per Fiscal Year, and all other applicable vessel rates and charges due from Virgin will be governed by the Tariff as set forth in Section 3(b)(iii) hereof (as so required, the "Additional Vessel Berthing Request"). Notwithstanding and prevailing over any contrary term or implication contained herein, upon presentment of any Additional Vessel Berthing Request to the County, the County, through the Port Director, may accept or reject said berthing request (in writing) in the exercise of the Director's sole discretion, it being agreed by all parties hereto that (a) this Agreement confers no preferential berthing rights to Virgin other than those specified in sub-section 3(a)(i) above relating to Sunday berthings at the Selected Terminal and (b) if any Additional Vessel Berthing Request seeks an additional vessel berthing commitment for a time period beyond that remaining in the Operating Term or (if applicable) the exercised extension thereof (hereafter, the "Post-Contract Portion"), then, in the event the Director approves said request, as to the Post-Contract Portion thereof, Virgin and any Port-approved additional Virgin Vessel shall be subject to all applicable fees, charges and terms under the Port Tariff and Virgin shall not be entitled to any discounts, incentives, or incentive payments of any kind. In the event the Director denies a properly submitted Additional Vessel Berthing Request, Virgin may then Home-Port such proposed additional vessel to another South Florida port. For avoidance of doubt, Virgin shall have no obligation hereunder to Home-Port in PortMiami any additional Virgin Vessel if the Port cannot accommodate (x) Virgin's requested day of embarkation and disembarkation (e.g., Saturday or Sunday, etc.) at a reasonably suitable and available Port terminal, it being agreed that Port terminals F or G are both suitable as are any other terminals that are similar to either in terms of quality and functionality (each, an "Acceptable Other Terminal"), and (y) the requested term of the Additional Vessel Berthing Request.

- (iii) Notwithstanding and prevailing over any contrary terms or implications set forth herein, the County shall have the right to allow other vessels or lines to use any portion of the Selected Terminal or adjacent Berths, or any other Terminals or Berths, at

any time during which Virgin has not been granted Virgin Preferential Berthing Rights pursuant to Section 3(a)(i). The assignment of particular Port Terminals and/or berths to cruise lines shall be at the sole discretion of the Port Director.

Should the Vessels be late on the route due to weather or any other similar cause, Virgin shall inform the County as soon as reasonably possible. In such case, the County shall use reasonable efforts to provide a berth and facilities infrastructure subject to availability at the discretion of the Port.

- (iv) Virgin's Prior Inspections/Suitability of Terminals F and G. Prior to the execution of this Agreement, Virgin has previously inspected Terminals F and G, including each terminal's exteriors and interiors, surrounding and berthing areas, aprons and wharves, and, in the exercise of Virgin's independent judgment, deems both terminals and associated berthing areas suitable for all of Virgin's purposes and intended cruise operations at the Port including, without limitation, Virgin's Year-Round deployment of Virgin's First Cruise Vessel at Terminals F or G.

- (v) Selected Terminal Improvements. No later than 24 months prior to the earlier of the actual or anticipated Operating Term Commencement Date, Virgin may provide the Port Director with a list of suggested non-structural Selected Terminal improvements, the total design and building cost of which may not exceed \$1,500,000, for the Director's review and approval. The Director may approve or reject the Virgin-requested (non-structural) Selected Terminal Improvements in whole or in part in the exercise of his reasonable discretion, provided, however, the total costs of any Director-approved Selected Terminal related improvements may not exceed \$1,500,000, nor may any of such improvements adversely affect the functionality of the Selected Terminal or any adjacent terminal in any way nor otherwise reduce the ability of the Port to accommodate other vessels at or adjacent to the Selected Terminal. If approved in writing by the Director in the exercise of his reasonable discretion and in accordance with the conditions and restrictions set forth above, the County shall cause to have the Director-approved Selected Terminal Improvements constructed no later than the anticipated arrival date of Virgin's First Cruise Vessel at the Selected Terminal. Notwithstanding the foregoing, the County shall have no duty to make any requested Selected Terminal improvements not requested in writing to the Port Director at least 24 months prior to the earlier of the actual or anticipated Operating Term Commencement Date.

(b) Port Fees.

- (i) Wharfage: Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the annual revenue and Year-Round Home-Port guarantees set forth in sub-sections 3(c), (d), and (e) below, the passenger wharfage fees due from Virgin to the County shall be based on the rates set forth in the Tariff during Fiscal Year 2014/2015 plus any annual increases to the Tariff passenger wharfage rate that may occur in or for the Fiscal Years commencing October 1, 2015 and thereafter through the Operating Term and any exercised extension thereof, which increases shall be capped at 3% per Fiscal Year (compounded) for Virgin regardless of the actual Tariff increases. Thus, the passenger wharfage rate chargeable to Virgin effective Fiscal Year 2019/20 shall be \$12.74 per each passenger embarkation and each passenger debarkation.

The County may increase the wharfage rate that applies to Virgin and its passengers in an amount equal to any percentage increase otherwise charged to cruise lines in general; provided, however, no such increase shall be in excess of three percent (3%) per annum (compounded) and such rate shall not be increased more than one time in a twelve month period.

- (ii) Dockage: Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the annual revenue and Year-Round Home--Port guarantees set forth in sub-sections 3(c), (d), and (e) below, the dockage fees due from Virgin to the County shall be based on the rates set forth in the Tariff during Fiscal Year 2014/15 plus any annual increases to the Tariff dockage rate that may occur in or for the Fiscal Years commencing October 1, 2015 and thereafter through the Operating Term and any exercised extension thereof, which increases shall be capped at 3% per Fiscal Year (compounded) for Virgin regardless of the actual Tariff increases. Thus, the dockage rate chargeable to Virgin effective in Fiscal Year 2019/20, assuming the Tariff dockage rate increases 3% per Fiscal Year from 2014/2015, will be \$.39 per gross registered ton.

