

**ISSUING DEPARTMENT INPUT DOCUMENT**  
**CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION**

☒ New    ☐ OTR    ☐ Sole Source    ☐ Bid Waiver    ☐ Emergency    Previous Contract/Project No. R-801-14

☐ Contract  
☐ Re-Bid    ☐ Other – Access of Other Entity Contract    LIVING WAGE APPLIES: ☐ YES ☐ NO

Requisition No./Project No.: BW-10095    TERM OF CONTRACT 5 YEAR(S) WITH 0 YEAR(S) OTR

Requisition /Project Title: Alclear Lease and Concession Agreement for Traveler Services

Description: The Concessionaire shall design a Registered Traveler Program and submit initially and thereafter annually a merchandising queuing and layout plan to be used at MIA.

Issuing Department: ISD    Contact Person: Hendry Lopez    Phone: 3053753803

Estimate Cost: \$2,200,000    GENERAL    FEDERAL    OTHER  
Funding Source: Revenue

**ANALYSIS**

<b><u>Commodity Codes:</u></b>	<u>257-40</u>	<u>905-36</u>	<u>905-80</u>	<u>958-14</u>	<u>905-68</u>
Contract/Project History of previous purchases three (3) years Check here <input type="checkbox"/> if this is a new contract/purchase with no previous history.					
	<b><u>EXISTING</u></b>	<b><u>2<sup>ND</sup> YEAR</u></b>	<b><u>3<sup>RD</sup> YEAR</u></b>		
<b>Contractor:</b>	<u></u>	<u></u>	<u></u>		
<b>Small Business Enterprise:</b>	<u></u>	<u></u>	<u></u>		
<b>Contract Value:</b>	<u></u>	<u></u>	<u></u>		
Comments:	<u></u>				

Continued on another page (s):    ☐ YES    ☐ NO

**RECOMMENDATIONS**

	Set-Aside	Subcontractor Goal	Bid Preference	Selection Factor
<b>SBE</b>	<u></u>	<u></u>	<u></u>	<u></u>
Basis of Recommendation: <u></u>				
Signed: <u>Hendry Lopez</u>		Date sent to SBD: <u>02.01.21</u>		
		Date returned to SPD: <u></u>		



**Allocation Request Form for Non-Competitive Acquisition**

**Section A - Only to be completed by ISD-SPD Personnel**

**Date:**

**To:**

*(Procurement Liaisons of client departments with allocations in current contract or pool)*

**From:** ; 305-375- , @miamidade.gov

*(Procurement Officer Name)*

*(Ext.)*

*(Email Address)*

**Subject:** Contract/Pool No. ,

*(Title)*

*(Term, From- To)*

**Instructions: Complete and return this document, with the appropriate attachments to,  
@miamidade.gov by:**

*(Email Address)*

*(Due Date)*

It is the policy of Miami-Dade County to consistently purchase goods and services using full and open competition. The citizens of Miami-Dade County are best served when we make sound business decisions based on competitive bids or proposals. Early acquisition planning that includes consultation with ISD-SPD staff can help avoid delays and facilitates effective market research. However, there may be instances when other than full and open competition may be justified. When a client department(s) determines that other than full and open competition is necessary or in the best interest of the County, appropriate justification for that course of action must be submitted to ISD-SPD for approval and execution in order to waive the competitive bid/proposal process. The provision of this form to a client department by ISD-SPD **does not** constitute a recommendation, nor does it imply that such request will be substantiated by ISD-SPD's independent evaluation or authorized to proceed as a non-competitive acquisition.

**Section B - To be completed by Client Department**

*Please provide the information requested below to support the need and feasibility for waiving the competitive bid/proposal process:*

Department:			
Project Manager Name:		Phone Number:	
Requisition No.:		*Allocation Request:	
Proposed Vendor:		Contract Term Request:	
Funding Source:			
Will Federal funds be used to support the requested allocation?: ____ Yes ____ No		Will PTP funds be used to support the requested allocation? : ____ Yes ____ No	
Previous Contract No.:		Previous Contract Value:	

\*Allocations may be proportionally adjusted should there be a change to contract term.

**Purpose of the Purchase**

*Please describe your minimum requirements and the benefits of making the acquisition.*

--



**INTERNAL SERVICES DEPARTMENT  
STRATEGIC PROCUREMENT DIVISION**

**Best Interest of the County/ Uniqueness of Product**

*Please provide a detailed description as to why a waiver of formal bidding is in the County's best interest (e.g., product standardization, compatibility, proprietary access or distributorship, how vendor is uniquely qualified to provide the needed product or service, etc.). Please note that a lack of advance planning is not an acceptable justification for a non-competitive acquisition.*

**Market Research**

*Please describe your market research and the results thereof. This should include a description of other, similar sources or products available in the market if any and why they are not acceptable.*

**Proposed Actions**

*Please describe the actions the department will take to overcome the present barriers to competition prior to any future acquisitions of this product or service.*

\_\_\_\_\_  
Department Director Name

\_\_\_\_\_  
Date Approved

\_\_\_\_\_  
Department Director Signature

**LEASE AND CONCESSION  
AGREEMENT**

**MIAMI-DADE COUNTY, FLORIDA**

**AND**

**ALCLEAR, LLC**

---

**REGISTERED TRAVELER SERVICES**

**AT**

**MIAMI INTERNATIONAL AIRPORT**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>Definitions</b>	<b>1</b>
<b>Article 1 – Term, Extension and Location(s)</b>	<b>5</b>
1.01 Term	5
1.02 Extension	6
1.03 Location(s)	6
1.04 Support Space	6
1.05 Not Used Storage Space	6
1.06 Common Warehouse System	6
1.07 Addition, Deletion and Modification of Location(s)	7
1.08 Non-exclusivity	8
1.09 Condition of the Location(s)	8
1.10 Capital Improvement Program	9
1.11 Request for Proposal Incorporated	9
1.12 TSA Approval	9
1.13 Concessionaire Liability for Security Violations	10
1.14 Order of Precedence	10
<b>Article 2 – Use of Location(s)</b>	<b>9</b>
2.01 Location(s)	9
2.02 Use of Location(s)	9
2.03 Concessionaire Services and Sales Rights	9
2.04 New Concepts	10
2.05 Scope of Services	10
2.06 Annual Marketing Plan Submission	13
2.07 Prohibited Activities	13
<b>Article 3 – Rentals, Payments and Reports</b>	<b>14</b>
3.01 Minimum Annual Guarantee	14
3.02 No Negotiations or Administrative Modifications	14
3.03 Recalculation of the Minimum Annual Guarantee	15
3.04 Percentage Fee to the Department	15
3.05 Not Used (Concession Category Percentage Fee)	16
3.06 Annual Rental	16
3.07 Annual Rental Rate Adjustment	16
3.08 Not Used - Common Warehouse Logistics Fee	16
3.09 Concession Marketing Fee	17
3.10 Performance Bond	17
3.11 Taxes	18
3.12 Reports of Gross Revenues	18
3.13 Other Reports	18
3.14 Late Payment	18
3.15 Dishonored Check or Draft	18

3.16 Address for Payments	19
3.17 Revenue Control Procedures	19
3.18 Annual Audit	19
3.19 Right to Audit/Inspect	20
3.20 Records and Reports	21
3.21 Additional Fees Due	22
3.22 Utilities	22
3.23 Damages	22
3.24 Payment Security	23
3.25 Accounts Receivable Adjustments	
3.26 Payment Card Industry Data Security Standard	
<b>Article 4 – Improvements to the Location(s)</b>	<b>23</b>
4.01 Improvements to Location(s)	23
4.02 Design of Improvements	24
4.03 Refurbishment of Location(s)	24
4.04 Certain Construction Contract Terms	24
4.05 Improvements Free and Clear	25
4.06 Other Requirements	25
4.07 Review of Construction	26
4.08 Cost Documentation	26
4.09 Not Used (Amortization Schedule)	27
4.10 Construction Permit Fee	28
4.11 Construction Services	28
4.12 Sustainable Buildings Program	
<b>Article 5 – Standards of Operation</b>	<b>30</b>
5.01 Standards of Operation	30
5	
<b>Article 6 – Obligations of the Department</b>	<b>31</b>
6.01 Department Services	31
<b>Article 7 – Furniture, Fixtures, and Equipment</b>	<b>33</b>
7.01 Furniture, Fixtures, and Equipment	33
7.02 Americans with Disabilities Act Requirements	33
7.03 Disposal of Furniture, Fixtures, and Equipment	33
<b>Article 8 – Maintenance</b>	<b>34</b>
8.01 Cleaning	34
8.02 Removal of Trash	34
8.03 Maintenance and Repair	34
8.04 Failure to Maintain	35
8.05 Environmental Recycling	35
8.06 Fire Protection and Safety Equipment	35

<b>Article 9 – Assignment and Ownership</b>	<b>35</b>
9.01 No Assignment	35
9.02 Ownership of the Concessionaire	36
9.03 Change of Control	36
9.04 Holdover	36
<b>Article 10 – Indemnification</b>	<b>37</b>
10.01 Indemnification Required of Concessionaire	37
<b>Article 11 – Insurance</b>	<b>37</b>
11.01 Insurance Required of Concessionaire	37
11.02 Certificate of Continuity	38
11.03 Insurance Company Rating Requirements	38
11.04 Concessionaire Liable	38
11.05 Cancellation of Insurance or Bonds	38
11.06 Right to Examine	39
11.07 Personal Property	39
11.08 Survival of Provisions	39
11.09 Indemnification, Construction Bonds and Insurance Required	39
<b>Article 12 – Default and Termination by County</b>	<b>42</b>
12.01 Events of Default	42
12.02 Payment Default	43
12.03 Other Defaults	43
12.04 Habitual Default	44
12.05 Notice of Default and Opportunity to Cure	44
12.06 Not Used (Unamortized Investment Extinguished)	44
12.07 Termination for Abandonment	45
12.08 Termination for Cause	
12.09 Termination for Convenience	45
12.10 Adequate Assurances	45
12.11 Actions at Termination	46
<b>Article 13 – Claims and Termination by Concessionaire</b>	<b>46</b>
13.01 Administrative Claim Procedures	46
13.02 Termination	46
<b>Article 14 – Airport Concession Disadvantaged Business Enterprise</b>	
14.01 Airport Concession Disadvantaged Business Enterprise Requirements	47
14.02 Counting ACDBE Participation toward Contract Goals	47
14.03 ACDBE Goal Achieved through Joint Venture (JV) Partnering	48
14.04 Certification-Airport Concession Disadvantaged Business Enterprise (ACDBE)	49
14.05 Affirmative Action and Airport Concession Disadvantaged Business Enterprise Programs	49
14.06 ACDBE Mentoring Assistance and Training Program	50

