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COMMUNICATIONS FOR DISTRIBUTION February 23, 2015

(Correspondence relating to upcoming legislation, appointments, petitions, etc)

<u>FILE NO.</u>	<u>COMMITTEE</u>	<u>PAGES</u>
2015-102 . . .	Ways & Means	2-34

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ONEIDA COUNTY DEPARTMENT OF LAW

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ANTHONY J. PICENTE JR.
COUNTY EXECUTIVE

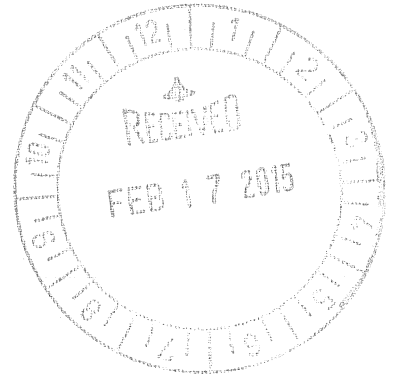
PETER M. RAYHILL
COUNTY ATTORNEY

FN 20 15 - 102

February 13, 2015

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

WAYS & MEANS



Re: MidAir USA, Inc.

Dear Mr. Picente, Jr.:

Attached are copies of an Agreement and Lease between Oneida County through the County Attorney's Office and MidAir USA, Inc.

The purpose of this agreement and lease is to resolve claims pertaining to previous lease violations.

This agreement will result in a payment of the back rents owed to the County, in addition to the monthly payments due going forward as determined by the lease.

If this meets with your approval, please forward to the Board of Legislators for their March 11, 2015 meeting.

Very truly yours,


Peter M. Rayhill, Esq.
Oneida County Attorney

Reviewed and Approved for submittal to the
Oneida County Board of Legislators by


Anthony J. Picente, Jr.
County Executive

Date 2/17/15

Oneida Co. Department: County Attorney

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Federal Agreement/Revenue _____

Oneida County Contract Summary

Name of Proposing Organization: MidAir USA, Inc.
72 MacDill Street, Building 215
Griffiss International Airport
Rome, New York 13441

Title of Activity or Service: Settlement Agreement and Lease

Proposed Dates of Operation: 2/28/15-2/28/16

Client Population/Number to be Served:

Summary Statements

- 1) Narrative Description of Proposed Services: Resolution of claims pertaining to lease violations.
- 2) Program/Service Objectives and Outcomes:
- 3) Program Design and Staffing:

Total Funding Requested: N/A Account #: A5620

Oneida County Dept. Funding Recommendation: N/A

Proposed Funding Sources (Federal \$/ State \$/County \$): N/A

Cost Per Client Served:

Past Performance Data:

O.C. Department Staff Comments:

Griffiss International Airport



592 Hangar Road, Suite 200

Rome, NY 13441

Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE, JR.
County Executive

CHAD LAWRENCE
Deputy Commissioner
of Aviation

COMMERCIAL HANGAR & RAMP USE AGREEMENT

This COMMERCIAL HANGAR & RAMP USE AGREEMENT (hereafter referred to as the "Agreement") is made and entered into this _____ day of _____, 2015, by and between the **COUNTY OF ONEIDA**, a municipal corporation organized and existing under the laws of the State of New York, with its principal place of business located at 800 Park Avenue, Utica, NY 13501 (hereinafter referred to as "Landlord") and **MidAir USA, Inc.**, a corporation authorized to do business in the State of New York, with its principal place of business located at 72 MacDill Street, Building 215, Griffiss International Airport, Rome, NY 13441, (hereinafter referred to as "Tenant");

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and in consideration of the sum of \$1.00 lawful monies of the United States in hand paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Description and Use.

Landlord hereby rents to Tenant, and Tenant does hereby rent from Landlord, approximately _____ square feet of hangar and/or office space within the building commonly referred to as "Building 100" situate at 592 Hangar Road, Rome, New York, which areas are more specifically identified and shown on **Exhibit "A"** annexed hereto and made a part hereof. Said areas are hereinafter referred to as the "Demised Premises". The Demised Premises shall be used by Tenant for the operation of an aircraft Repair Station in accordance with Title 14, Code of Federal Regulations (CFR), Part 65, 91 and/or 145, in connection with the performance of maintenance, preventive maintenance or alterations of an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which Part 43 applies. Said use shall be in compliance with applicable building and/or fire codes, and in accordance with the General Terms and Conditions annexed hereto and marked as **Exhibit "B"**.

2. Term.

a. The Term of this Agreement shall be for a period of one (1) year, commencing on _____, 2015 and ending on _____, 2016 (the "Term"), unless this Agreement is sooner terminated in accordance herewith.

b. Provided the Tenant is not in default in the performance of this Lease, Tenant shall have the option to renew this Lease for two (2) successive one-year terms, each a "Renewal Term". The renewal shall be upon the same terms and conditions as herein set forth, with the exception of those provisions relating to Rent. The Rent to be charged for each of the Renewal Terms shall be increased by adding three percent (3%) to the Rent that was charged for the previous Term. To be effective, Tenant must give Landlord written notice of its intent to exercise its option to renew at least ninety (90) days prior to the expiration of the then existing Term.

c. In the event the Tenant remains in possession of the Demised Premises after the expiration of the Term or Renewal Term as the case may be, the Tenant shall be deemed to be occupying the premises as a Tenant from month-to-month, with the parties therefore subject to existing provisions of law and all of the conditions of this Agreement insofar as they are applicable to a month-to-month tenancy until the premises are vacated by the Tenant or until the parties enter into a new Agreement, whichever is sooner. Also, in this event, the Tenant hereby agrees that the rent to be charged during such month-to-month tenancy shall be increased by adding three percent (3%) to the base rent that was in effect for the immediately preceding Term.