The County may increase the dockage rate that applies to Virgin in an amount equal to any percentage increase otherwise charged to cruise lines in general; provided, however, no such increase shall be in excess of three percent (3%) per Fiscal Year (compounded) of the then existing rate chargeable to Virgin and such rate shall not be increased more than one time in a Fiscal Year. Such rate

increase shall apply regardless of, and prevail over, any dockage increase applied to the Tariff as defined in this Agreement.

- (iii) Harbor Fee / other Tariff terms: Harbor Fees due from Virgin Vessels to the County (per vessel call) shall be those set forth in the Tariff. Other than the dockage and wharfage rate, all other applicable Port Fees due to the County from Virgin (including water charges) shall be as per the Tariff.

(c) Virgin Minimum Annual Passenger Guarantees.

- (i) Minimum Annual Passenger Wharfage Guarantee. Commencing with the Fiscal Year beginning October 1, 2019 and continuing each Fiscal Year thereafter during the Operating Term and any exercised extension thereof, Virgin shall have a Minimum Annual Passenger Wharfage Guarantee to the County calculated based on the then-existing passenger wharfage Tariff rate (subject to the annual rate escalation cap set forth in Section 3(b)(i) above) times a number of minimum annual Virgin Passenger Movements calculated using the following formula (“Virgin Minimum Annual Passenger Throughput Formula”): in the first Fiscal Year of the Operating Term, the actual passenger capacity of Virgin’s First Cruise Vessel actually home-ported at the Port of Miami (which capacity shall be deemed no less than 2,800 passengers) x 1.0 (100%) x 52 (weeks/vessel calls a year) x 2 (embark and debark) x .8 (80%); in the second Fiscal Year of the Operating Term, the actual passenger capacity of Virgin’s First Cruise Vessel actually home-ported at the Port of Miami (which capacity shall be deemed no less than 2,800 passengers) x 1.025 (102.5%) x 52 (weeks/vessel calls a year) x 2 (embark and debark) x .8 (80%); in the third Fiscal Year of the Operating Term, the actual passenger capacity of Virgin’s First Cruise Vessel actually home-ported at the Port of Miami (which capacity shall be deemed no less than 2,800 passengers) x 1.05 (105%) x 52 (weeks/vessel calls a year) x 2 (embark and debark) x .8 (80%); in the fourth Fiscal Year of the Operating Term, the actual passenger capacity of Virgin’s First Cruise Vessel actually home-ported at the Port of Miami (which capacity shall be deemed no less than 2,800 passengers) x 1.075 (107.5%) x 52 (weeks/vessel calls a year) x 2 (embark and debark) x .8 (80%); and in the fifth and subsequent Fiscal Years of the Operating Term, as may be extended in accordance with Section 4(c) hereof, the actual passenger capacity of Virgin’s First Cruise Vessel actually home-ported at the Port of Miami (which capacity shall be deemed no less than 2,800 passengers) x 1.1 (110%) x 52 (weeks/vessel calls a year) x 2 (embark and debark) x .8 (80%) (as applicable, the “Minimum Annual Passenger Wharfage

Guarantee”). For removal of doubt, for purposes of calculating the Virgin Minimum Annual Passenger Throughput Formula, the vessel passenger capacity to be used in calculating Virgin’s Minimum Annual Passenger Wharfage Guarantee shall be the greater of (i) the actual passenger capacity of Virgin’s First Cruise Vessel (based on double occupancy per cabin), (ii) the actual passenger capacity of a Virgin Substitute Vessel (if applicable) (based on double occupancy per cabin), or (iii) 2,800 passengers. If Virgin fails to meet its Minimum Annual Passenger Wharfage Guarantee in any Fiscal Year during the Operating Term or any exercised extension thereof, it shall make a Shortfall Payment to the County within thirty (30) days of the end of the Fiscal Year in which the Minimum Annual Passenger Wharfage Guarantee was not met. Shortfall Payments will be based on the then applicable wharfage rates for the given Fiscal Year times the number of annual Virgin Passenger Movements below those required per the Virgin Minimum Annual Passenger Throughput Formula (set forth above) in the applicable Fiscal Year. For avoidance of doubt, in the event Virgin fails to meet its Minimum Annual Passenger Wharfage Guarantee and/or (if applicable) the Minimum Annual Guarantee Expansion or any other minimum Virgin revenue or vessel call requirement hereunder, regardless of cause, the parties agree that the County shall have no duty hereunder or otherwise to mitigate its damages relating to or arising from such deficiency(ies). The payment obligations under sub-section 3(c) of this Agreement shall survive any properly exercised County termination of this Agreement, as well as any unauthorized or improper termination of this Agreement by Virgin, through and including May 4, 2025, but, if the Virgin Operating Term Extension is or has been exercised, through and including May 5, 2030.

- (ii) Minimum Annual Guarantee Expansion. Commencing with Virgin’s exercise of the Minimum Annual Guarantee Expansion Election (as defined in Section 3(e) below), if applicable, and continuing through the remainder of the Operating Term and any properly exercised extension thereof, Virgin shall guarantee the County minimum annual dockage revenue each Fiscal Year of the remaining Operating Term and any exercised extension thereof calculated based on the then-existing dockage Tariff rate (subject to the annual rate escalation cap set forth in Section 3(b)(ii) above) times the greater of (i) Virgin’s First Cruise Vessel’s gross registered tonnage (“GRT”), (ii) if applicable, the Virgin Substitute Vessel’s GRT, or (iii) 110,000 GRT, times 52 (annual vessel calls) times .8 (80%) (hereafter, the “Minimum Annual Guarantee Expansion”). Once activated via the Minimum Annual Guarantee

Expansion Election, if Virgin fails to meet this Minimum Annual Guarantee Expansion in any Fiscal Year during the Operating Term or any exercised extension thereof, it shall pay the County for any Minimum Annual Guarantee Expansion deficiency (hereafter, "Dockage Shortfall Payment") within thirty (30) calendar days of the end of the applicable Fiscal Year in which the Minimum Annual Guarantee Expansion is not met.