14.07xcvb	Airport
Concession Disadvantaged Business Enterprise Participation Plan	51
<b>Article 15 – Rules, Regulations and Permits</b>	<b>51</b>
15.01 Rules and Regulations	51
15.02 Violations of Rules and Regulations	52
15.03 Permits and Licenses	52
15.04 Not Used (Prohibition on Using products Containing Trans-fats R-456-07)	
15.05 Labor Peace Requirement–Resolution No. R-148-07	
15.06 Living Wage	47
15.07 Miami Dade Aviation Department Operational Directives	47
<b>Article 16 – Governing Law</b>	<b>52</b>
16.01 Governing Law; Venue	52
16.02 Notice of Commencement of Civil Action	52
16.03 Registered Office/Agent Jurisdiction	
<b>Article 17 – Trust Agreement</b>	<b>53</b>
17.01 Incorporation of Trust Agreement by Reference	53
17.02 Adjustment of Terms and Conditions	53
17.03 Inspections	54
17.04 Independent Private Sector Inspector General Review	54
17.05 Miami-Dade County Inspector General Review	54
<b>Article 18 – Other Provisions</b>	<b>55</b>
18.01 Payment of Taxes	55
18.02 Alterations by Concessionaire	55
18.03 Rights to be Exercised by Department	55
18.04 Administrative Modifications	55
18.05 Security	55
18.06 Rights of Department at Airport	55
18.07 Other Department Rights	55
18.08 Federal Subordination	56
18.09 Notices	56
18.10 Severability	57
18.11 Rights Reserved to Department	57
18.12 County Lien	57
18.13 Authorized Uses Only	57
18.14 No Waiver	57
18.15 Secured Areas/Airfield Operations Area (AOA) Sterile Areas Security	57
18.16 Intent of Agreement	60
18.17 Modifications	60
18.18 Radon Disclosure	60
18.19 Trademarks and Licenses	60
18.20 Headings	60
18.21 Binding Effect	60



18.22 Governmental Department	61
18.23 Independent Contractor	61
18.24 Other Liens	61
18.25 First Source Hiring Referral Program.....	
18.26 Right to Regulate	
18.27 E-Verify	
<b>Article 19 – Not Used (Subleases)</b>	<b>64</b>
 <b>Article 20 – Waiver of Claims</b>	 <b>61</b>
 <b>Article 21 – Required, General and Miscellaneous Provisions</b>	 <b>62</b>
21.01 Agreements with State of Florida and Miami-Dade County	62
21.02 Right to Amend	62
21.03 Concessionaire Covenants and Assurances	62
21.04 Right to Modify	64
21.05 Tax Exempt Status of Department Revenue Bonds	64
21.06 Remedies	65
21.07 Regulations of Department	65
21.08 Interest	65
21.09 Miscellaneous Provisions	65
21.10 Force Majeure	66
21.11 Aspirational Policy Regarding Diversity	67
21.12 Public Records and Contracts for Services Performed on Behalf of Miami-Dade County	
21.13 FAA Special Provisions	
21.14 U.S. Soccer Federation 2026 World Cup	
21.15 Vendor Registration / Conflict of Interest	
21.16 Entire Agreement	67
Signature Page	68

### **Attachments**

Exhibit A – Location(s)	
Exhibit B – Surety Performance and Payment Bond	
Exhibit C – Airport Concession Disadvantaged Business Enterprise Participation/Plan	
Exhibit D – Performance Bond	
Exhibit E – Retail Concessions Design Guidelines	
Exhibit F – Tenant Airport Construction-Non-Reimbursable Procedures (TAC-N) Tenant Airport Construction Reimbursable Procedures (TAC-R)	
Exhibit G – Independent Audit Report	
Exhibit H – *See note below	
Exhibit I – Monthly Report of Gross Revenues	
Exhibit J – List of Prohibited Items	
Exhibit K – Tenant Handbook	
Exhibit L – Standards of Operation	

\* The executed copies of the Affidavits and Condition of Award Certificates will be attached as Exhibit H.

DRAFT

## **DEFINITIONS AND ACRONYMS**

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

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

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

The term “**Airport**” or acronym “**MIA**” shall mean Miami International Airport.

The terms “**Airport Concession Disadvantaged Business Enterprises**” or acronym “**ACDBE**” shall mean a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations.

The term “**As-Is**” shall mean that the Concessionaire may receive a Location(s) that is not in a “prepared shell” (vanilla box) condition. Assumption of an As-Is space may require demolition and upgrade of infrastructure, at Concessionaire’s sole cost.

The terms “**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 Concessionaire for business, or when a Temporary Certificate of Occupancy or Certificate of Occupancy has been issued.)

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

The term “**Catchment Area**” shall mean Miami-Dade, Broward, Monroe, and Collier counties which Concessionaire is operating a similar Registered Traveler Service.

The term “**Certificate of Occupancy**” or acronym “**COO**” or “**Temporary Certificate of Occupancy** or acronym “**TCO**” shall mean the document issued by the appropriate code enforcement agency that enables the Concessionaire to occupy or utilize a location for revenue generating purposes.

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 known as Concourses E-G.

The term “**Class VI**” shall mean all other leasable revenue producing and concession space. Class VI shall specifically include space leased by Airlines for concession-type activities. A

single rental rate for this class will not be established, provided that the overall revenues produced for this class shall average per square foot at least \$88.75 or as adjusted every October 1st by the Board of County Commissioners.

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

The term “**Common Logistics Fee**” shall mean an amount to be invoiced as a separate line item and collected from the Concessionaire for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the Concessionaire may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient operation of the Retail Program. The Concessionaire will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

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

The term “**Concession**” shall mean the designated location or locations where the Concessionaire’s commercial operations take place.

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

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

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

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

The terms “**Department**” or “**MDAD**” shall mean the Miami-Dade Aviation Department. Wherein in this agreement, rights are reserved to the County, MDAD may exercise such rights.

The term “**FAA**” shall mean the United States Federal Aviation, and any successor agency, office or department thereto.

The words “**Gross Revenue(s)**” to mean all monies paid or payable to, or considerations of determinable value received by the Lessee for sales made, transactions had, or from Lessee members who enroll in any Lessee membership program, regardless of when, where or how, the membership is sold, less any applicable customer/membership refunds, or Services rendered in the operation of its business under this Agreement and from the subleasing of space or other portions of the Premises, regardless of when or where the order therefor is received, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value. A “sale” shall be deemed to have been consummated for

purposes hereof, and the entire amount of the sales price shall be included in Gross Revenues and deemed received at the time sales charges are assessed.

The following shall be excluded from the definition of Gross Revenues:

Losses from “bad” checks or credit card fee transactions will be the Lessee’s sole responsibility and shall not be excluded from Gross Revenue. Gross Revenue shall include all such sales, revenues or receipts generated by Lessee’s Subcontractors or anyone else conducting business pursuant to an arrangement with the Lessee. “Gross Revenue” shall also include any fees collected by the Lessee from retail concessions partners pursuant to a concessions facilitation partnership arrangement, in the event that Lessee’s locations at the Airport are utilized to market, sell, advertise, or promote the goods and services of such partners.

Gross Revenue shall also not include (i) any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, Gross Revenues taxes and other similar taxes and/or government-mandated user fees now or hereafter imposed by law upon the sale of merchandise and products or services to the extent paid by the Lessee to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to the Lessee and such charges are merely an accommodation to customers; (iv) discounts given by the Lessee on sales of memberships; (v) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Lessee’s record keeping system or have been recognized as income; (vi) the sale or transfer in bulk of the inventory of the Lessee to a purchaser of all or substantially all of Lessee’s assets in a transaction not in the ordinary course of Lessee’s business; and (vii) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in the definition of Gross Revenues, receipts from all other insurance proceeds received by the Lessee as a result of a loss or casualty at the Airport.

The term “Gross Receipts” shall mean and include all monies paid or payable to Concessionaire, whether for cash, credit or otherwise, from Concessionaire members who enroll in Concessionaire’s biometrics-based Registered Traveler program, for which the enrollee provides an address within the Catchment Area, regardless of when, where or how, the membership is sold, less any applicable customer/membership refunds. Gross Receipts shall also include all monies paid to Concessionaire from all new enrollees who physically enroll at MIA and do not reside in the Catchment Area, except those that Concessionaire demonstrates have an enrollment residence address that falls within the Catchment Area of another municipality or airport authority operating a Registered Traveler or similar Services contracted through Concessionaire. A “sale” shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time sales charges are assessed on a membership account by Concessionaire. Losses from “bad” checks or credit card fee transactions are Concessionaire’s sole responsibility and shall not be excluded from Gross Receipts. Gross Receipts shall include all such sales, revenues or receipts generated by Concessionaire’s subcontractors or anyone else conducting business pursuant to an arrangement with Concessionaire. “Gross Receipts” shall also include any fees collected by Concessionaire from retail concessions partners pursuant to a concessions facilitation partnership

arrangement, in the event that Concessionaire's locations at the Airport are utilized to market, sell, advertise, or promote the goods and services of such partners.