3. Base Rent.

a. As and for the use of the Demised Premises, the Tenant shall pay Rent during the initial Term of this Lease the total sum of **Three Hundred Forty-Five Thousand Six Hundred and No/100 Dollars (\$345,600.00)**, payable in equal monthly installments of **Twenty-Eight Thousand Eight Hundred and No/100 Dollars (\$28,800.00)**, which installment payment shall be due, in advance, on the 1st day of each and every month. The payment of Rent in monthly installments is for Tenant's convenience only and, in the event of Tenant's default, the Landlord shall have the right to accelerate payment and demand all sums due hereunder.

b. All such rental payments shall be made payable to the "County of Oneida" and remitted to 660 Hangar Road, Rome, NY 13441, or to such other address or addresses as the Landlord may, from time to time, designate. In the event any retroactive rental payments are due hereunder, payment of same shall be made on the first day of the next succeeding month.

4. Security Deposit.

The Tenant previously occupied all or a portion of the Demised Premises under a prior Lease Agreement which has since been terminated. According to the terms of such prior lease, the Tenant posted a security deposit of \$25,000 for the faithful performance of same. The Tenant also previously occupied other premises (Hangar No. 782) under a prior Lease Agreement which has since been terminated. According to the terms of that prior lease, the Tenant posted a security deposit of \$10,000 for the faithful performance of same. It is hereby understood and agreed that the prior security deposits were forfeited by the Tenant and applied by the Landlord to reduce Tenants' financial obligations due and owing to the Landlord under the aforementioned prior lease agreements. As a result, the Tenant DOES NOT currently have any sums on deposit with the Landlord to secure the faithful performance of this Lease.

5. General Terms and Conditions.

This Agreement is subject to the General Terms and Conditions, annexed hereto and marked as Exhibit "B", and the Standard Conditions, annexed hereto as Exhibit "C", both of which are hereby incorporated by reference.

6. Special Provisions / Other

a. Tenant has other financial obligations due and owing to the County of Oneida, which financial obligations are more specifically set forth in a collateral agreement entered into between the parties bearing even date herewith, a copy of which is annexed hereto and marked as Exhibit "D". The terms of this Lease agreement are subject to Tenant's performance of the terms and obligations set forth in the aforementioned collateral agreement. Should Tenant default in the performance thereof, this Lease shall immediately terminate, at which point Landlord shall have the right to immediately reclaim possession of the Demised Premises and forcibly remove Tenant therefrom and/or to resort to any other legal remedy.

IN WITNESS WHEREOF, the parties have executed this Agreement which shall become effective as of the date first above written.

County of Oneida, Landlord

MidAir USA, Inc.

By: _____
Anthony J. Picente, Jr.
County Executive

By: _____
Name:
Title:

Approved as to form only:

Oneida County Department of Law

EXHIBIT B - GENERAL TERMS AND CONDITIONS

1. **Late Charge.** The due date for the payment of Rent is the 1st day of each and every month. If any sum due from Tenant is not actually received by Landlord within fifteen (15) days of the date due, then Tenant shall pay a late charge of 5% of the amount due, in addition to any attorneys' Rents, collection expenses, or interest incurred by Tenant's failure to make timely payments. Landlord shall have the right, but not the obligation, to provide Tenant with monthly or annual invoices for Rent payments; a timely payment of Rent is due regardless of the issuance of such invoices, or lack thereof.

2. **Proration of Rent.** In the event that the Agreement begins or is terminated on any date other than the first day or last day of a calendar month, the applicable Rent and charges for that month shall be paid for that month on a pro rata basis according to the number of days in that month during which the Hangar and Ramp area was enjoyed by Tenant.

3. **Delivery of Rent.** Rent checks shall be made payable to "County of Oneida" and shall be mailed or delivered to: 592 Hangar Road, Suite 200, Rome, NY 13441, or to such other place or places as Landlord may designate, in writing.

4. **Security Deposit.** The Security Deposit shall be returned to Tenant upon termination of the Agreement after Tenant has vacated the Premises, provided that Tenant has fully and faithfully carried out all of the terms and provisions of the Agreement, including but not limited to the prompt payment of Rent and any other sums due Landlord. No interest shall be payable by Landlord to Tenant on account of such Security Deposit. Landlord shall have the right, but not the obligation, to apply all or any part of such Security Deposit to cure any default of Tenant, and if Landlord does so, Tenant shall upon demand by Landlord, deposit with Landlord the amount necessary for Landlord to have at all times on hand the full amount of the Security Deposit required under the Agreement, and if Tenant fails to restore such Security Deposit to the full deposit amount within fifteen (15) days after receipt of such demand, such failure shall constitute a material breach of the Agreement.

5. **Permitted Uses; Prohibited Uses.**

a. The Hangar and Ramp area shall be used by the Tenant only for the purposes identified in the Agreement, and for no other use. Painting, other than minor touch up of an aircraft, is prohibited within the Hangar unless otherwise approved by Landlord and the local fire marshal. Storage of boats, campers, vehicles or any other non-aviation items in the Hangar is not allowed. Kerosene or gas fired heaters or any type of open flame heaters or devices are prohibited in the Hangar.

b. In that the Hangar and Ramp area is located at the Griffiss International Airport, Tenant shall not use the Hangar and Ramp area in a manner that would violate the rules and regulations of the Federal Aviation Administration or the Griffiss International Airport. Tenant acknowledges that Tenant has conducted Tenant's own investigation and has determined that the Hangar and Ramp area is suitable for Tenant's intended use. Tenant shall have reasonably necessary rights of access across Landlord's adjoining areas.

c. Tenant will not make or permit any use of the Hangar and/or Ramp area that would be: (1) offensive so as to constitute a nuisance; (2) unlawful under any federal, state, or county code, ordinance, or regulation; (3) injurious to any person or property; (4) prohibited by a New York standard form fire insurance policy; or (5) which may increase or incur the Landlord's liability under any laws relating to the use and storage of hazardous materials.

6. **Ingress and Egress.** Tenant shall have reasonably necessary right of ingress and egress to the Hangar and Ramp area. The hangars, ramp areas and taxi-lanes adjacent to the Tenant's Hangar and Ramp areas shall be and are deemed to be right-of-way and common areas to which the Tenant shall have non-exclusive access to and use of for the term of this Agreement and any renewals thereof.

7. **Utilities and Services.** Tenant shall be responsible for the costs and payments of all utilities and services, including without limitation, electricity, water, gas, and sewer service furnished to the Hangar. The Landlord shall not be liable for any interruption or delay in such utility services, unless such delay or interruption is caused by the Landlord's negligence or willful misconduct.