- (d) Exclusive Home-Port Commitment. Virgin agrees that the Port shall be the exclusive Year-Round Home-Port in South Florida (including Palm Beach, Broward, Monroe, Brevard, and Miami-Dade Counties) for Virgin's First Cruise Vessel and (if applicable) the Virgin Substitute Vessel and any other Virgin Vessel for which an Additional Vessel Berthing Request is submitted to and approved by the Director pursuant to Section 3(a)(ii) hereof, if any, and Virgin agrees not to Home-Port any such applicable Virgin Vessel(s) or Virgin affiliate vessels in another South Florida port during any portion of the Operating Term and any properly exercised extension of the Operating Term.
- (e) Virgin's Year-Round Service Commitment. Virgin commits to HomePort Virgin's First Cruise Vessel and, if applicable, a Virgin Substitute Vessel at PortMiami for Year-Round Service during the Operating Term and, if applicable, any extension thereof. In the event Virgin fails to have at least 50 PortMiami vessel calls in any Fiscal Year during the Operating term (as may be extended), or fewer than a pro rata proportional number of required vessel calls during its first Fiscal Year of the Operating Term (hereafter, a "Vessel Call Deficiency"), then the County shall thereafter have the option of terminating this Agreement upon twenty-seven (27) months prior written notice (the "Vessel Call Deficiency Notice") to Virgin (hereafter, the "Vessel Call Deficiency Termination Right"), provided, however, that if Virgin provides the Port Director with written notice of Virgin's election to assume or activate the Minimum Annual Guarantee Expansion (the "Minimum Annual Guarantee Expansion Election") within thirty (30) calendar days of Virgin's receipt of the County's Vessel Call Deficiency Notice, thereby activating Virgin's Minimum Annual Guarantee Expansion, then the County's prior Vessel Call Deficiency Notice shall be deemed withdrawn. Notwithstanding the foregoing, if at any time during the Operating Term or exercised extension thereof Virgin, or any affiliate or agent of Virgin, commences offering for sale cruises on Virgin's First Cruise Vessel or (if applicable) a Virgin Substitute Vessel for cruise sailings from any Home-Port other than PortMiami, then, in such event, the above-described Vessel Call Deficiency Notice, if given by the County to Virgin, shall be deemed to have been given (and the 27 month termination notice clock shall be deemed to have commenced) as of the first date Virgin or an affiliate or agent of Virgin commenced offering for sale cruises on Virgin's First Cruise Vessel or (if

applicable) a Virgin Substitute Vessel for cruise sailings from a Home-Port other than PortMiami during the Operating Term as may be extended.

(f) Parking Revenues

- (i) In consideration of the guaranteed Passenger Movements that will be generated by Virgin during the Operating Term of this Agreement, and the Parking Revenue that will be collected by the County for paying passenger vehicles that park at the Port during the Operating Term of this Agreement, the County shall pay to Virgin a parking incentive based upon a fraction of the Parking Revenue collected by the County for those paying vehicles that park at the Port during the Operating Term of this Agreement deemed to carry Virgin multi-day cruise passengers (the "Parking Incentive").
- (ii) For purposes of this Agreement, Virgin's Parking Incentive shall be determined based on the proportion of Virgin multi-day cruise embarkations at the Port to total multi-day cruise embarkations at the Port in a given Fiscal Year during the Operating Term. Embarkations and parking revenue associated with port-of-call vessels shall not be included in the calculation of the Parking Incentive, nor shall cruise passenger embarkations or parking revenue associated with daily cruises, non-revenue cruises, ferry services, cruises less than 24 hours in duration, or cruises to nowhere be included in such calculation. As an example, if in a given Fiscal Year during the Operating Term, Virgin's multi-day cruise passenger embarkations are ten percent (10%) of the Port's total multi-day cruise passenger embarkations then Virgin will receive ten percent (10%) of Parking Revenues collected by the Port in such Fiscal Year. The Port shall remit Parking Revenues to Virgin within sixty (60) days of the close of each fiscal quarter during the Operating Term provided Virgin is in full compliance with all of its payment and performance obligations under this Agreement.

Virgin reserves the right to check said reconciliation for accuracy. As the Parking Incentive is to be based on an annual proportion of Parking Revenues collected within a Fiscal Year during the Operating Term, but paid quarterly (within sixty (60) days of the close of each fiscal quarter during the Operating Term in which Virgin Vessels are calling the Port), such quarterly payments shall be subject to an end-of-the-Fiscal Year reconciliation conducted by

the County. The operational mode and timings of its verifications will subject to the Parties mutual agreement.