Gross Receipts shall not include revenues generated from the replacement of member cards, Gross Receipts shall also not include (i) any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes and/or government-mandated user fees now or hereafter imposed by law upon the sale of merchandise and products or services to the extent paid by Concessionaire to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to Concessionaire and such charges are merely an accommodation to customers; (iv) discounts given by Concessionaire on sales of memberships; (v) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Concessionaire's recordkeeping system or have been recognized as income; (vi) the sale or transfer in bulk of the inventory of Concessionaire to a purchaser of all or substantially all of Concessionaire's assets in a transaction not in the ordinary course of Concessionaire's business; and (vii) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in the definition of Gross Receipts, receipts from all other insurance proceeds received by Concessionaire as a result of a loss or casualty at the Airport.

The term "**Lease Effective Date**" shall mean the date entered on the Recitals of this Agreement.

The term "**Living Wage**" shall mean those wages paid to the Concessionaires employees pursuant to Section 2-8.9 of the Code of Miami-Dade County, and Administrative Order No. 3-30, as amended. The Concessionaire shall also ensure that its subcontractors comply with the order in respect to their employees.

The term "**Location(s)**" shall mean the concession areas as depicted on Exhibit A, "Location(s)".

The words "**Percentage Fee of Total Gross Revenue**" or "**Percentage Fee**" shall mean the amount paid by the Concessionaire, which is determined by multiplying the total monthly Gross Revenues by the percent as further defined in the Agreement under Article 3.04- Payment to the County, in the Agreement.

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 previously known as Concourses A-D.

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

The term "**Shell Condition**" shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) which may not be within the lease

area of the Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts (“HVAC”), fire alarm system and fire sprinkler system.. **[Note: Location in this agreement is considered to be “AS IS.”]**

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 known as Concourses H and J and connecting concession and public locations.

The term “Subcontractor” 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 to the County, whether directly or indirectly, on behalf of the Concessionaire.

The term “**State**” shall mean the State of Florida.

The term “United States Transportation Security Administration” or “TSA” shall mean an administration within the Department of Homeland Security 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 term “**Services**”, shall mean all matters and things that will be required to be done by the Concessionaire in accordance with the Scope of Services, and the terms and conditions of this Agreement.

**LEASE AND CONCESSION AGREEMENT  
FOR A NON-EXCLUSIVE  
AT  
MIAMI INTERNATIONAL AIRPORT**

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (Lease Effective Date), by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and Alclear, LLC, (“Concessionaire” or “CLEAR”), a Delaware 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 Department desires to provide Traveler Registered Services for passengers who are members of CLEAR, which will free existing security check lanes for other passengers; and

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



## ARTICLE 1 – TERM, EXTENSION AND LOCATION(S)

- 1.01 TERM:** The Department leases to the Concessionaire the Location, Exhibit A, commencing upon the Lease Effective Date of this Agreement; and shall expire on the fifth (5<sup>th</sup>) year unless extended or sooner terminated.

The Agreement is subject to subsequent long term lease approval by the Federal Aviation Administration (FAA); in the event that the FAA determines that this lease is (1) both a long term exclusive lease and (2) such lease is not approved by the FAA, the term of this Lease shall be deemed to be five (5) years from the Lease Effective Date.

In no event shall this Agreement afford Concessionaire or any other party any right to use or occupy the Location (or any part thereof) after the expiration, or termination of this Agreement.

- 1.02 EXTENSION:** The County reserves the right to extend the Agreement on a month-to-month basis for so long as may be needed to avoid disruption of concession services to passengers in accordance with Section 2-286.1(8) of the Miami-Dade County Code. In the event the Concessionaire is in default, pursuant to **Article 12 “Default and Termination by County”** of the Lease and Concession Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

- 1.03 LOCATION(S):** The Department hereby provides to the Concessionaire the Location(s) as depicted in Exhibit A, Location(s).

- 1.04 SUPPORT SPACE:** In addition to the Location provided to the Concessionaire in **Sub-Article 1.03 “Location”**, the Department may provide Support Space to the Concessionaire. Provision of the Support Space is at the sole discretion of MDAD, and MDAD does not guarantee that Support Space is available, or if available, is suitable for the needs of the Concessionaire. Lack of Support Space shall not excuse the Concessionaire from its obligations under this Agreement. The Concessionaire shall pay monthly rental payments for the spaces as provided for in **Sub-Article 3.06 “Annual Rental”**.

- 1.05 NOT USED (STORAGE SPACE)**

- 1.06 NOT USED (COMMON WAREHOUSE SYSTEM)**

- 1.07 ADDITION, DELETION AND MODIFICATION OF LOCATION(S):** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Location(s) pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Location(s) in **Sub-Articles 1.03 “Location(s)”**, **1.04 “Support Space”**, and total payments due the Department in accordance with **Article 3, “Rentals, Payments and Reports”** and **Article 2 “Use of Location(s)”**.

- A. ADDITION OF LOCATION(S):** If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for concession development pursuant to the scope in this Agreement, the Department may, but is not required to, offer such additional Location to the Concessionaire upon written notification. The Concessionaire will have thirty (30) Days to submit a written response accepting or rejecting the additional Location.
- B. ADDITION OF TEMPORARY LOCATION(S):** The Department reserves the right to require the Concessionaire to provide, and cause to be operated, temporary locations. Any rents and/or additional fees for these locations are subject to the terms of this Agreement. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.
- C. DELETION OR MODIFICATION OF LOCATION(S):** The Department reserves the right, at its sole discretion, to delete or modify any of the Location(s), or any administrative support space(s) due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Concessionaire shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Concessionaire for any inconvenience or loss of business as a result of the deletion or modification of any Location(s) or other space pursuant to this Sub-Article.

- 1.08 NON-EXCLUSIVITY:** This Agreement is non-exclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other Concessionaires and/or others in other locations at the Airport during the Term, and any Extension of this Agreement.
- 1.09 CONDITION OF THE LOCATION(S): CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATION(S) 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 LOCATION(S)** including: (i) the quality, nature, adequacy and physical condition and aspects of the Location(s), including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Location(s); (iii) the development potential of the Location(s), the use of the Location(s), and the habitability, merchantability, or fitness, suitability, value or adequacy of the Location(s) for any particular purpose; (iv) the zoning or other legal status of the Location(s) or any other public or private restrictions on use of the Location(s); (v) the compliance of the Location(s) 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 Location(s); (vii) the quality of any labor and materials used in any improvements on the Location(s); (viii) the condition of title to the Location(s); (ix) the agreements affecting the Location(s); and (x) the Proposal submitted by Concessionaire to the Department, including any statements relating to the potential profitability of such Proposal. Concessionaire represents and warrants that it has made an independent investigation of all aspects of its Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Concessionaire has satisfied itself as to such suitability and other pertinent matters by the Concessionaire's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Concessionaire accepts the Location(s) in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Location(s) to the requirements of applicable law, the Concessionaire assumes sole responsibility for any such service.

Without limiting the preceding, the Concessionaire is additionally advised the passenger traffic, terminal utilization, and airline locations at Miami International Airport may change over the course of this Agreement. The County shall not be liable for any decrease in profitability or increase in costs to Concessionaire on account of same, nor shall such causes relieve Concessionaire of its obligations under this Agreement.

**1.10 CAPITAL IMPROVEMENT PROGRAM:** The Capital Improvement Program (CIP) involves the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Location(s), 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 Location(s), and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM AND ANY EXTENSION OF THIS AGREEMENT.**

**1.11 NOT USED - REQUEST FOR PROPOSAL INCORPORATED**

**1.12 TSA APPROVAL**

Concessionaire acknowledges and agrees that: [i] it will not be able to continue the Registered Traveler Service under this Agreement unless they actively maintain the appropriate documentation from the County and TSA authorizing such services; [ii] the County is a "non-Federal Government customer" of Concessionaire for purposes of the SAFETY Act; and [iii] Concessionaire has been Certified as Qualified Anti-Terrorism Technology under the SAFETY Act.

The County and Concessionaire additionally agree that an amendment to the Airport's Airport Security Plan may be required as needed. Should the Airport Security Plan require amending, the Department and Concessionaire will cooperate with each other in compiling a proposed revised ASP Amendment for presentation to the County's local Transportation Security Administration office.

If any of these conditions are not met, this Agreement shall be voidable in the discretion of the County, and the County will not be responsible for any costs incurred by Concessionaire pursuant to, arising out of, or incidental to this Agreement.

### **1.13 CONCESSIONAIRE LIABILITY FOR SECURITY VIOLATIONS**

Concessionaire acknowledges that its actions or omissions may create liability on the part of the County with respect to various Federal regulations governing airport security, border protection, or the movement of persons. Accordingly, Concessionaire expressly agrees that it shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, including but not limited to administrative actions brought by the TSA, CPB, or other Federal agency, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to violations of any Federal law or regulation relating to airport security, border protection, or movement of person resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners, principals or any other persons. The Concessionaire shall pay all claims and losses in connection therewith, including all fines or penalties issued pursuant to any administrative proceeding, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

### **1.14 ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions and any supplemental agreements.

## **ARTICLE 2 – USE OF LOCATION(S)**

**2.01 LOCATION(S):** The Location(s) as outlined in Exhibit A, "Location(s) " shall be used solely for their assigned and approved concept. Failure to maintain the concept category pursuant to **Article 2 "Use of Location(s)"** may result in Damages as indicated in **Sub-Article 3.23 " Liquidated Damages"**.