8. Casualty. In the event the Hangar or the means of access thereto, shall be damaged by fire or any other cause, the Rent payable hereunder shall not abate provided that the Hangar is not rendered unusable by such damage. If the Hangar is rendered unusable and Landlord elects to repair the Hangar, the Rent shall abate for the period during which such repairs are being made, provided the damage was not caused by the acts or omissions of Tenant or Tenant's employees, agents or invitees. If Tenant or Tenant's employees, agents, or invitees caused such damage, the Rent shall not abate. If the Hangar is rendered unusable and Landlord elects not to repair the Hangar, the Agreement shall terminate.

9. Insurance and Indemnification.

a. During the Term of the Agreement, including all renewals, Tenant shall maintain, at Tenant's own expense, for the benefit of Tenant, and Landlord as additional insured, a Comprehensive General Liability insurance policy, which coverage shall be Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability, including Premises Operation and Hangar Keeper's Liability and Automobile Liability, with minimum coverage of \$10,000,000 per occurrence. The coverage shall include broad form contractual liability, and comprehensive general liability for bodily injury and property damage, and product liability for bodily injury and property damage for the purpose of insuring against liability for damage or loss to aircraft or other property and against liability for personal injury or death, arising from acts or omissions of Tenant or Tenant's agents, employees, or invitees. Such policy or policies shall contain a provision whereby Landlord must receive at least thirty (30) days prior written notice of any cancellation of Tenant's insurance coverage. Prior to the commencement of this Agreement, Tenant shall deliver to Landlord certificates, endorsements, or binders evidencing the existence of the insurance required herein.

b. Tenant further agrees to hold Landlord harmless from all claims and losses by reason of an accident or damage to any person or property happening on or about the Hangar and/or Ramp area arising from acts or omissions of Tenant or Tenant's agents, employees, or invitees; to the extent allowed by law, Tenant shall indemnify and hold Landlord harmless against all liability or loss and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the Hangar or based upon any violation of any statute, ordinance, building code, or regulation, and the defense of any such claims or actions, resulting from the acts or omissions of Tenant or Tenant's agents, employees, or invitees.

c. In the event that any claim in writing is asserted by a third party, which may entitle the Landlord to indemnification, Landlord shall give notice thereof to Tenant which notice shall be accompanied by a copy of statement of the claim. Following the notice, Tenant shall have the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If Tenant shall fail timely to defend, contest or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event Landlord decides to participate in the proceeding or defense, Landlord shall have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to Tenant, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto shall cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.

d. The indemnification provisions of this paragraph shall survive the termination of the Agreement.

10. Environmental Indemnity.

a. Tenant shall not permit the Hangar and/or Ramp area to be contaminated with any environmental hazard and Tenant shall not store hazardous waste or materials, contaminants, or flammable materials, including but not limited to gasoline, on the premises. Tenant shall indemnify, protect, and hold Landlord harmless from any environmental damage, and, if such environmental damage resulting from Tenant's use of the Hangar and/or Ramp area is discovered, Tenant shall promptly undertake and pursue diligently appropriate steps to repair the damage and shall notify Landlord of such environmental damage within twenty-four (24) hours after Tenant's discovery of such environmental damage.

b. The environmental indemnification provisions of this paragraph shall survive the termination of the Lease.

11. **Obligations of Landlord.** Landlord will maintain the structural components of the Hangar, including doors and door mechanisms, and Ramp area, and Landlord will provide normal building maintenance without additional cost to Tenant. Tenant shall have at all times the right of ingress to and egress from the Hangar and Ramp area. To ensure this right, Landlord shall make all reasonable efforts to keep adjacent areas to the Hangar free and clear of all hazards and obstructions, natural or manmade.

12. **Obligations of Tenant.**

a. **Storage.** The Hangar and Ramp area shall be used only as described in the Agreement.

b. **Maintenance and Repair.** Tenant shall maintain the Hangar and Ramp area in a neat and orderly condition, and shall keep the Hangar floor and Ramp area pavement clean and clear of oil, grease, or toxic chemicals. No hazardous or flammable materials will be stored within or about the Hangar. No boxes, crates, rubbish, paper, or other litter shall be permitted to accumulate within or about the Hangar.

c. **Damage.** Tenant shall be responsible for all damage to the Hangar caused by use or negligence by Tenant, or Tenant's agents, employees, or invitees. Tenant shall be responsible for all damage to property, real or personal, located on or about the Hangar and/or Ramp area caused by use or negligence by Tenant, or Tenant's agents, employees, or invitees. Landlord reserves the right to make such repairs, at Tenant's expense, which shall become due and payable as part of Tenant's next monthly Rent payment. Tenant shall make no structural, electrical, or other modification to the Hangar without first obtaining Landlord's written permission and obtaining any permits, if required.

d. **Tenant's Personal Property.** All personal property placed or moved into the Hangar and Ramp area shall be at the risk of Tenant or owner thereof, and Landlord shall not be liable for any damage to personal property, or to Tenant, arising from any act of negligence of any other tenant or occupants at the Airport or of any other person whomsoever. Tenant agrees and understands that Tenant is responsible for the proper securing of personal property and shall further indemnify and hold Landlord harmless for any damage or liability caused by improper securing of personal property. Landlord shall not be responsible for any loss from theft, vandalism, or act of God, and all personal property stored in the Hangar and Ramp area is at Tenant's sole risk.

e. **Compliance with Laws.** Tenant agrees to and shall comply with all applicable ordinances, rules, and regulations established by federal, state, or local government agency or by Landlord. Tenant shall be responsible for obtaining and complying with all governmental permits required for Tenant's use and occupancy of the Hangar and Ramp area, if any. Tenant further expressly represents, covenants, warrants, guarantees, and agrees that it shall fully comply with all federal, state and local laws, ordinances, rules, and regulations protecting the environment. Tenant agrees to keep itself informed of future changes in the existing environmental laws. Tenant hereby expressly agrees to indemnify and hold Landlord harmless from and against any and all liability for fines and physical damage to property or injury or deaths to persons, including reasonable expense and attorneys' Rents, arising from or resulting out of, or in any way caused by, Tenant's failure to comply with any and all applicable federal, state, and local laws, ordinances, regulations, rulings, orders and standards, now or hereafter, promulgated for the purpose of protecting the environment. Tenant agrees to cooperate with any investigation or inquiry by any governmental agency regarding possible violation of any environmental law or regulation.