4. TERM AND EFFECTIVE DATE

- (a) Term. This Agreement shall be effective upon the last to occur of (i) its execution by a duly authorized representative of Virgin and (ii) its execution by the County Mayor or his designee after the effective date of a resolution approved by the Board of County Commissioners of Miami-Dade County ("Board") approving this Agreement and authorizing its execution ("Effective Date"), and shall expire on 11:59 pm on May 4, 2025 (the "Expiration Date") unless timely and properly extended by Virgin in accordance with the terms and conditions of the Virgin Operating Term Extension Option set forth in Section 4(c) below.
- (b) Operating Term. Virgin shall commence Year-Round Home-Port deployment of Virgin's First Cruise Vessel at the Port Miami no later than February 9, 2020, provided, however, that Virgin shall have until 5:00 pm EST on May 1, 2017 (the "Deferral Election Notice Deadline") by which to provide written notice to the Port Director of Virgin's election to defer the required arrival date of Virgin's First Cruise Vessel to PortMiami from February 9, 2020 to May 3, 2020 (the "Operating Term Commencement Deferral Notice"), in which case the operating term commencement date shall be deferred to May 3, 2020 (the "Deferred Operating Term Commencement Date"). In the event the Operating Term Commencement Date Deferral Notice is not provided by Virgin to the Port Director prior to the Deferral Election Notice Deadline, then the operating term commencement date shall be the earlier of (i) February 9, 2020, (ii) the actual arrival date of Virgin's First Cruise Vessel to PortMiami, or (iii) Virgin's Early Arrival Election date (the earlier of (i), (ii), or (iii) shall be deemed the "Operating Term Commencement Date"). Further, in the event the Operating Term Commencement Date Deferral Notice is not provided by Virgin to the Port Director prior to the Deferral Election Notice Deadline, then for each Sunday, starting and including the earlier of (x) Virgin's Early Arrival Election date (if applicable) or (y) Sunday, February 9, 2020, and including each Sunday thereafter during the Term on which Virgin's First Cruise Vessel does not embark on a weekly cruise from PortMiami, Virgin shall pay the County \$114,244 in lost weekly dockage and passenger wharfage revenue, payable to the Port monthly in arrears, which sum shall increase 3% per Fiscal Year of the Term ("Virgin's Late Arrival Compensation Obligation"). Once Virgin's First Cruise Vessel commences actual weekly Year-Round Service from PortMiami on Sundays, Virgin's Late Arrival Compensation obligation (if applicable) shall cease. By the Deferral Election Notice Deadline, Virgin must provide written notice to the Director of its election to either (i) defer

the operating term commencement date to May 3, 2020, in which case the Late Arrival Compensation obligation shall not apply, (ii) confirm Virgin's planned PortMiami Year-Round Service commencement on Sunday, February 9, 2020, or (iii) provide the Director with Virgin's election to commence weekly Year-Round Service at the Selected Terminal on a Virgin-designated Sunday earlier than February 9, 2020, which designated Sunday commencement may not be earlier than Sunday, November 3, 2019, unless approved in writing by the Director in the exercise of his sole discretion ("Virgin's Early Arrival Election"). In the event Virgin provides the Director with Virgin's Early Arrival Election, then Virgin's Late Arrival Compensation Obligation (described above) shall commence as of the earlier Sunday designated by Virgin in Virgin's Early Arrival Election. For purposes of this Agreement, if the Operating Term Commencement Date Deferral Notice is timely provided to the County, then the Operating Term hereof shall commence on the Deferred Operating Term Commencement Date (May 3, 2020); if the Operating Term Commencement Date Deferral Notice is not timely provided, then the Operating Term shall commence on the Operating Term Commencement Date defined above; and, in either event, the Operating Term shall expire at 11:59 pm on May 4, 2025 (hereafter, the "Operating Term") unless timely and properly extended in accordance with the requirements and conditions of the Virgin Operating Term Extension Option set forth below.

- (c) Virgin Operating Term Extension Option. Virgin shall have a conditional right to extend the Operating Term once for a period of an additional five years (the "Virgin Operating Term Extension Option") by providing the Port Director with written notice of Virgin's election to exercise its Operating Term Extension Option no later than 5:00 p.m. EST on February 3, 2023 (the "Operating Term Extension Option Notice Deadline"). Any notice or attempt to exercise the Virgin Operating Term Extension Option after the Operating Term Extension Option Notice Deadline shall be deemed null, void and ineffective. Further, the Virgin Operating Term Extension Option may not be exercised unless Virgin is in full compliance with all Virgin payment obligations and material compliance with all other obligations under this agreement. In the event Virgin properly and timely exercises its single Virgin Operating Term Extension Option, the Operating Term shall be deemed to be extended for an additional five years and shall expire at 11:59 pm EST on May 5, 2030. A proper and timely exercise of Virgin's Operating Term Extension Option shall also serve to extend the Term, which shall then also expire at 11:59 pm EST on May 5, 2030.
- (d) Limited Opt Out Right. In the sole event that Virgin, despite the exercise of diligent and good faith efforts, is unable to execute a written contract with a cruise vessel shipyard for the construction of Virgin's First Cruise

Vessel by the close of business on January 15, 2016, then Virgin shall have ten (10) calendar days therefrom within which to provide the Port Director with written notice (via certified mail, return receipt requested) advising that Virgin has not executed, and has been unable to execute, any contract to construct Virgin's First Cruise Vessel and either (i) requests an extension of time (up to an additional one-hundred and twenty (120) calendar days) within which to either consummate such contract or exercise its limited opt out right under this subsection 4(c) (if extended) or (ii) exercises its conditioned right to opt out of this Agreement. In the event Virgin timely and properly provides the Port Director with written notice of its opt out of this Agreement, neither the County nor Virgin will thereafter have any further responsibility or liability to the other arising from this Agreement. In the event Virgin timely requests an extension of time (up to a maximum of one-hundred and twenty (120) calendar days) in which to consummate its construction contract for the construction of Virgin's First Cruise Vessel, the Port Director may grant or deny said extension request in his or her sole discretion, provided the opt out period may under no circumstances be extended past May 15, 2016. If the aforesaid limited opt out right is not timely and properly exercised by close of business on January 15, 2016, such right shall be deemed irrevocably waived and extinguished and this Agreement shall continue in full force and effect, unless the opt out period is timely extended by the Port Director before its expiration; in which case the opt out right shall become irrevocably waived and extinguished if not timely and properly exercised prior to close of business on the last day of the opt out period as extended.