**2.02 USE OF LOCATION(S):** The Concessionaire shall have the right, privilege, to develop, lease, market, manage, operate and maintain the Location(s), depicted in Exhibit A, "Location(s) ", for the purpose of providing Registered Traveler services as approved by the Department.

If Concessionaire is in violation of any law, rule, or regulation, the County may require Concessionaire to comply with same, irrespective of the failure of an Authority Having Jurisdiction to issue a citation, notice to cure, or other advisory document.

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

included in this Agreement. Any such sales by the Concessionaire of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Concessionaire shall discontinue the sale or service not approved in the scope of services included in this agreement immediately, upon written notice from the Department. Failure by Concessionaire to discontinue such sales within twenty-four (24) hours shall subject the Concessionaire to Damages pursuant to **Sub-Article 3.23 “Liquidated Damages”**. The proposed new product or services as agreed to by the Department and the Concessionaire will be reflected in a revised Exhibit A, a revised negotiated Percentage Fee as applicable for the category as provided for in **Article 3 “Rentals, Payments and Reports”**, and a revised **Article 2 “Use of Location(s)”**.

## **2.04 NOT USED - NEW CONCEPTS**

**2.05 SCOPE OF SERVICES:** The Concessionaire hereby agrees that it will finance, design and construct, lease, manage, operate and maintain the Location(s) depicted in Exhibit A, “Location(s)”, for the purpose of establishing high quality, state of the art Registered Traveler Services as approved by the Department. The Concessionaire will perform as follows:

The Concessionaire shall design a Registered Traveler Program and submit initially and thereafter annually a merchandising queuing and layout plan to be used at MIA. The Concessionaire will be responsible for updating the plan as necessary throughout the Term, and any Extension of this Agreement.

The Concessionaire will staff its operations with a manager, supervisors and a team trained in the Concessionaire enrollment, verification, sales and other operations procedures. Below are detailed descriptions of the Concessionaire’s primary services and operations:

1. **Enrollment:** Kiosk enrollment stations are to be located in visible areas of the terminal near the security checkpoint(s). The Concessionaire’s staff be uniformed, badged, and hospitality- and security-trained. Staff shall greet travelers and invite them to learn more about the Traveler Service in order to promote the traveler to join the program. Interested travelers are then guided through the processes which include identity validation, collection of biometrics (iris, fingerprint, face, etc.), and payment. Travelers may enroll entirely on Concessionaire’s kiosk in the Airport, or partially ahead of time on their mobile devices or computer browser and then complete the process at the Airport kiosk.
2. **Verification:** The Concessionaire will establish dedicated lanes, including biometric verification and enrollment stations lanes at locations mutually determined by the Concessionaire and MDAD. The Concessionaire’s technology shall automate the TSA TDC function at multiple airport security checkpoints. The Concessionaire’s staff shall greet travelers at the entrance to the lane and invite them to use the biometric of their choice (iris or fingerprint) to verify the person eligibility.

The Concessionaire’s staff will verify the eligibility of the traveler, except as specified by MDAD, TSA or the applicable ASP Amendment. Once verified, travelers will proceed to the TSA TDC for a “confer and concur” process and then on to the TSA’s physical screening process.

3. **Other Duties:**

1. CLEAR will establish dedicated CLEAR lanes, which include biometric verification lanes and in many cases enrollment stations, at locations mutually determined by CLEAR and Miami. CLEAR's technology automates the TSA Travel Document Checker function at the airport's security checkpoints.

CLEARThe Concessionaire will follow the following Airport-approved protocols (which are subject to change in the discretion of the County):

- i. Name of passenger as recorded in the Concessionaire's CLEAR database matched against name on boarding pass per ASP Amendment guidelines
- ii. Boarding pass checked for special markings that impact the process, such as the SSSS
- iii. All travel document validations required per the ASP Amendment are performed
- iv. The identity is verified at the kiosk via biometric match
- v. The passenger who positively completes this process is then guided to the security screening area.

#### 4. Security Certification

During the term of this Agreement, the Concessionaire will maintain and provide to the County updated copies of the Qualified Anti-Terrorism Technology certification issued by the U.S. Department of Homeland Security (DHS) under the SAFETY Act.

#### 5. Customer Service Process

The Concessionaire shall provide MDAD with emergency telephone numbers of Concessionaires staff that shall be available on a 24-hour basis.

A Concessionaire's manager shall be available to speak to customers and support other staff with customer feedback and/or complaints during all times of operation. The Concessionaire staff stationed in the Kiosk(s) stations can escalate any concern or issue to our Member Care Support team. Members may also seek support at [clearme.com/support](http://clearme.com/support) or contact Member Care directly via chat, email, or phone. The Concessionaire shall regularly survey the member experience and respond to member feedback for their respective locations daily.

#### 6. Related Cost

The Concessionaire shall assume all costs related to the described responsibilities to conduct Registered Traveler operations, including services, equipment, personnel, facilities, and removal of equipment and related materials when operations are terminated at a site.

#### 7. **Communication**

- a. The Concessionaire shall participate in regular meetings as scheduled and facilitated by the Project Manager. These meetings are designed to continuously improve the Traveler Service through regular communication of operational performance, security protocols, general airport updates, and other information

- b. The Concessionaire will ensure that the Project Manager is advised of information related to the Traveler service that may affect operational and revenue performance which may include, but is not limited to, promotions and discounts offered by the Concessionaire.
- c. The Concessionaire shall immediately report any violation of the Airport Security Program to the Project Manager or designee.

**8. Area Soliciting, Advertising, Checkpoint Design**

- a. No soliciting for any purpose, other than the Services specified in this Agreement will be permitted by the Concessionaire or staff.
- b. Any posted advertising of the Concessionaire's service must be approved in advance by MDAD.

**9. Inspections and Observations**

- a. Authorized representatives of MDAD or TSA may conduct Inspections and observations within the Location(s) to ensure compliance with the Scope of Services and requirements of this Agreement.
- b. Inspections may include observations and tests of the enrollment process, verification of the units, dedicated lane, personnel, and other performance to evaluate the Concessionaire operating standards including but not limited to: cleanliness, signage, etc.

**10. Training**

The Concessionaire shall be responsible for creating a training curriculum which must be approved annually by TSA in order to provide these Services.

**11. Hours of Operations**

The Concessionaire shall have a minimum of one (1) employee at each Kiosk to assist travelers with verification and enrollment during the time a Terminal security checkpoint is operational (day and/or night). Each Kiosk(s) must be opened to travelers 90 minutes prior to the scheduled airline departure. In consultation with the airlines and the TSA, the County reserves the right to modify the hours of operation.

**2.06 ANNUAL MARKETING PLAN SUBMISSION:** The Department may request a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) Days prior to the upcoming fiscal year for the Department (October 1 – September 30). The Department shall have ninety (90) Days after receipt of the foregoing plan to approve or disapprove the same at its discretion. If MDAD disapproves the plan, the Concessionaire shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

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

- 2.07 PROHIBITED ACTIVITIES:** Without limiting any other provision herein, Concessionaire 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 Location(s), or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA terminal building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA terminal building; (c) commit or suffer to be committed any waste upon the Location(s); (d) use, or allow the Location(s) to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport; or utilize or permit the utilization of the Location(s) in any manner inconsistent with any security regulation of the County, State, or Federal governments. 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 MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

### **ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS**

#### **3.01 NOT USED (MINIMUM ANNUAL GUARANTEE)**

- 3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS:** The Concessionaire understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of **Sub-Article 3.04 "Percentage Fee to the Department"** is not subject to negotiation or adjustment for any reason other than those contained elsewhere in this Agreement, 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 nature or an event of force majeure as such term is defined in **Sub-Article 21.10 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term, and any Extension of this Agreement. If the Concessionaire's Location(s) are so damaged as to significantly impact the Concessionaire's operations for a period in excess of seventy-two (72) hours, the Department shall provide a proportionate abatement of the Annual Rent for that portion of the Location(s) 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 NOT USED (RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE)**

#### **3.04 PERCENTAGE FEE TO THE DEPARTMENT:**

The Concessionaire shall pay the Department fourteen percent (14%) of the Gross Revenues for Clear Travelers registered within Miami-Dade, Monroe, and Collier Counties. Concessionaire shall pay the Department a Percentage Fee of ten percent (10%) of the Gross Receipts for all Travelers registered from Broward County. The Concessionaire shall pay the Department within twenty (20) days after the expiration of



each calendar month. CLEAR represents that it is and will remain capable of providing comprehensive electronic records from its data warehouse, in a format acceptable to MDAD, of aggregated daily, monthly and annual verifications for each CLEAR kiosk under this Agreement., Concessionaire shall support new applicant registrations at MIA and maintain a compiled report of transactions by zip code, traveler identification numbers, transaction date/time, and registration kiosk identifiers.

The Monthly Percentage Fee payments to the Department shall commence upon the Lease Effective Date.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.18 “Annual Audit”**, are considered as having been due on the tenth (10<sup>th</sup>) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

Within thirty (30) days of each twelve (12) month anniversary of Lease Effective Date, Concessionaire will calculate the Member Verification True Up Amount. If Member Verification True Up Amount is greater than the sum of the Percentage Rent over the prior twelve (12) months, Concessionaire will pay Miami-Dade the difference between the Member Verification True Up Amount and the sum of the Percentage Rent over the prior twelve months

(b)“Member Verification True Up Amount” will equal \$2.00 times Unique Member Verifications during the prior 12 months.

(c)“Unique Member Verification” means a unique biometric verification of a CONCESSIONAIRE member performed at CONCESSIONAIRE lanes at Miami International in a particular period, as measured by CONCESSIONAIRE’s automated data warehouse. For clarity, Unique Member Verifications do not include (a) duplicate transactions; (b) CONCESSIONAIRE employee verifications; (c) verifications made for testing or quality control purposes; (d) demonstration verifications.