f. **Fire Extinguisher.** Tenant shall maintain at all times, in the Hangar, a minimum of two (2) approved twenty (20) pound dry chemical portable fire extinguisher suitable for use on Class "A", "B", and "C" fires with a current inspection certificate from an approved fire equipment company affixed.

g. **Surrender upon Termination.** On the termination of the Agreement, for any reason other than as a result of a default in payment or performance by Tenant, Tenant shall immediately surrender possession of the Hangar and Ramp area and shall remove aircraft and all other property therein, leaving the Hangar and Ramp area in the same condition as when received, ordinary wear and tear expected. Tenant shall be liable for any and all damage to the Hangar and Ramp area caused by use or negligence by Tenant or Tenant's agents, employees, or invitees, including, but not limited to, damage to doors or interior walls by being bent or broken or damage to unsealed floors due to fuel or oil spillage. If Tenant fails to remove such items from the Hangar and Ramp area and to repair such damage upon vacating the premises, then Landlord may remove the items and repair the damages, and Tenant shall promptly pay the costs and expenses of such removal and repairs.

h. **Compliance with All Resolutions, Rules, Regulations, and Standards.** Tenant acknowledges that Landlord operates an airport, and resolutions, rules, regulations, and standards must be adopted by Landlord and modified from time to time in order to promote the orderly operation and development of the airport. Therefore, Tenant agrees to be bound by all terms and provisions of any resolutions, rules, regulations, and standards that may from time to time be adopted by Landlord, provided that such resolutions, rules, regulations, and standards do not increase the Rent to be paid by Tenant. The parties agree that Tenant's use of the Hangar and Ramp area and any

rights conferred to Tenant in the Agreement shall be subject to Landlord's minimum standards, as amended from time to time, provided that no such rules, regulations, or standards shall interfere with or cause any derogation or infringement with or upon the rights and privileges granted to Tenant in the Agreement. Tenant shall be given advance notice of any proposed change or addition to such rules, regulations, and standards, and Tenant shall be given an opportunity to be heard thereon. All the terms, conditions, and covenants of the Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties.

i. Signs. Tenant shall not erect or post any signs without the Landlord's written permission, which permission will not be unreasonably conditioned, delayed or withheld. Subject to Landlord's approval as aforesaid, it is anticipated that Tenant will erect a sign on the exterior of the Hangar.

j. Covenant Not to Abandon. Tenant hereby covenants not to abandon the leased premises prior to expiration of the term of the lease, without a Surrender Agreement with the Landlord in place. Abandonment of the premises shall be defined to include but not be limited to the cessation of operations, or abandonment of Tenant-owned or third party-owned property at the premises unattended, or removal of substantial portions of Tenant property from the leased premises, other than in the normal course of Tenant's business. The Tenant acknowledges that any abandonment of the leased premises will entitle the Landlord to obtain an injunction or order compelling the Tenant to return to its business in the premises, and the Tenant hereby consents to such injunction or order in addition to any other remedies to which the Landlord may be entitled at law or in equity, including monetary damages related to any premature cessation of operations which cause expense to the Landlord including but not limited to such matters as environmental remediation, cleaning of premises or removal of debris left by the Tenant prior to completion of lease term.

k. Covenant Not to Vacate. Tenant hereby covenants to continuously occupy the premises and not to vacate the leased premises prior to the expiration of the term of the lease, without a Surrender Agreement with the Landlord in place. Vacating the premises shall be defined to include but not be limited to the withdrawal or cessation of operations or abandonment of Tenant-owned or third party-owned property at the premises unattended, or removal of substantial portions of the Tenant's property from the leased premises, other than in the normal course of the Tenant's business. The Tenant acknowledges that any failure to occupy the leased premises will entitle the Landlord to obtain an injunction or order compelling the Tenant to return to its business in the premises, and the Tenant hereby consents to such injunction or order in addition to any other remedies to which the Landlord may be entitled at law or in equity, including monetary damages related to any premature cessation of operations which cause expense to the Landlord including but not limited to such matters as environmental remediation, cleaning of premises or removal of debris left by the Tenant prior to completion of lease term.

l. Covenant of Continuous Operations. The Tenant hereby covenants that during the lease term, the Tenant will continue its operations for the entire length of the lease and not cease operations or leave the premises prematurely, without a Surrender Agreement with the Landlord in place. The Tenant acknowledges that any failure to so continuously operate will entitle the Landlord to obtain an injunction or order compelling the Tenant to continuously operate its business in the premises, and the Tenant hereby consents to such injunction or order in addition to any other remedies to which the Landlord may be entitled at law or in equity, including monetary damages related to any premature cessation of operations which cause expense to the Landlord including but not limited to such matters as environmental remediation, cleaning of premises or removal of debris left by the Tenant prior to completion of lease term.

13. Nondiscrimination. Notwithstanding any other provision of this Agreement, during the performance of the Agreement, Tenant for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration for the Agreement, does hereby covenant and agree that:

a. No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Hangar and Ramp area on the grounds of race, color, religion, sex, disability, age, or national origin.

b. In the construction of any improvements on, over, or under the Hangar and Ramp area, and the furnishing of services therein or thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, religion, sex, disability, age, or national origin.

c. Tenant shall use the Hangar and Ramp area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as such regulations may be amended.

d. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate the Agreement and to reenter and repossess the Hangar and Ramp area and hold the premises as if the Agreement had never been made or issued. The provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, have been followed and completed, including the exercise or expiration of appeal rights.

14. Reservation of Rights by Landlord.

a. Development. Landlord reserves the right to further develop and improve the airport as Landlord sees fit, without interference or hindrance, but taking into consideration the desires and views of Tenant, and for purposes of developing and improving the airport, Landlord reserves the right to enter upon the Hangar and Ramp area and make improvements to or on the Hangar and Ramp area. Landlord shall make every effort to minimize the disruption of normal airport usage during periods of repair or further development of the airport.

b. Relocation. Landlord reserves the right upon thirty (30) days written notice to relocate Tenant to a similar size Hangar and/or Ramp area in other areas of the airport at Landlord's sole expense.

c. National Emergency. Landlord further reserves the right, during time of war or national emergency, to lease the landing area or common areas of the airport to the United States Government or the State of New York for military use or for natural disaster relief operations, and if such a lease is executed with the federal or state government, the terms of the Agreement which are inconsistent with the lease to the government shall be temporarily suspended and rent shall be abated during the tenancy by the government.