- (e) Virgin's Limited Early Termination Right. In consideration of Virgin's Year-Round Service Commitment hereunder and status as a new start-up cruise line, commencing with the first anniversary of the Operating Term Commencement Date, Virgin shall have the limited and conditioned right to terminate this Agreement upon twenty-seven (27) months prior written notice to the County ("Required Early Termination Notice"), provided such early termination right may not be noticed or exercised if Virgin is not in full compliance with all of its payment and other obligations under this Agreement, provided further that under all circumstances Virgin shall remain liable to the County for all payment and other obligations arising under or associated with this Agreement from the Effective Date hereof through the effective date of the early termination following the expiration of the properly noticed and commenced early termination notice period, and provided further that in the event Virgin exercises this early termination right, Virgin may not Home-Port Virgin's First Cruise Vessel or the Virgin Substitute Vessel at any other Florida or Cuban port for the remainder of the Operating Term or any exercised extension thereof (hereafter, as so conditioned, "Virgin's Limited and Conditioned Early Termination Right"). Any Early Termination Notice made or given when

Virgin is not in full compliance with all of its payment and other obligations under this agreement shall be deemed null and void *ab initio*. Moreover, notwithstanding the purported expiration of any Early Termination Notice period, no early Virgin termination of this Agreement will be deemed effective unless and until all payment and other obligations of Virgin to the County have been fully satisfied. Once Virgin provides the County with a Required Early Termination Notice, the County may unilaterally terminate this Agreement upon the expiration of a 27 month period from Virgin's transmission to the County of the Required Early Termination Notice without any further notice from the County to Virgin. This sub-section shall survive any early termination hereof through and including May 4, 2025 or, if the Virgin Operating Term Extension is exercised, through and including May 5, 2030.

5. PERMITTED USE OF TERMINAL

- (a) No Unlawful or Unauthorized Use. Virgin shall not use the Terminal(s) for any unlawful purpose, any use other than a cruise passenger terminal, or any use prohibited by Applicable Laws.
- (b) No Abandonment or Cessation of Service, Exceptions. During the Operating Term, including any renewal term, Virgin agrees not to abandon or cease service to the Terminal(s), unless expressly specified and authorized under this Agreement.
- (c) Port and Vessel Registration Requirements. Prior to operating any Virgin Vessel from the Terminal(s), Virgin must first register such vessel with the Port and deliver copies of all required vessel certifications, approvals, and operating permits to the Port.
- (d) Terminal Advertising and Promotions. The County shall have the right to advertise and/or promote in the interior and exterior of the Terminal(s) in the County's sole discretion, as long as such Advertising, with respect to the Selected Terminal on Sundays during the Operating Term, does not interfere with Virgin's operations at the Selected Terminal and is not for any other cruise line while a Virgin Vessel is berthed at the Selected Terminal.

6. SECURITY, MAINTENANCE AND REPAIR OF THE TERMINAL(S)

- (a) Terminal Maintenance & Security Responsibility.
 - (i) Virgin shall have no responsibility or obligation to maintain the Terminal(s), except as provided in this Section 6(a) below. When using the Terminal(s), Virgin shall at all times, at its own cost and expense, keep the Terminal(s) in a clean, orderly, secure, and safe

condition, normal wear and tear excepted, and be responsible for security and operations of the apron, wharf and interior portions of the Terminal(s) when using the Terminal(s).

(ii) The County shall:

- a. Provide electricity, water and sewer service to the Terminal(s).
- b. Maintain, repair and replace, as needed, the electrical, heating, ventilating, air-conditioning, elevators, escalators, mechanical, plumbing, safety systems, wiring systems, carpets, fixtures, furniture, lighting and structural components of the buildings and improvements comprising the Terminal(s) and paint the exterior and interior of the Terminal(s), as necessary, and keep same in good working order and operating condition to accommodate Virgin's then current fleet throughout the Term.
- c. Except when Virgin is using the Terminal(s), provide all necessary janitorial services in accordance with the County's current practice.
- d. Make repairs at its own cost and expense to all paved surfaces, all utilities and lighting at the Terminal(s) and the surrounding areas.

(iii) Virgin shall not make any changes or alterations to the Terminal(s) without the prior written permission of the Port Director.

(b) Virgin solely shall be responsible for complying with all federal, state and local security and cruise terminal operational requirements related to Virgin's operations at the Port. Virgin agrees to indemnify, hold harmless, and defend the County for any security, security-related, or cruise terminal operation related notice of violation or other fine or penalty of any kind or in any form whatsoever that is based on action or inaction by Virgin or its affiliates, employees, contractors, subcontractors or passengers.

(c) County Rights to Enter Terminal Space. The County, its agents and representatives and federal, state and local law enforcement officers may at all times and without advanced notice, enter the Terminal(s) to view, inspect, and/or show the Terminal(s), or for any other purpose.

(d) Casualty.

- (i) In the event that any of the Terminal(s) or any portion thereof, is damaged or destroyed by fire or other casualty, or the Port is inaccessible to Virgin, Virgin Vessels or passengers (including without limitation, due to damage or destruction to the Port bridge or waterway), the County shall promptly notify Virgin of such an event and repair or remedy the damage or situation to the condition that existed immediately prior to such casualty or provide reasonably suitable temporary alternative accommodations, at the Port's option.
- (ii) In the event of any such casualty that only affects the Selected Terminal, the County shall make reasonable efforts to provide alternative berthing and terminal facilities at the Port (if available) to enable Virgin to continue its operations until the affected Terminal(s) is/are restored.
- (iii) In the event of a casualty precluding use of the Selected Terminal, and in the event no alternative facilities are available, the provisions of this Agreement temporarily shall be suspended and the term of this Agreement shall be extended accordingly until reasonably suitable temporary accommodations are available on the Port.