### **3.05 NOT USED (CONCESSION CATEGORY PERCENTAGE FEE)**

**3.06 ANNUAL RENTAL:** Solely in the event that payments pursuant to Section 3.04 above are not sufficient to cover the rent for the Locations, the Concessionaire shall be required to pay the prevailing Class VI Terminal rental rates for the lease of the Location(s), prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, with any payment received pursuant to Section 3.04 being applied towards such rental payment. In the event that payments pursuant to Section 3.04 are in excess of rent for the Locations, such payment shall be deemed to include rent and no further rent payments shall be required.

The Concessionaire shall be required to pay the prevailing Class VI Terminal rental rates for Support Space which includes administrative and/or support space. Payments shall commence on the beneficial occupancy date.

**3.07 ANNUAL RENTAL RATE ADJUSTMENT:** On October 1st of each year of the Agreement, the cost based rental rates, pursuant to **Sub-Article 3.06, "Annual Rental"**, applicable to the Location(s) rented hereunder, shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. 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 (10) Days of same.

**3.08 NOT USED (COMMON WAREHOUSE LOGISTICS FEE)**

**3.09 NOT USED CONCESSION MARKETING FEE**

**3.10 PERFORMANCE BOND:** Within thirty (30) Days of the Lease Effective Date of this Agreement, the Concessionaire shall provide the Department a Performance Bond to guarantee payment of the percentage fees and Annual Rent for the Location(s), and if any, of rental for the lease of support space(s). 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 or other security instrument shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney

The amount of the Performance Bond or other security instrument shall initially be in an amount equal to seventy-five percent (75%) of the percentage fee revenue paid to MDAD for FY 19/20. Thereafter, the amount of the Performance Bond shall be adjusted as necessary to reflect any increases in percentage fees paid to MDAD for the previous fiscal year and rental of the Locations, and support spaces.

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

the payment security instrument will be returned to Concessionaire within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

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

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

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

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

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

- C. For bonds in excess of \$500,000 the above provisions will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

- D. The attorney-in-fact or other officer who signs the bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

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

The Bonds shall be delivered to the Department as indicated above.

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

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

- 3.11 TAXES:** The Concessionaire shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, Damages and charges levied thereon. The Concessionaire hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and Damages payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.
- 3.12 REPORTS OF GROSS REVENUES:** On or before the tenth (10<sup>th</sup>) Day following the end of each month throughout the Term and any Extension of this Agreement, the Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using **Exhibit I “Monthly Report of Gross Revenues.”** The report shall list each Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04 “Percentage Fee to the Department”**. The Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Concessionaire. The statement must be signed by an officer (if the Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Concessionaire, and identify all Gross Revenues by Location reported to the Concessionaire during such month. Failure to provide the Monthly Report of Gross Revenues by the tenth (10<sup>th</sup>) day shall result in a late fee Damage of fifty dollars (\$50.00) per Day to a maximum of \$750 a month, as provided in **Sub-Article 3.23 “Liquidated Damages.”**
- 3.13 OTHER REPORTS:** The Concessionaire shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) Days written notice of the format and frequency required for said financial data and operating statistics.
- 3.14 LATE PAYMENT:** In the event the Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.

- 3.15 DISHONORED CHECK OR DRAFT:** In the event the Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service fee of TWENTY-FIVE DOLLARS (\$25.00), if the face value of the dishonored check or draft is fifty dollars (\$50.00) or less, THIRTY DOLLARS (\$30.00) if the face value of the dishonored check or draft is more than fifty dollars (\$50.00) and less than three hundred dollars (\$300.00), or FORTY DOLLARS (\$40.00), if the face value of the dishonored check is three hundred dollars (\$300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus Damages imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.
- 3.16 ADDRESS FOR PAYMENTS:** The Concessionaire shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:
- By Mail:** Miami-Dade Aviation Department  
Finance Division  
P.O. Box 592624  
Miami, Florida 33152-6624
- By Express Mail:** Miami-Dade Aviation Department  
Finance Division  
4200 N.W. 36<sup>th</sup> Street  
Building 5A, Suite 300  
Miami, Florida 33122
- By Wire Transfer:** In accordance with Wire Transfer instructions provided by MDAD's Finance Division, 305-876-7383.
- By Online Payment:** Via the MIA-Pay website ([www.miami-airport.com](http://www.miami-airport.com)) by setting up user and password with an accurate invoice number.
- 3.17 REVENUE CONTROL PROCEDURES:** Notwithstanding anything to the contrary contained herein, the Concessionaire shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Concessionaire with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Concessionaire to implement any such revenue control procedures.
- 3.18 ANNUAL AUDIT:** Within 90 Days of each calendar year end anniversary of the Lease Effective Date of this Agreement and within 90 Days following expiration or earlier termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees containing an opinion, prepared and attested to by an independent certified public accounting firm licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this

Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department. If such schedules indicate that the percentage fees for such period audited have been underpaid, the Concessionaire shall submit payment therefore within forty-five (45) days after the completion of the reports to the Department as stated in **Sub-Article 3.16 “Address for Payments”** together with interest on any underpaid percentage fees at the rate set forth in **Sub-Article 3.14 “Late Payment”**.

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

If it is established that the percentage of Gross Revenues have been underpaid to the Department, the Concessionaire shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.14 “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 principles or standards.

**3.20 RECORDS AND REPORTS:** The Concessionaire shall, at all times during the Term and any Extension hereof and in accordance with applicable law, maintain at the Concessionaire's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Location(s) 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. [reserved]
2. Concessionaire's bank account statements;
3. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues, 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 "Transaction Reports"; and
4. A monthly statement detailing each online transaction, including bookings, amounts, sales etc.
5. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Concessionaire's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, including the general ledger and bank statements and all Federal, state and local tax returns, shall be made available, either at the Location(s), 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 Location(s) will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Concessionaire's business.

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

**3.22 UTILITIES:** The cost of all utilities used or consumed on the Location(s) shall be included with the annual rent paid by the Concessionaire. The Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

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

<b>Violation</b>	<b>Fee</b>
Violation of Permitted Use of a Location	\$ 100 per Day/per Location
Failure to Maintain Required Hours of Operation	\$ 25 per hour/per Location
Failure to Submit Required Documents and Reports*	\$ 50 per Day/per Report*
Unauthorized Advertising/Product Sale	\$ 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 Location(s)	\$ 50 per Day/per Location
Violations of other terms and conditions	\$ 75 per Day/per Location

\*Up to \$750 a month

The foregoing is due and payable from the Concessionaire.

**3.24 PAYMENT SECURITY:** Within thirty (30) Days of the Lease Effective Date of this Agreement, the Concessionaire shall provide the Department with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an initial amount equal to twenty-five percent (25%) of the percentage fee revenue paid to MDAD for FY 19/20. The payment security shall be kept in full force throughout the Term and any Extension(s) of this Agreement thereof. The Department may draw upon such payment security instrument if the Concessionaire fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Concessionaire shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. Thereafter, the



amount of the Payment Security shall be adjusted as necessary to reflect any increases in percentage fees paid to MDAD for the previous fiscal year and lease of the Locations, and/or support space. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) shall constitute a default of this Agreement as set forth in **Sub-Article 12.02 “Payment Default”**, entitling Department to all available remedies.

**3.25 ACCOUNTS RECEIVABLE ADJUSTMENTS:** In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Concessionaire to the County, whether under this Agreement or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Concessionaire under this Agreement. Such retained amount shall be applied to the amount owed by the Concessionaire to the County. The Concessionaire shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Concessionaire for the applicable payment due herein.

**3.26 PAYMENT CARD INDUSTRY DATA SECURITY STANDARD:** Concessionaire must maintain compliance with the Payment Card Industry Data Security Standard (**PCI DSS**), which is a set of requirements designed to ensure that ALL companies that process, store or transmit credit card information maintain a secure environment.

**3.27 SHARED TENANT SERVICES:** MDAD reserves the right to require Concessionaire to utilize Shared Tenant Services during the term of this Lease on a paid subscription basis. Concessionaire shall: (1) limit the access to only the area within the Licensed Area; (2) not interfere with any other equipment of the Miami Dade Aviation Department or other tenants or Concessionaire; (3) have the sole responsibility, at its own cost and expense, for fully complying with any and all applicable present and future rules, regulations, Policies, restrictions, ordinances, statutes, laws and or orders of any state, local or federal government; and (4) comply at its own sole cost and expense with all applicable present and future privacy laws from any governmental organization (US or foreign) as may be amended from time to time. Concessionaire shall be solely responsible for any and all civil or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, ordinances, statutes, laws and or orders.

The Concessionaire shall sign Exhibit R - Telecommunications Systems / Services – Airport Rental Agreement, within seven (7) days of the executed Agreement date, in order to comply with the Shared Tenant Services requirement.

#### **ARTICLE 4 – IMPROVEMENTS TO THE LOCATION(S)**

**4.01 IMPROVEMENTS TO LOCATION(S):** The Concessionaire shall be required to invest, for approved improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for each Location listed in Exhibit A and any additional location taken by the Concessionaire pursuant to Sub-article 1.07A) “Addition of Location,” a sum equal, on a square foot basis, with that invested by

CLEAR at other U.S. airports, including San Francisco (SFO). The investment sum on a square foot basis shall not be less than \$75.00 per square foot.

Any and all improvements to Location(s) will be performed in accordance with the Exhibit F, **“Tenant Airport Construction – Non-Reimbursable Procedures TAC-N and TAC-R” as amended.**

## **ARTICLE 5 – STANDARDS OF OPERATION**

**5.01 STANDARDS OF OPERATION:** The Concessionaire shall comply with the Department’s “Tenant Handbook”, Exhibit K; the “Standards of Operations”, Exhibit L, the “MIA Terminal Standards” (MDAD will make available upon request), 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 Location(s), 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, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

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

The Concessionaire acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Location(s) 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 Location(s), pursuant to Exhibit L “Standards of Operation”, as may be amended from time to time.