15. Right of Access and Inspection.

a. Landlord will retain a key for access to the Hangar. Tenant will not change locks without prior notice and agreement of Landlord.

b. Landlord shall have the right to make reasonable inspections of the Hangar between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, exclusive of federal holidays. Landlord shall have the right at any other time to enter the Hangar for security, fire, other emergencies, or making repairs.

16. Assurance Agreements. The Hangar and Ramp area is subject to the terms of those certain assurances made to guarantee the public use of the airport as incident to grant agreements between Oneida County, New York, the State of New York, and the United States of America, as amended. The terms and provisions of the Agreement shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the assurance agreements and any existing or subsequent amendments to any of the provisions of the assurance agreements.

17. Federal Aviation Administration Requirements. In the event that the Federal Aviation Administration (FAA) or its successors require modification or change in the Agreement as a condition precedent to (1) the granting of funds for the improvement of the airport, or (2) as a condition precedent to compliance with FAA regulations or standards, Tenant agrees to consent to such amendments, modifications, or changes to the Agreement as may be reasonably required to either obtain such funds or comply with such regulations or standards. However, in no event shall Tenant be required pursuant to this paragraph to agree to an increase in the Rent provided for in the Agreement or to agree to a reduction in size of the Hangar and/or Ramp area, or a change in the authorized use to which Tenant has put the Hangar without an adjustment in Rent.

18. Airspace. As a condition of the Agreement, Landlord reserves unto itself, its successors, and assigns, for use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Hangar and Ramp area, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace, and for use of the airspace for landing on, taking off from, or operating on the airport. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Hangar and Ramp area to such a height in compliance with Federal Aviation Regulations, Part 77. Tenant agrees for itself, its successors and assigns, to prevent any use of the Hangar and Ramp area which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

19. No Grant of Exclusive Right or Privilege. Notwithstanding anything contained in the Agreement that may be, or may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under the Agreement are nonexclusive, and Landlord reserves the right to grant similar privileges to another tenant or other tenants on other parts of the airport. Nothing in the Agreement shall be construed as granting an exclusive right or

privilege other than the right of Tenant to possess and to peacefully enjoy the use of the Hangar and Ramp area in accordance with the Agreement.

20. Sub-Agreement, Sub-lease, and Assignment Prohibited.

a. Tenant shall not sub-agreement or sub-lease the Hangar and Ramp area or assign the Agreement without prior written approval of Landlord. The parking and storage of aircraft not owned or leased by Tenant in the Hangar and/or Ramp area shall constitute a sub-agreement. Tenant shall not either voluntarily, or by operation of law, assign, or transfer the leasehold interest granted by the Agreement or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, nor allow the sale or transfer of a majority interest or majority ownership in Tenant, without first obtaining the written consent of Landlord. The consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment, subletting, or encumbrance. Any such subsequent assignment or subletting shall be void, and shall, at the option of Landlord, constitute a default of the Agreement.

b. Regardless of Landlord's consent, no subletting or assignment shall release Tenant or Guarantor, if any, or any obligations and/or liabilities of Tenant or Guarantor, if any, to pay the Rent and to perform all other obligations required of Tenant by the Agreement. The acceptance of the Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of the Agreement. In the event of a default by any assignee or subtenant of Tenant in the performance of any of the terms of the Agreement, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against an assignee or subtenant.

21. Condition of Premises. Tenant shall accept, and has accepted, the Hangar and Ramp area in its present condition, AS IS, without any liability or obligation on the part of Landlord to make any alterations, improvements or repairs of any kind on or about the Hangar.

22. Disclaimer of Warranty and Responsibility for Securing Aircraft. Tenant accepts all facilities on the Premises on an "as is" basis. Landlord hereby disclaims, and Tenant accepts such disclaimer, of any warranty, either express or implied of the condition, use, or fitness of the tie-down rings, ropes, chains, or other apparatus used to secure airplanes, and Tenant assumes full responsibility to furnish any equipment necessary to properly secure Tenant's aircraft. Tenant agrees and understands that Tenant is responsible for the proper tie down or securing of aircraft inside or outside of the Hangar and shall further indemnify and hold harmless the Landlord for any damage or liability caused by improper tie down or securing. Landlord shall not be liable for any loss from theft, vandalism or act of God, and all aircraft are stored or parked on the premises or airport at Tenant's sole risk.

23. Alterations; Liens.

a. Tenant covenants and agrees not to install any fixtures or make any alterations, additions or improvements to the Hangar without the prior written approval of Landlord, which approval will not be unreasonably conditioned, delayed or withheld. All fixtures installed or additions and improvements made to the Hangar shall become Landlord's property and shall remain in the Hangar at the termination of the Agreement without compensation or payment to Tenant. Tenant shall not suffer or permit any lien to be filed against the premises or any part of Landlord's interest, by reason of work, labor, services or materials performed or supplied to Tenant or anyone holding the premises or any part thereof under Tenant. If any such lien is filed against the premises or Landlord's interest, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, and shall incur all charges in the release of such lien.

b. Tenant agrees to pay all liens of contractors, subcontractors, mechanics, laborers, material men, and other items of like character, and indemnify Landlord against all expenses, costs and charges, including bond premiums for release of liens and reasonable attorneys' Rents incurred in the defense of any suit in discharging the Premises or any part thereof from any liens, judgments, or encumbrances caused or suffered by Tenant.

c. Tenant shall not have any authority to create any liens for labor or material in the Rent interest owned by Landlord or Landlord's interest in the property by any persons contracting with Tenant for the destruction or removal of any facilities or other improvements or for the construction, erection, installation, alteration, or repair of any facilities or other improvements on or about the Premises. All material men, contractors, subcontractors, mechanics, and laborers, are hereby charged with notice that they must look only to Tenant and to Tenant's interests in the property in the Hangar or on the Ramp area to secure the payment of any bill for work done or materials furnished at the request or instruction of Tenant.