7. SIGNAGE AT TERMINAL(S)

- (a) The County requires the use of international symbols for all safety and visitor signs (such as elevators, check-in, and safety instructions) and the County agrees to maintain such international signage at the Terminal(s) at all times, at its sole cost and expense.
- (b) Virgin shall at all times be permitted to maintain temporary and removable signage inside of a particular Terminal for Virgin and the Virgin Vessels when Virgin is using a particular Terminal provided same complies with the Miami-Dade County Sign Ordinance requirements or its successor as such may be amended from time to time, and all Applicable Laws, has been approved in advance by the Port Director, and is removed by Virgin. Virgin shall be solely responsible for all costs associated with the design, construction, installation and removal of such signage at the direction of the Seaport.
- (c) Virgin acknowledges that the County has entered or may enter into agreements for commercial signs and advertising both within and outside Port terminal(s) and elsewhere on the Port. Virgin agrees that this Agreement shall not preclude or in any way affect such commercial sign and advertising agreements, or the County's rights or ability to enter into such agreements in the future.

8. **PREFERENTIAL BERTHING AGREEMENT NOT A LEASE**

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or the improvements located in or at the Terminal(s) is created by this Agreement.

9. **COMMITMENT ON INDEMNITY AND INSURANCE**

- (a) Indemnification by Virgin. Virgin agrees to indemnify, protect and hold harmless the County, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which the County, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the reckless or negligent acts or omissions or intentional misconduct of Virgin or its agents, employees, officers or contractors which arise from, grow out of, or are connected in any way with either the occupation and use of the Terminal(s) by Virgin or its agents, employees, officers, contractors, subcontractors, invitees or guests under this Agreement or any breach of this Agreement by Virgin; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the County or its employees, officers, agents, contractors, or subcontractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs are against or sustained by others to whom the County, its agents or employees may become liable. Upon request of the County, Virgin shall undertake to defend, at its sole cost and expense, any and all suits brought against the County in connection with the matters specified in this Section.
- (b) Indemnification by County. The County agrees to indemnify and hold harmless Virgin, to the extent and within the limitations of Section 768.28, Florida Statutes, whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any person which exceeds the sum of \$200,000 or any claim or judgments or portions thereof, which, when totaled with all other claims arising out of the same occurrence, exceed the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence or wrongful act of the County, its agents or its employees acting within the scope of their employment. However, nothing herein shall be deemed to indemnify Virgin from any liability or claim arising out of the negligence, intentional act, omission, negligent performance or failure of performance of Virgin, its agents or its employees, or any other unrelated third party. To the extent allowed by Florida law, the Parties agree that the above sovereign immunity limits do not restrict Virgin's ability to assert claims against the

County for breach of contract based on any alleged breach of any express written terms of this Agreement. The County hereby represents and warrants that it is self-insured and does not maintain private or independent liability insurance that would provide coverage to the County for injury, damage or death claims related to any incident on port property caused by the negligence of the County, its employees, or its contractors, except to the extent that the County's contractors maintain liability insurance naming the County as an additional insured if so required. Nothing herein shall limit the right of Virgin to seek, demand, or claim indemnification or contribution above the above referenced liability limits to the extent such claim or demand may be covered by available insurance.

- (c) No Actions to Invalidate Insurance Policies of County. Virgin covenants that it will not permit to be done on or about or in the proximity of the Terminal(s), anything which shall invalidate the County's fire, casualty, liability or other insurance policies, if any, with respect to the Terminal(s) or violate any terms thereof, or increase the premiums payable therefore.
- (d) Environmental. Virgin shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes, hazardous wastes and wastes generated on or by Virgin Vessels, in, on, or near the Terminal(s). Virgin shall indemnify and hold harmless the County, its officers, employees, agents, successors and assigns from, and assume liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, costs, charges, and expenses (including, but not limited to, reasonable attorneys' fees, environmental response and remediation costs and the costs and expenses of appellate action, if any) imposed on, incurred by or asserted against the County by any party including, without limitation, governmental entities, to the extent it arises out of, is in connection with or relates in any way to any environmental condition or contamination or any violation of applicable Federal, state or local environmental law with respect to the Terminal(s), caused or created in whole or in part by Virgin or its employees, officers, agents or guests.
- (e) Insurance Coverage Required. Virgin shall procure and maintain throughout the Operating Term, at its sole cost and expense, insurance coverage as required below. VIRGIN shall furnish to Seaport Department, 1015 North America Way, Miami, Florida 33132-2081, Certificates of Insurance which indicate that the insurance coverage has been obtained which meet the requirements as outlined below:
 - (i) Workers' Compensation Insurance. Said insurance shall cover all persons employed by Virgin (other than crew members of the Virgin Vessels) or any Virgin affiliate in and about the Terminal

Area including coverage required under the United States Longshore and Harborworkers Compensation Act (if applicable) and/or as required by Florida Statute 440 or any successor thereto.