**5.02 NOT USED - MARKET BASKET/COMPETITIVE PRICING POLICY:**

## **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 Location(s). 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 Location(s) 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) 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 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 Location(s).
- C. All maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Concessionaire's Location(s) 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 or license agreement, the Department may provide a rent abatement for that portion of the Location(s) rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.
- D. No Other Obligation of Department: The Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability of the Location(s) 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 Location(s) or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Location(s) 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, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Concessionaire to operate from the Location(s) hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Concessionaire by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.
3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Location(s) or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Concessionaire under or in connection with this Agreement.
4. The Department shall not be liable to the Concessionaire for any loss of business or damages sustained by the Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

## **ARTICLE 7 – FURNITURE, FIXTURES AND EQUIPMENT**

- 7.01 FURNITURE, FIXTURES, AND EQUIPMENT:** Any equipment, furnishings, fixtures and signs installed in the Location(s) 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 the Location(s)”**, shall, except as provided in **Sub-Article 7.03(B) “Disposal of Furniture, Fixtures, and Equipment”**, be removed from the Location(s) 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 Location(s) and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to applicable 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’ location(s). 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 location(s) to comply with the Department's ADA obligations with respect to the Location(s), as the Department in its sole discretion deems reasonably necessary.

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

- (A) Require the Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Location(s) within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 "Improvements to Location(s)";** 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 Location(s)";**) 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 Location(s) clean, neat, orderly, sanitary and presentable at all times. If the Location(s) are not kept clean as provided in the Standards of Operation, Exhibit L, the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in Damages being assessed pursuant to **Sub-Article 3.23 "Liquidated Damages"**.

**8.02 REMOVAL OF TRASH:** The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Location(s) 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 service within the Location(s), such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. Any trash left or stored in any area visible to the public or edible items not properly contained may result in Damages being assessed pursuant to **Sub-Article 3.23 "Liquidated Damages"**.

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

**8.03 MAINTENANCE AND REPAIR:** Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Location(s). 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 the obligation of the Concessionaire. The Concessionaire shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Location(s) to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Location(s), or with appropriate notice, enter upon the Location(s), 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 may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Location(s) and perform such maintenance and charge Concessionaire for such services, as provided by **Sub-Article 8.04 "Failure to Maintain"**.

**8.04 FAILURE TO MAINTAIN:** Upon failure of the Concessionaire or its Sub-tenants to maintain the Location(s) as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Location(s) and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Concessionaire, in addition to any Damages imposed by the Department pursuant to **Sub-Article 3.23 "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 or its Sub-tenants is the sole responsibility of the Concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other Federal or local regulatory agency.

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

## **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 Location(s), 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, upon a change in ownership constituting a transfer or, sale of majority ownership or control (deemed to mean more than fifty percent (50%) of the stock) of the Concessionaire, the Department shall have the right to terminate this agreement without further obligation.
- 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”** and shall be subject to the provisions of **Sub-Article 9.01 “No Assignment”**. If the Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Concessionaire (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this **Article 9 “Assignment and Ownership”** and shall be subject to the provisions of **Sub-Article 9.01 “No Assignment”**.
- 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.

In addition, the Concessionaire shall pay the percentage of Gross Revenues as outlined in **Sub-Article 3.04 “Percentage Fee to the Department”**, 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 Location(s) 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 Location(s) a sum, at a rate equal to two times (2x) the monthly Percentage Fee (the “Holdover Charges”). PLUS monthly lease rental pursuant to **Sub-Article 3.05 “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 County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney’s fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners, principals or any other persons. The Concessionaire shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney’s fees which may issue thereon.

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



limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. **Without limiting the preceding, Concessionaire expressly agrees that the provisions and obligations of this section apply to claims, including administrative claims, involving identify theft, data theft, data breaches, commercial fraud, and all other similar claims or causes of action.**

## **ARTICLE 11 – INSURANCE**

**11.01 INSURANCE REQUIRED OF CONCESSIONAIRE:** Within thirty (30) Days of the Lease Effective Date 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 upon review and approval of the Concessionaire's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

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

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

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

- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$300,000\* per occurrence for Bodily Injury and Property Damage combined.

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

**11.02 CERTIFICATE OF CONTINUITY:** The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with **Article 11 "Insurance"** remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the

Concessionaire shall be responsible for submitting new or renewed insurance certificates for its operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

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

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

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

or

The company must hold a valid Florida Certificate of Authority 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 Financial Services.

**NOTE: CERTIFICATE HOLDER MUST READ:**      **MIAMI-DADE COUNTY**  
   **111 NW 1<sup>st</sup> STREET**  
   **SUITE 2340**  
   **MIAMI, FL 33128**

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

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

**11.06 RIGHT TO EXAMINE:** The Department reserves the right, upon reasonable notice to examine the original policies of insurance of the Concessionaire (including but not limited to binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit or cause to permit such inspection at the offices of the Concessionaire. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire agree to provide copies to the Department, at the Concessionaire's sole cost and expense.

**11.07 PERSONAL PROPERTY:** Any personal property of the Concessionaire or of others, placed in the Location and support spaces shall be at the sole risk of the Concessionaire

or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

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

**11.09 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:**

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

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

- B. **Surety Performance and Payment Bonds:** Pursuant to and in accordance with Section 255.05, Florida Statutes, the Concessionaire or each contractor performing any part of the Service for the Concessionaire shall obtain and thereafter at all times during the performance of the Service maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the “Bond”) in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit “B”, Surety Performance and Payment Bond”. Prior to performing any portion of the

Service, the Concessionaire shall deliver to County the Bonds required to be provided by Concessionaire or each contractor as set forth in this Agreement.

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

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

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

- a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.
- b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
- c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.
- d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.
- e) For contracts in excess of \$500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- g) The attorney-in-fact or other officer who signs an Exhibit B, "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

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

The Bond shall be delivered to the Department upon execution of the contract between the Concessionaire and its contractor.

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

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

- (a) Workers' Compensation as required by Chapter 440, Florida Statutes.
- (b) Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Concessionaire must be shown as an additional insured with respect to this coverage.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$300,000\* per occurrence for Bodily Injury and Property Damage combined.

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

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

- E. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

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

- F. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to binders, amendments, exclusions, endorsements, riders and applications) to determine the

true extent of coverage. The contractor shall be required by the Concessionaire to agree to permit such inspection at the offices of the Department. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire agrees to provide copies to the Department, at the Concessionaire's sole cost and expense.

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

## **ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY**

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

- (A) The Concessionaire has violated the terms and conditions of this Agreement;
- (B) The Concessionaire has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the Concessionaire's facilities;
- (C) The Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Concessionaire's creditors, or the Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Concessionaire's affairs have been put in the hands of a receiver;
- (D) The occurrence of any act, which operates to deprive Concessionaire of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;
- (E) Abandonment or discontinuance of operations by Concessionaire of its business by any act(s) of Concessionaire;
- (F) Any persistent violation on the part of Concessionaire, its agents or employees of the traffic rules and regulations of local, County, State or Airport or disregard of the safety of persons using the Airports, upon failure by Concessionaire to correct the same;
- (G) Failure on the part of Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Concessionaire being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;

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

**12.02 PAYMENT DEFAULT:** Failure of the Concessionaire to make Annual Rental Payments, Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Concessionaire.

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

The notice of default shall specify the Termination Date by when 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 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 (7th) 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 12.11 “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.

**12.06 NOT USED (UNAMORTIZED INVESTMENT EXTINGUISHED):**

**12.07 TERMINATION FOR ABANDONMENT:** This Agreement may be terminated in its entirety upon the discontinuance of Concessionaire’s services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, and the failure to cure the same within three (3) calendar days after written notice unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of nature that prevents the Concessionaire from providing services. Such abandonments shall constitute an event of default, and the County shall be entitled to all remedies for such default provided for in this Agreement or otherwise provided under law.

**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, of (iii) if the Concessionaire is found to have submitted a false certification or to have been, or is subsequently during the term of this Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.. 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 County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney’s fees.

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

**12.09 TERMINATION FOR CONVENIENCE:** The Department, in addition to the rights and options to terminate for cause, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement upon thirty (30) days written notice at its sole option at any time for convenience, without cause, when in its sole discretion it



deems such termination is in the best interest of the Department. In such circumstance, the County will solely be responsible for paying the amortized costs of any improvements constructed by Concessionaire, but the County shall not be responsible for any other costs or damages, including but not limited to lost profits, loss of opportunity, borrowing costs, carrying costs, damage to reputation, loss of goodwill, or loss of income.

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

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

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

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

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

## **ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE**

**13.01 ADMINISTRATIVE CLAIM PROCEDURES:** If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The claim will be accompanied by a certification, in the form

provided for in the County's False Claims Ordinance. The Concessionaire shall additionally, at the direction of the Director, provide County staff, Audit and Management Services, and/or the Office of the Inspector General access to documents, records, and/or financial materials as may be necessary to substantiate such claim, without limitation, and within 30 days of the Director's request. Failure to present and process any claim in accordance with this Sub-Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.

The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Concessionaire at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the Mayor. The decision of the Mayor, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Concessionaire's receipt of such decision, the Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the Mayor shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

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

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

## ARTICLE 14 – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

### 14.01 ACDBE REQUIREMENTS:

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

**ACDBE participation is Voluntary, but not required for this contract. ACDBE participation can be achieved either through the Concessionaire being an ACDBE itself, a Partnership or Joint Venture, or subcontracting a percentage of Gross Revenues.**

If the Concessionaire elects to participate, the Concessionaire is required to submit:

- (1) Executed Joint Venture or Sub-concession Agreement prior to submission for Board approval;
- (2) Notarized Monthly Utilization Report (MUR) reflecting ACDBE revenue;
- (3) Notarized Monthly Activity Report (MAR) of ACDBE Joint Venture Partner commencing thirty (30) days after beneficial occupancy and monthly thereafter, on or before the 10<sup>th</sup> of every month.