24. **Events of Default by Tenant.** The occurrence of any of the following shall constitute an event of default under the Agreement:

- a. Tenant fails to pay any part or all the money due Landlord under the Agreement, and such non-payment continues for a period of thirty (30) days;
- b. Tenant fails to perform or breaches any term, covenant, or provision of the Agreement, except the payment of money, and such non-performance or breach is not cured within twenty (20) days after written notice of the default from Landlord is delivered to Tenant;
- c. Tenant is the subject a voluntary or involuntary petition for bankruptcy protection (including a petition for reorganization or an agreement), Tenant makes a general or other assignment for the benefit of creditors, or Tenant's assets or operations become subject to the control of a court-appointed receiver;

25. **Remedies on Default by Tenant.** In the event of any default of the Agreement by Tenant, Landlord shall have the right, at its earliest option, to pursue any one or more of the following remedies, in addition or in place of the remedies otherwise provided herein or by statute, without any notice or demand whatsoever to Tenant or Guarantor, if any:

- a. Landlord shall have the right to terminate the Agreement and to enter upon and take possession of the Hangar and Ramp area and to remove the aircraft and any other property of Tenant from the Hangar and Ramp area without being deemed guilty of trespass, breach of peace or forcible entry and detainer and without prejudice to any other remedy for possession or arrearage in Rent, and Tenant expressly waives the service of any notice. Tenant agrees to pay Landlord on demand the amount of all loss or damage which Landlord may suffer by reason of such termination, including the expenses of retaking, re-renting the Hangar and/or Ramp area, and loss of Rent through the inability to re-let the Hangar and/or Ramp area.

- b. Landlord shall have the right to enter upon and take possession of the premises, and re-let the premises and receive the Rents therefore without thereby terminating or avoiding the Agreement. Tenant agrees to pay Landlord on the due day of each month thereafter sums equivalent to the monthly Rent payment under the Agreement, less the avails of re-letting, if any.

- c. Exercise by Landlord of either or both of the rights specified above shall not prejudice Landlord's right to pursue any other legal remedy available to Landlord in law or equity, including, but not limited to, court costs and attorneys' Rents for bringing legal action against Tenant. All of the foregoing rights, remedies, powers, and elections of Landlord are cumulative, and pursuit of any of the foregoing shall not preclude other remedies provided by law, nor shall such pursuit constitute a forfeiture or waiver of any rent due to Landlord or of any damages occurring to Landlord by reason of the violation of any of the provisions of the Agreement. Forbearance by Landlord to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default.

- d. Tenant agrees that no assent, express or implied, by Landlord to any breach of the Agreement by Tenant shall be deemed to be a waiver of any succeeding breach by Tenant.

- e. All sums due under the Agreement shall be paid by Tenant to Landlord without any setoff or counterclaim whatsoever and all past due sums shall bear interest at the maximum legal rate per annum. The subsequent acceptance of Rents under the Agreement by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of the Agreement, other than the failure to pay the particular Rents so accepted, regardless of Landlord's knowledge of such preceding default at the time of accepting the Rents.

26. **Waiver of Breach.** Tenant agrees that no assent, express or implied, by Landlord to any breach of the Agreement by Tenant shall be deemed to be a waiver of any succeeding breach by Tenant.

27. **Surrender at End of Lease.** Tenant agrees upon termination of the Agreement for any reason to peaceably yield up to Landlord the premises in neat and clean condition, with all debris removed, and in good condition in all respects.

28. **Landlord's Lien.** Tenant hereby gives and grants to Landlord a lien upon, and pledges as collateral to the Landlord in case of default, all fixtures, chattels and personal property of every kind and description now or hereafter to be placed, installed, or stored by Tenant at the Airport, and Tenant agrees that in the event of any failure on the part of Tenant to comply with each and every one of the covenants and obligations hereof, or in the event of any default continuing for 60 days of any specified rent, Landlord may take possession of and sell the same in any manner provided by law and may credit the net proceeds upon any indebtedness due, or damage sustained by Landlord without prejudice to further claims thereafter to arise under the terms of the Agreement.

29. **Notices.** All notices to the parties shall be sent or delivered to that party at the address first written for that party in the Agreement. All notices shall be in writing and shall be delivered either by hand with proof of delivery or by certified mail, return receipt requested, and postage prepaid. Notices sent or delivered by mail in accordance with this paragraph shall be deemed to have been given five (5) business days after the date of mailing, and all other notices delivered by any other means with proof of delivery, such as hand delivery or express delivery, shall be deemed to have been given when received.

30. **Miscellaneous Provisions.**

a. **Successors Bound.** The Agreement shall not be effective or binding on any party until fully executed. All of the covenants, conditions and obligations of the Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, successors, and assigns of the parties.

b. **Joinder by Guarantor; Personal Guarantee.** By joining in the execution of the Agreement, Guarantor, if any, hereby unconditionally guarantees performance of each and every obligation of Tenant created in this Agreement. Guarantor waives any requirement of notice of non-payment or non-performance, proof, or demand, as a condition for liability by Guarantor. Guarantor expressly agrees that the validity of the Agreement and the obligations of this personal guarantee shall in no way be terminated, affected, or impaired by reason of assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Agreement, or by Landlord granting any indulgence or giving of additional time to Tenant for the performance of any of the obligations of the Agreement. This personal guarantee shall remain in full force and effect as to any amendment, modification, renewal, extension, or otherwise, of the Agreement. Landlord need not pursue any remedies against Tenant before enforcing this personal guarantee against Guarantor. If there is more than one person or entity signing the Agreement as Guarantor, the obligations imposed by the Agreement on Guarantor shall be joint and several.

c. **Construction of Agreement.** Words of any gender used in the Agreement shall be construed to include any other gender, and words in singular number shall be held to include the plural, and vice versa, when the sense requires. The headings or captions for paragraphs or subparagraphs in the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit or expand the terms and provisions of the Agreement.