- (ii) Crew Insurance. Said insurance shall cover all persons employed as crew of the Virgin Vessels under a Protection and Indemnity Policy or a Marine Employers Liability Policy to provide coverage for liability under 46 USC Section 688, (The Jones Act) and under General Maritime Law.
- (iii) Commercial General Liability Insurance. With respect to the use and activities of Virgin and its employees, contractors, agents, customers and guests in and around the Terminal Area, Commercial General Liability Insurance must be in place on a comprehensive basis in an amount not less than \$1,000,000 combined single limits for the death of, or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof, or the activities of Virgin thereon. This coverage must also include but not be limited to embarkation and disembarkation of Virgin Vessels. Miami-Dade County must be shown as an additional named insured with respect to this coverage.
- (iv) Pollution Liability Coverage. Virgin shall maintain at its sole cost and expense for Virgin Vessels used in connection with this Agreement, operation pollution liability coverage sufficient to satisfy all applicable requirements of CERCLA and OPA-90.
- (v) Vessel Liability Insurance (Hull and Machinery). Covering all Virgin Vessels used in connection with this Agreement, whether owned or chartered, in an amount not less than \$10,000,000 per occurrence for hull and property damage.
- (vi) Automobile Liability Insurance. Covering all owned, non-owned and hired vehicles used in connection with Virgin's operations in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
- (f) Insurance Policy Requirements, Generally. Except for Protection and Indemnity Insurance and Hull and Machinery Insurance, all insurance policies required under subpart (e) above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's

Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division, or Companies holding a valid Florida Certificate,

or

as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Insurance and which are members of the Florida Guaranty Fund.

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

- (g) Injury or Damage, Notification to County. In the event of any injury or damage to persons or property in or around the Terminal(s), Virgin shall notify the County in writing as soon as reasonably possible after it becomes aware of such injury or damage and shall promptly thereafter furnish to the County copies of all related reports given to Virgin's insurance carrier or carriers.

10. EXCLUSIVE VENUE AND CHOICE OF LAW

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall not apply to matters in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission. Virgin hereby consents to personal jurisdiction in the courts of the State of Florida or federal courts venued in Miami-Dade County, Florida. Virgin further agrees and hereby authorizes Corporation Service Company, to accept service of process on behalf of Virgin, and Virgin agrees that service of process by the County on Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301, as agent for Virgin, shall constitute valid service of process on Virgin for all purposes.

11. NO ORAL CHANGE OR TERMINATION

This Agreement and the Exhibits and appendices appended hereto and incorporated herein by reference constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom

enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

12. COMPLIANCE WITH APPLICABLE LAWS

Throughout the Term of this Agreement, Virgin shall comply with all Applicable Laws relating to this Agreement, Virgin's use of the Terminal(s) and Virgin's use of the Port. Throughout the Term, the County shall also comply with all Applicable laws in connection with this Agreement.

13. NUISANCE

Virgin shall not commit any nuisance on the Port or in the Terminal(s) or do or permit to be done anything that may result in the creation or commission of a nuisance on the Port or in the Terminals.

14. REPRESENTATIONS

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms. The County represents that the execution, delivery and performance by County of this Agreement complies with all laws, rules, regulations and orders applicable to County; and that County has full authority to enter into and perform this Agreement in accordance with its terms.

15. NO EXCLUSIVE REMEDIES

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

16. FAILURE TO EXERCISE RIGHTS NOT A WAIVER

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein. Except as otherwise provided herein, all waivers must be in writing and signed by a duly authorized officer of the waiving party, it being understood that the foregoing requirement shall not apply to waivers arising from either party's failure to timely exercise a right or option set forth herein when a specific time period for such exercise is expressly required herein.

17. EVENTS OF DEFAULT

- (a) Virgin shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:
- (i) Virgin fails to timely comply with any payment obligation arising hereunder which is not cured within thirty (30) days from Virgin's receipt of written notice from the County of failure to meet such payment obligation.
 - (ii) Virgin fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within sixty (60) days after receipt of written notice from the County specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days, VIRGIN shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.
 - (iii) If Virgin shall be adjudicated bankrupt, or if Virgin shall make a general assignment for the benefit of creditors, or if in any proceedings based upon the insolvency of Virgin are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of Virgin which is not dismissed within sixty (60) days of such appointment.
- (b) The County shall be in default under this Agreement if the County fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from Virgin specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not unreasonably interfere with the operations of Virgin at the Port, the County shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently and expeditiously prosecutes such cure to completion so as to minimize any interference with Virgin's operations.

18. REMEDIES UPON DEFAULT AND TERMINATION

Subject to Section 3(c) of this Agreement, upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may pursue all remedies available at law or in equity, including, without limitation, termination or specific performance of this Agreement.

19. PORT BOND OBLIGATIONS

Notwithstanding and prevailing over any other provision of this Agreement, the County reserves the right to increase the rates contained in this Agreement herein at a percentage increase no greater than that applied to other multiple-day cruise line operators upon a reasonable determination by the County's independent Financial Advisor that Port revenues in the aggregate will not be sufficient to meet the rate covenant and/or additional bonds tests on all outstanding Seaport bonds obligations or any bond coverage requirements contained therein. The County shall give Virgin thirty (30) days written notice of its intent to increase the rates pursuant to this provision of the Agreement, and shall make reasonable efforts, within the limitations of the applicable bond documents, to provide VIRGIN more than thirty (30) days notice. Virgin shall have the right to terminate this Agreement by written notice to the County within thirty (30) days of the date of such notice. If Virgin does not terminate this Agreement within the thirty (30) day period, the increased rates shall become effective immediately and Virgin shall have no other recourse with respect to such increase.

20. ATTORNEY FEES

In the event an action is commenced by a party resulting from a default under this Agreement, each party shall bear their own attorney fees and costs.

21. CONFLICT OF PROVISIONS

If there is any conflict between the provisions of this Agreement and the provisions of an addendum, schedule, exhibit, and/or purchase order attached to this Agreement, the provisions of this Agreement shall prevail.

22. FORCE MAJEURE; INABILITY TO PERFORM

County and Virgin shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond the reasonable control of the County, Virgin, and their agents, employees, contractors, subcontractors, and guests including, without limitation acts of God, an act of state or war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type (whether affecting County, Virgin, its contractors or subcontractors), providing that the party claiming the existence of a force majeure event delivers written notice to the other party of such event within fifteen calendar days of the commencement of such event.

23. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other

than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

24. ASSIGNMENT

The term of this Agreement shall inure to the exclusive benefit of Virgin and is binding upon Virgin. Virgin will not transfer, assign or pledge this Agreement or any rights hereunder without the prior written consent of the County; provided that Virgin may assign to an affiliate (other than and excluding any other cruise line or affiliate or subsidiary thereof) if Virgin provides an unconditional guarantee of payment and performance to the County upon such assignment to its affiliate (a "Permitted Transfer"). For the purposes of this Agreement, an assignment shall be deemed to occur, among other things, upon a transfer or sale of a majority of the issued shares of capital stock of Virgin.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns (if permitted) of the Parties. Notwithstanding the foregoing, no passenger throughput or Passenger Movements arising under or in furtherance of this Agreement shall inure to the benefit of any other cruise line or affiliate thereof, nor shall such passenger throughput or Passenger Movements qualify for any discounts, credits, rebates, or other incentives contained in or arising from any other cruise terminal or volume incentive agreement with the County.

25. OBLIGATIONS SURVIVING TERMINATION HEREOF

Notwithstanding and prevailing over any contrary term or provision contained herein, including any early termination rights contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a six year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

26. LACK OF AGENCY RELATIONSHIP

Nothing contained herein shall be construed as establishing an agency relationship between the County and Virgin and neither Virgin nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the County for any purpose hereunder, and the County, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of Virgin or its subsidiaries, divisions or affiliates.

27. NON SOLICITATION

The County agrees that it will not, and will direct its agents, representatives or employees not to, solicit any employee of Virgin or any of its subsidiaries to become employed by the County or any of its affiliates, without the prior written consent of Virgin.

28. NOTICES

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

FOR COUNTY:

Juan M. Kuryla, PPM
Port Director
Miami-Dade County
1015 North America Way
Miami, Florida 33132-2081
Telephone Number: 305-371-7678
Telecopy Number: 305-347-4852

with a copy to:

County Attorney
111 Northwest 1st Street
Suite 2810
Miami, Florida 33128
Telephone Number: 305-375-5151
Telecopy Number: 305-375-5634

FOR VIRGIN:

Tom McAlpin

CEO
Virgin Cruises Intermediate Limited
1200 South Pine Island Road
Suite 300
Plantation, FL 33324
Telephone Number:
Telecopy Number:

with a copy to:

Virgin Cruises Legal Department
c/o Virgin Management USA, Inc.
65 Bleecker Street, 6th Floor
New York, NY 10012
Attn: General Counsel
Telephone Number: 212 497 9050
Telecopy Number: 212 497 9051

29. ACKNOWLEDGMENT BY VIRGIN

- (a) Exclusive Franchise Arrangements and County Contracts. Virgin acknowledges that the County may be a party to exclusive arrangements for the provision of various goods and services, including but not limited to ATMs, pay telephones, phone cards and vending machines at the Port. Accordingly, Virgin shall not install, cause to be installed or permit to be installed pay telephones, ATMs, vending machines or any other device or service for which the County has a contract or agreement in or around the Terminal(s) by any person or entity other than the County, absent the consent of the County and the relevant party with whom the County has so contracted. The County has installed or may install at its expense pay telephones, ATMs, vending machines, signage, or other devices in the Terminal(s), and shall be entitled to all revenue derived therefrom.
- (b) Furniture. Virgin acknowledges that the furniture and fixtures located in the Terminal(s) and terminal seating areas, are the property of the County. Virgin shall not remove or otherwise alter such furniture and fixtures without the express written consent of the County.
- (c) Concessions. Virgin acknowledges that the County has or may have concession agreements (such as car rental, retail shops or kiosks, ferry operations, etc.) at the Terminal(s). This Agreement shall not affect such concession agreements.
- (d) Notwithstanding and prevailing over any other provisions in this Agreement, Virgin acknowledges that the County has the sole and exclusive right to any and all retail establishments, advertising, signage or space, or any other revenue-generating activity, in, on or about the Terminal(s).

30. MISCELLANEOUS.

- (a) Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, Virgin shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall Virgin's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to Virgin, its officers, agents, employees, contractors, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of Virgin in connection with this Agreement. The terms of this Section shall not impose any liability on the County by Virgin or any third party.
- (b) Submittal of Executed County Vendor Affidavits Form. Prior to this Agreement becoming effective, Virgin shall provide the County with an executed County Vendor Affidavits Form, a copy of which is hereby incorporated herein by reference. Virgin shall be a registered vendor with the Miami-Dade County, Department of Procurement Management, for the duration of this Agreement. It is the responsibility of Virgin to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any exercised extension of the Term or Operating Term.
- (c) Mutual Obligations. Except as otherwise expressly provided for herein, nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party.

31. COUNTERPARTS

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all parties hereto, and all such counterparts shall together constitute one and the same agreement. For purposes of the preceding sentence, a legible facsimile of a properly executed and delivered counterpart shall be acceptable.

IN WITNESS WHEREOF, the parties have caused this document to be executed by its duly authorized officers.

Signed, sealed and delivered
in the presence of:

**MIAMI-DADE COUNTY,
FLORIDA**, a political subdivision
of the State of Florida

By: _____
Carlos A. Gimenez
Mayor

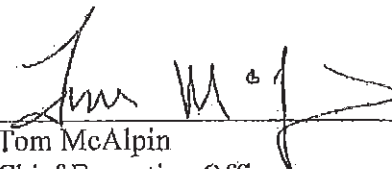
ATTEST:
CLERK OF THE BOARD

By: _____
Deputy Clerk

Signed, sealed and delivered

**VIRGIN CRUISES
INTERMEDIATE LIMITED,**

ATTEST:

By: 
Tom McAlpin
Chief Executive Officer

By: Raguel Baglino