### 14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:

1. When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.
2. When an ACDBE performs as a participant in a joint venture a portion of the total dollar value of the contract **during the complete contract term**, equal to the clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in **Appendix I**. "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" and ACDBE Joint Venture Guidance by the U. S. Department of Transportation, Federal Aviation Administration (USDOT-FAA) ACDBE Schedule 8.
3. Expenditures to an ACDBE concessionaire toward ACDBE goals, will be counted only if the ACDBE is performing a commercially useful function as defined below:
  - (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and

is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.

The County will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the sub-concession agreement or other agreements in accordance with industry practices.

- (b) 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.
- (c) If an ACDBE does not perform or exercise responsibility for at least seventy (70%) percent of its participation or if the ACDBE subcontract's 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.
- (d) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption.

- 4. The County's decision on commercially useful function matters are final.

#### **14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:**

Concessionaires may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE as detailed in the ACDBE Joint Venture Guidance by the U.S.DOT-FAA; ACDBE Schedule 8. The Joint Venture agreement must specify the following:

- (1) Each ACDBE joint venture ("JV") partner must be responsible for a distinct clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner as specified in the Joint Venture Guidance by U.S. DOT-FAA (Schedule 8).

The work to be performed should be submitted as part of this solicitation and annually thereafter to the County. The work to be performed by the ACDBE JV partner should be store specific with regards to tasks and locations or as a distinct element of work be specified.

The ACDBE JV partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten hours per week.

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

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

#### **14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**

In order to participate as an ACDBE on this contract, firms must be certified by the FLUCP for the State of Florida as an ACDBE. Only those firms certified as ACDBEs at the time of bid submittal will be counted towards an ACDBE goal. It is the prime Bidder's obligation to verify ACDBE status prior to bid submission. Certification as a SBE-Construction/SBE-Goods/SBE-Services/MWBE or by any other program SHALL NOT count toward achievement of the ACDBE Goal.

Application for certification as an ACDBE may be obtained by contacting the Florida DOT Equal Opportunity Office Located at FLUCP 605 Suwannee Street, MS 65 Tallahassee, Florida 32399-0450 Tel: (850) 414-4747 Facsimile: (850) 414-4879, or their Website:

<https://www.fdot.gov/equalopportunity/>. Miami-Dade County, Small Business Development Division (SBD) is a certifying member of the Florida Unified Certification Program (FLUCP) and can be contacted for ACDBE certification. SBD is located at 111 N.W. 1<sup>st</sup> Street, Stephen P. Clark Center, 19<sup>th</sup> Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111, website: <https://www.miamidade.gov/smallbusiness/> or <https://mdcsbd.gob2g.com/>.

The FLUCP updates the certification data every 24 hours and revises the database regularly. The database lists the firm's name, address, phone number, date of most recent certification, certifying agency and type of work the firm has been certified to perform.

#### **14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:**

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

These requirements may include, but not be limited to, the compliance with ACDBE and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the County, the contracting of specified percentages of goods and services contracts to ACDBE. 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 section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

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

*"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23".*

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

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

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

#### **14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:**

Consistent with the goal of providing ACDBE's with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Section 14.01 "Airport Concession Disadvantaged Business Enterprises"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

**A. Store Operations**

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

**B. Personnel**

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

**C. Shop Design and Display**

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

**D. Loss Prevention**

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

**E. Books, Records and Reports**

- (1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the County or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.
- (2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Concessionaire shall

provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (*i.e.*, income) statement for the preceding month and for the year-to-date.

- (3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's SBD Division and Business Management Divisions, outlining the specific areas of training (*i.e.*, components covered, total number of hours of training, training material covered, etc.).

#### **14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:**

The Concessionaire shall contract with those firm(s) as are listed on the Concessionaire's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The County shall monitor the compliance of the Concessionaire with the requirements of this provision during the term and/or extension of this agreement.

The County 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 the ACDBE Participant, and other records pertaining to ACDBE Participation Plan.

***If at any time the County 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 or cancellation of the 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 County upon the Concessionaire except pursuant to a hearing conducted by the ACDBELO and/or his designee.***

### **ARTICLE 15 - RULES, REGULATIONS AND PERMITS**

**15.01 RULES AND REGULATIONS:** The Concessionaire shall comply with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same



may be amended from time to time, Operational Directives (available at <http://www.miami-airport.com/od2.asp>) issued thereunder by the Department, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders, Implementing Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

- 15.02 VIOLATIONS OF RULES AND REGULATIONS:** The Concessionaire agrees to pay, on behalf of the County, any Damage, assessment or fine issued against the County, or the Department to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Concessionaire, its agents, employees, Sub-tenants or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 “Rules and Regulations”** or any plan or program developed in compliance therewith. .
- 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.
- 15.04 NOT USED (PROHIBITION ON USING PRODUCTS CONTAINING TRANS FATS – RESOLUTION NO. R-456-07)**
- 15.05 LABOR PEACE REQUIREMENT – RESOLUTION NO. R-148-07:** The Concessionaire provided a signed copy of the labor peace agreement for their employees to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA) (See Exhibit M). Furthermore, the County has the right, in the event of a labor disruption, to suspend its obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Concessionaire is unable to reach an agreement with a labor organization regarding the terms of a labor peace agreement, the dispute between the Concessionaire and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration but no later than five (5) days prior to the date the proposal is due. The Concessionaire and the labor organization shall equally share the costs of arbitration.
- 15.06 LIVING WAGE:** The Concessionaire shall comply with section 2-8.9 of the Code of Miami-Dade County, and Administrative Order No. 3-30, as may be amended from time to time, requiring the payment to covered employees the applicable hourly living wage rate, with or without health benefits and that it shall comply with the administrative and records keeping required of the concessionaire set forth in the Administrative Order. The Concessionaire and its Sub-tenants shall also ensure that its subcontractors comply with the order in respect to their employees.

- 15.07 MIAMI-DADE AVIATION DEPARTMENT OPERATIONAL DIRECTIVES** Pursuant to the Miami-Dade Aviation Department (MDAD) Operational Directive No. 16-04, Concessionaires, certain business partners, and management agreement operators agree not to provide containers (including but not limited to shopping bags, trash bags, take-out bags, clamshells, or other methods of securing foods, beverage, utensils, cups, straws, or plates which are made of Styrofoam or which are made of petroleum based plastic. Please refer to MDAD Operational Directive No. 16.04, available at <http://www.miami-airport.com/od2.asp>.

## **ARTICLE 16 – GOVERNING LAW**

- 16.01 GOVERNING LAW; VENUE:** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.
- 16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION:** In the event that the County or the Concessionaire commence a civil action in the state or Federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Concessionaire agree to waive the procedures for initial service of process mandated by Chapters 48 and 83 of the Florida Statutes, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Concessionaire agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09 “Notices”** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Concessionaire has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Concessionaire, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of State in accordance with Chapters 48 and 607 of the Florida Statutes.
- 16.03 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 15<sup>th</sup> day of December, 2002, as amended from time to time, by and between the County and JPMorgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Concessionaire at the offices of the Department during normal working hours.

**17.02 ADJUSTMENT OF TERMS AND CONDITIONS:** If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other Concessionaires under other agreements of the Department for the lease or use of Location(s) used for similar purposes, are unjustly discriminatory, the County, shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Concessionaire.

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

**17.04 INDEPENDENT PRIVATE SECTION INSPECTOR GENERAL REVIEW:** Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Concessionaire shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Proposal or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Concessionaire's cost/price for

this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Concessionaire, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Concessionaire in connection with this Agreement. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the Concessionaire or third party.

**17.05 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW:** According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one (1) percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. **Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one-quarter (1/4) of one (1) percent in any exempted contract at the time of award.**

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents

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

## **ARTICLE 18 – OTHER PROVISIONS**

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

**18.02 ALTERATIONS BY CONCESSIONAIRE:** The Concessionaire shall not alter or modify the Location(s) and or any support spaces, except in accordance with **Article 4 “Improvements to the Location(s)”** 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 MODIFICATIONS:**

This Agreement may only be modified and revised in writing and duly executed by the parties hereto; any such modification, except as specifically authorized in Section (2) below, requires the express consent of the Board of County Commissioners. 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.

- a. **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 the following this Agreement pursuant to: **Sub-Article 1.07 “Addition, Deletion and Modification of Location(s)”**, **Sub-Article 18.02 “Alterations by Concessionaire”**. Additionally:

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

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

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

**18.07 OTHER DEPARTMENT RIGHTS:** The Concessionaire shall be liable for any physical damage caused to the Location(s) by the Concessionaire, its employees, agents, contractors, subcontractors, or suppliers. The liability shall encompass: (i) the Concessionaire's repair of the Location(s), or if the Location(s) cannot be repaired, payment to the Department of the fair market value replacement cost of the Location(s); and (ii) any other such damages to the Department arising from the physical damage caused by the Concessionaire and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.

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

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

To the County:  
(Mailing Address)

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

or (physical address):

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

To the Concessionaire:

Alclear, LLC  
730 Fifth Ave.  
Suite 600  
New York, NY 10019  
Attention: CEO  
with copies to:  
Alclear, LLC  
730 Fifth Ave.  
Suite 600  
New York, NY 10019  
Attention: General Counsel

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

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

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

**18.12 [removed]**

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

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

**18.15 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY:** The Concessionaire acknowledges and accepts full responsibility for compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Homeland Security, Transportation Security Administration's (TSA) Code of Federal Regulations 49 CFR Part 1542 et al, Federal Aviation Administration FAA, Customs and Border Protection CBP, the MDAD Airport Security Plan and applicable Security Directives issued by TSA and the Aviation Department as set forth from time to time relating to Concessionaire's activities at the Miami International Airport (MIA).