d. **Judicial Interpretation.** If any provision of the Agreement becomes subject to judicial interpretation, it is agreed that the court interpreting or considering such provision will not apply the presumption or rule of construction that the terms of the Agreement be more strictly construed against the party which itself or through its counsel prepared the same, because all parties have participated in the preparation of the final form of the Agreement through review and negotiation of terms, and therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

e. **Severability.** In the event that any provision of the Agreement is determined to be invalid, illegal, or unenforceable for any reason, then the parties shall negotiate in good faith and agree on such amendments or modifications to the Agreement, or such other appropriate actions, that will to the maximum extent practicable in light of such determination, give effect to the intentions of the parties as reflected in the Agreement, and all other provisions of the Agreement, as amended, modified, or otherwise, shall remain in full force and effect, but if, after good faith negotiations, the parties fail to reach an agreement regarding the invalid, illegal, or unenforceable provisions, then the parties agree that such provisions shall be severed from the Agreement and such severance shall not invalidate any other provision of the Agreement or the Agreement itself.

f. **Joint Obligations.** If there is more than one person or entity signing the Agreement as Tenant, the obligations imposed by the Agreement on Tenant shall be joint and several.

g. **Entire Agreement.** The Agreement contains the entire agreement between the parties, and no prior or independent agreements or understandings between the parties pertaining to the renting of the Hangar and Ramp area shall be effective for any purpose. Tenant acknowledges that any representations, statements, or negotiations made by Landlord or by any of Landlord's staff, employees, counsel, or any other agent, do not suffice to legally bind Landlord, unless such representations have been reduced to writing and fully executed by all of the parties.

h. **Written Modifications.** No provision of the Agreement may be changed or modified except by an agreement in writing executed by all of the parties or their successors in interest.

i. **Venue; Law.** Venue for all court proceedings to enforce or interpret the Agreement or determine the liabilities and obligations of the parties shall be in Oneida County, New York, and such proceedings shall be governed by the laws of the State of New York.

j. **Subordination.** Upon request of Landlord, Tenant will in writing subordinate Tenant's rights under the Agreement to the lien of any mortgage or deed of trust, to any lender, bank, insurance company or lending institution, or to comply with the requirements of any grant for funding that may be sought by Landlord.

k. **Time is of the Essence.** The parties agree that time is of the essence in performance of the Agreement. Any time the Agreement references a number of days for any action, it shall be calendar days, not business days.

l. **Relationship of Parties.** Tenant shall never at any time during the term of the Agreement become the agent of Landlord, and Landlord shall not be responsible for the acts or omissions of Tenant or Tenant's agents. Nothing in the Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between the parties other than the relationship of landlord and tenant.

m. **Attorneys' Rents.** It is understood and agreed between the parties hereto that in the event of any litigation between the parties, the prevailing party shall be entitled to recover reasonable attorneys' Rents and court costs from the losing party.

n. **Material Breach.** The failure of Tenant to comply with any Terms or Conditions of the Agreement, or of this Exhibit "A" to Agreement, shall be considered a material breach of the Agreement.

EXHIBIT "C" – STANDARD CONDITIONS

THIS ADDENDUM, entered into on this ___ day of _____, between the County of Oneida, hereinafter known as **COUNTY**, and a contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as **CONTRACTOR**.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. Executor or Non-Appropriation Clause.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. Oneida County Board of Legislators: Resolution #249 Solid Waste Disposal Requirements.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. Certification Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements.

a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal Grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.

b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,

1. The Contractor certifies that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contracts under a public transaction, violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicated or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
- d. Have not within a three-year period preceding this Contract had one or more public transactions (Federal, State, or local) for cause or default; and

2. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

1. The Contractor will or will continue to provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - b. Establishing an on-going drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Contractor's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance program; and
 4. The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
 - c. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);
 - d. Notifying the employee in the statement required by paragraph (a) that as a condition of employment under the Contract, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
 - e. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.
 - f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;
 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the Requirements of the Rehabilitation Act of 1973, as amended; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e),(f).

2. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F. for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

1. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to: Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

4. Health Insurance Portability and Accountability Act (HIPAA).

When applicable to the services provided pursuant to the Contract:

a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:

1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
2. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
3. Utilize an adequate amount of physical hardware, including but not limited to filing cabinets, and locks on drawers, cabinets, and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.

- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
1. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
 2. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
1. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
 2. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
 3. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
 4. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of, the County agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
 5. Make available protected health information in accordance with 45 CFR § 164.524;
 6. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.528;
 7. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
 8. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the Contractor on behalf of, the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
 9. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by the Contractor on behalf of, the County that the Contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Contract to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
1. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 2. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or

3. There is a material change in the business practices and procedures of the County.

e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. Non-Assignment Clause.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. Worker's Compensation Benefits.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. Non-Discrimination Requirements.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any

employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

8. Wage and Hours Provisions.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County approved sums due and owing for work done upon the project.

9. Non-Collusive Bidding Certification.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. Records.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails and attachments, rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an

office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. Identifying Information and Privacy Notification.

a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must give the reason or reasons why the payee does not have such number or numbers.

b. Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. Conflicting Terms.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. Governing Law.

This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

14. Prohibition on Purchase of Tropical Hardwoods.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the County.

15. Compliance with New York State Information Security Breach and Notification Act.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. Gratuities and Kickbacks.

a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. Audit

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to or permit the County to examine or obtain copies of any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a Federal financial assistance program from a Federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. Certification of compliance with the Iran Divestment Act.

Pursuant Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (OGS) website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any Bidder/Contractor seeking to renew or extend a Contract or assume the

responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within 90 days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The County reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

IN WITNESS WHEREOF, the parties hereto have signed this document on the day and year first above written.

County of Oneida

Contractor

By: _____
Oneida County Executive

By: _____
Name:

Approved as to Form only

Oneida County Attorney

Exhibit D

AGREEMENT

THIS AGREEMENT dated the ____ day of February, 2015, by and between the **COUNTY OF ONEIDA**, a municipal corporation organized and existing under the laws of the State of New York with its principal place of business located at 800 Park Drive, Utica, New York 13501 (the “County”) and **MIDAIR USA, INC.**, a corporation organized and existing under and by the laws of the State of Delaware, with its principal place of business located at 72 MacDill Street, Building 215, Griffiss International Airport, Rome, New York 13441 (“MidAir”).