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

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

All employees of the Concessionaire who must work within MDAD Secured/AOA/SIDA/Sterile Concourse areas or any other restricted areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all



times while within the referenced secured areas. Badges shall be worn/displayed on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular company area. Each employee must complete the Security Identification Display Area SIDA training program conducted by the MDAD Security Division Credentialing Office before any ID badge is issued to such employee and comply with all other TSA, Homeland Security, FAA, CBP and MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued.

Concessionaire Ramp Permits will be issued to the Concessionaire authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department vehicle access control gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. These permits will be only issued to company owned vehicles or company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch (3") lettering) displayed on both sides of the vehicles.

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

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

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

The Concessionaire acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts cargo

tampering, aircraft sabotage, and other unlawful activities at the Airport and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control and security policies and procedures as may be required and designated in the Airport Security Plan and the Miami-Dade Aviation Department Rules and Regulations Chapter 25.

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

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

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

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

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

The Concessionaire understands it must seek the approval from all governing authorities stated herein before assisting customers and delivering merchandise through secured areas, AOA, sterile areas, and restricted areas at MIA. The Concessionaire shall abide by all TSA, CBP, and MDAD rules pertaining to soliciting business when in the security areas listed above.

**18.16 INTENT OF AGREEMENT:** This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b)

authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

- 18.17 MODIFICATIONS:** This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.04 “Modifications”, Sub-Article 21.02 “Right to Amend”, and Sub-Article 21.04 “Right to Modify”**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.
- 18.18 RADON DISCLOSURE:** In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **“Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.”**
- 18.19 TRADEMARKS AND LICENSES:** The Department may, from time to time, require the Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Concessionaire and the Department, on behalf of the Department granting the Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.
- 18.20 HEADINGS:** The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 18.21 BINDING EFFECT:** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.
- 18.22 GOVERNMENTAL DEPARTMENT:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.

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

**18.24 OTHER LIENS:** Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Location(s), the leasehold, or the furniture, fixtures and equipment or any portion thereof. Concessionaire shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Location(s), 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 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 Location(s) or any personal property or trade fixtures in the Location(s), including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Concessionaire shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Location(s) 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 Lease.

**18.25 FIRST SOURCE HIRING REFERRAL PROGRAM ("FSHRP")**

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the successful Bidder, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the successful Bidder is free to fill its vacancies from other sources. Successful Bidders will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less.. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407.

**18.26 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.

**18.27 VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)**

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

**ARTICLE 19 – NOT USED**

**ARTICLE 20 - WAIVER OF CLAIMS**

The Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Location(s) available to the Concessionaire or by reason of any defects or deficiencies in the Location(s) or in the terminal building including any defect or deficiency in the Location(s) 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 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS**

**21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY:**

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

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

**21.03 CONCESSIONAIRE COVENANTS AND ASSURANCES:**

**A. Covenants Against Discrimination:**

1. Concessionaire on behalf of itself, 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 Location(s) or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking. 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 Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its Location(s) as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Location(s) and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.
4. Concessionaire assures County that no person shall be excluded on the grounds or race, creed, color, national origin or sex pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking, as applicable, from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Concessionaire also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.
5. Concessionaire further assures County that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking be excluded from participating in any activity conducted at or in connection with its operations at the Location(s) Concessionaire also assures County that it will require its contractors to provide assurances to the same effect. 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, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking, as applicable, in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

- b) Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.
- 7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Concessionaire agrees that it will adopt such requirements as part of this Agreement.
- 8. In addition to and superseding anything above to the contrary, Concessionaire covenants to comply with the provisions of Sub-article 21.13, of this Agreement.

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

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

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



- 21.07 REGULATIONS OF DEPARTMENT:** The rights and privileges granted to the Concessionaire hereunder and the occupancy and use by the Concessionaire of the Location(s) 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 policies and procedures as the same may be amended from time to time.
- 21.08 INTEREST:** Any sums payable to the Department by the Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of **one and one half percent (1 1/2%)** per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.
- 21.09 MISCELLANEOUS PROVISIONS:** The Concessionaire, and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all Federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Concessionaire or to its services or operations hereunder.
1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Concessionaire herein, on the Location(s) and on any and all equipment installed on the Location(s) and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.
  2. The Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Concessionaire or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.
  3. The Concessionaire is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Concessionaire.
  4. The County shall have the right during the Concessionaire's normal business hours (and at any time during an emergency) to inspect the Location(s) 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 contained herein.
9. Except as otherwise provided herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.
10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Concessionaire shall comply with these requirements.

**21.10 FORCE MAJEURE:**

Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods, or acts or decisions of the Federal Aviation Administration, the Department of Transportation, the Transportation Security Administration, or the Environmental Protection Agency. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay. The parties agree that the commercial impacts of COVID-19 are currently known to the parties, and that commercial impacts related to COVID-19 shall not constitute force majeure events.

In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the

payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

**21.11 ASPIRATIONAL POLICY REGARDING DIVERSITY:** Pursuant to Resolution No. R-1106-15 Miami-Dade County vendors are encouraged to utilize a diverse workforce that is reflective of the racial, gender and ethnic diversity of Miami-Dade County and employ locally-based small firms and employees from the communities where work is being performed in their performance of work for the County. This policy shall not be a condition of contracting with the County, nor will it be a factor in the evaluation of solicitations unless permitted by law.

**21.12 PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY:** The Concessionaire shall comply with the Public Records Laws of the State of Florida, including but not limited to,: (1) keeping and maintaining all public records that ordinarily and necessarily would be required by Miami-Dade County (County) in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Concessionaire upon termination of the agreement and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of the agreement and shall be enforced in accordance with the terms of the agreement.

**IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE MIAMI DADE AVIATION RECORDS CUSTODIAN, JORGE MIHAIC (305) 876-0933;JMIHAIC@MIAMI-AIRPORT.COM; MIAMI-DADE AVIATION DEPARTMENT, RISK MANAGEMENT & SUPPORT SERVICES, P.O. BOX 025504, MIAMI, FLORIDA 33102-5504.**

**21.13**

**FEDERAL AVIATION ADMINISTRATION (FAA) SPECIAL PROVISIONS**

:

A). Compliance with Nondiscrimination Requirements

During the performance of this Contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire") agrees as follows:

1. Compliance with Regulations: The Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. Non-discrimination: The Concessionaire, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this Contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Concessionaire's noncompliance with the Nondiscrimination provisions of this Contract, the sponsor will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Concessionaire under the Contract until the Concessionaire complies; and/or
  - b. Cancelling, terminating, or suspending a Contract, in whole or in part.
6. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contract Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes

involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

7. During the performance of this Contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “Concessionaire”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Concessionaires, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123 (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- B) All Contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

- C) All Contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Concessionaire retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### **21.14 U.S. SOCCER FEDERATION 2026 WORLD CUP**

The terms of this agreement are subordinate to the terms of the Airport Agreement submitted by Miami-Dade County to the United States Soccer Federation on February 21, 2018. In carrying out its obligations under this Contract, the Concessionaire shall not take or omit any action which is inconsistent with, or in derogation of, the County's obligations under the Airport Agreement. Where the Concessionaire's rights or obligations under this Agreement are in conflict with the County's obligations under the Airport Agreement, and upon notice by the County to the Concessionaire, the terms of this Agreement shall be deemed conformed to the County's obligations under the Airport Agreement. Where such conformance would cause a material change in this Contract, Concessionaire shall have the right, upon written notice to the County within five (5) days of receipt of notice of such a conflict, to terminate this Agreement for convenience; in such termination, the Management shall have no cause of action for money damages of any kind, including but not limited to direct damages, or debt, stored or ordered materials, indirect damages, lost profits, loss of opportunity, loss of goodwill, or otherwise. In the

event that the Agreement does not elect to terminate this Agreement within the time specified herein, this Agreement shall be deemed to have been amended via consent of the parties to conform its terms to the requirements of the Airport Agreement, but only to the extent needed to avoid conflict with same. Agreement between Miami-Dade County and U.S. Soccer Federation may be downloaded at: [www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180129min.pdf](http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180129min.pdf).

## 21.15 Vendor Registration / Conflict of Interest

### a) Vendor Registration

The Concessionaire shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit**  
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**  
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**  
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**  
(Resolution R-919-18)
14. **Subcontracting Practices**  
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**  
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**  
(as required by the Internal Revenue Service)
17. **FEIN Number or Social Security Number**  
In order to establish a file, the Concessionaire's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Concessionaire's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
  - Identification of individual account records
  - To make payments to individual/ Concessionaire for goods and services provided to Miami-Dade County
  - Tax reporting purposes
  - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
18. **Office of the Inspector General**  
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
20. **Antitrust Laws**  
By acceptance of any contract, the Concessionaire agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

## **21.16 ENTIRE AGREEMENT:**

This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Concessionaire hereby affirms the completeness and accuracy of the information provided by Concessionaire to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Concessionaire to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04 " Modifications"** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.



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

**CONCESSIONAIRE**

**ATTEST:**

Secretary \_\_\_\_\_  
(Signature and Seal)

\_\_\_\_\_  
(Type Name & Title)

\_\_\_\_\_  
(Legal Name of Corporation)

By: \_\_\_\_\_  
Concessionaire - Signature

Name: \_\_\_\_\_

\_\_\_\_\_  
(Type Name & Title)

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

By: \_\_\_\_\_  
Mayor

Approved for Form  
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

\_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Deputy Clerk

Resolution No.: \_\_\_\_\_

Date: \_\_\_\_\_