WITNESSETH:

WHEREAS, on or about March 17, 2010, County and MidAir entered into a Commercial Hangar & Ramp Use Agreement (“Nose Dock Lease”) for Hangar No. 782 (“Nose Dock Premises”); and

WHEREAS, on or about October 1, 2010, County and MidAir entered into a Commercial Hangar & Ramp Use Agreement for Building 100, East Bay (“East Bay Lease”) at 592 Hangar Road, Rome, New York (“East Bay Premises”) ; and

WHEREAS, on or about September 27, 2010, County and MidAir entered into a Commercial Hangar & Ramp Use Agreement for Building 100, West Bay (“West Bay Lease”) at 592 Hangar Road, Rome, New York (“West Bay Premises”); and

WHEREAS, on or about October 31, 2014, County did send three (3) day notices of default to MidAir under each of the Nose Dock Lease, the East Bay Lease and the West Bay Lease, respectively; and

WHEREAS, on or about December 3, 2014, County did file a Petition pursuant to the New York Real Property Actions and Procedures Law seeking a Warrant of Eviction of MidAir from each of the three premises, as well as a judgment for all amounts due and owing to County; and

WHEREAS, on or about January 7, 2015, Rome City Court did grant a Warrant of Eviction in favor of County for the Nose Dock Premises, although the County withdrew its request for a judgment of rent without prejudice; and

WHEREAS, on or about January 7, 2015, Rome City Court did grant a Warrant of Eviction in favor of the County for the East Bay Premises, as well as a judgment in favor of the County against MidAir in the amount of Three Hundred Eighty-Three Thousand Five Hundred Twenty-One and 28/100 Dollars (\$383,521.28) for rent through November of 2014 and utilities through September of 2014; and

WHEREAS, on or about January 7, 2015, Rome City Court did grant a Warrant of Eviction in favor of the County for the West Bay Premises, as well as a judgment in favor of the County against MidAir in the amount of Two Hundred Twenty-Three Thousand Six Hundred Eighty-One and 00/100 Dollars (\$223,681.00) for rent through November of 2014; and

WHEREAS, on or about January 9, 2015, the County did execute said Warrants for the Nose Dock and East Bay by delivering them to the Oneida County Sheriff; and

WHEREAS, on or before January 9, 2015, MidAir vacated the Nose Dock Premises and the East Bay Premises and no longer maintained any right, title or interest in said premises; and

WHEREAS, the County has not executed the Warrant of Eviction for the West Bay Premises and MidAir continues to occupy and desires to remain in possession of the West Bay Premises; and

WHEREAS, the County is willing to enter into a new Lease to allow MidAir to retain possession of the West Bay Premises under the terms and conditions of this Agreement set forth herein.

NOW, THEREFORE, upon the above-referenced recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. The County and MidAir agree the following amounts are due and owing by MidAir to the County pursuant to the Nose Dock Lease, the East Bay Lease and the West Bay Lease:

A.	<u>Nose Dock</u> – rent from April of 2014 to January of 2015 - 9 months at \$12,000.00 per month plus 9 days X \$387.10		\$111,483.90
B.	<u>West Bay</u>		
	Rent – April of 2014 to October Of 2014 (7 months at \$26,649.00)	\$ 186,543.00	
	November 2014 to December 2014 (2 months at \$27,449.00)	\$ 54,898.00	
	<u>West Bay Addition:</u>		
	April 2014 to December 2014 (9 months at \$1,311.50)	\$ 11,803.50	
		=====	\$253,244.50

C.	<u>East Bay</u>		
	Rent April 2014 to September 2014 (6 months at \$12,875.00)	\$ 77,250.00	
	Rent October 2014 to January 2015 (3 months at \$13,261.00 plus 9 days X \$427.77)	\$ 43,632.93	
	Utilities – December 2013 to January 2015	\$406,800.01 =====	\$527,682.94
D.	<u>Apron Fees</u>		
	December 2013 to February 2014 (3 months at \$2,843.75)	\$ 8,531.25	
	March 2014 to June 2014 (4 months at \$3,472.50)	\$13,890.00	
	July 2014 to January 2015 (7 months at \$3,981.25)	\$27,868.75 =====	\$50,290.00
	TOTAL:		\$942,701.34

(hereinafter "Total Amounts Due").

2. The County agrees the Total Amounts Due (\$942,701.34) from MidAir shall be reduced as follows:

A.	Twenty-Five Thousand Dollars November 2010 Deposit	\$25,000.00
B.	Ten Thousand Dollars	\$10,000.00
C.	One Thousand Four Hundred Fifty-Four Dollars 2009 overpayments	\$ 1,454.00
D.	Five Thousand (from scrapping proceeds)	\$ 5,000.00 =====

TOTAL: \$41,454.00

(hereinafter "Credit Amount").

3. Simultaneously with the execution of this Agreement, MidAir shall pay to County the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), to be wired to the County to an account identified by the County upon the execution of this Agreement (the "Initial Payment").

4. The Total Amounts Due, as defined in Paragraph 1, minus the Credit Amount, as defined in Paragraph 2, minus the Initial Payment, as defined in Paragraph 3 result in an amount due from MidAir to County under this Agreement of Six Hundred Fifty-one Thousand Two Hundred Forty-seven and 34/100 Dollars (\$651,247.34) (hereinafter "Net Amount Due").

5. The County and MidAir agree the Nose Dock Lease and the East Bay Lease shall be deemed terminated as of January 9, 2015, and the West Bay Lease (and addition) shall be deemed terminated as of January 31, 2015. MidAir shall have no further rights to possession of the said premises under said Leases as of said date. However, any and all obligations of MidAir which survive the termination of said Lease agreements shall remain in full force and effect.

6. The County and MidAir agree they shall enter into a lease for the West Bay Premises effective February 1, 2015 in the form substantially as set forth and attached hereto as Exhibit A ("New West Bay Lease").

7. MidAir agrees, in addition to the monthly payments due and owing to the County under the New West Bay Lease attached hereto as Exhibit A, to pay the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) in certified funds to be made payable on or about the first day of each month, commencing on April 1, 2015, and payable each and every month until the Net Amount Due as set forth in Paragraph 4 above is paid in full ("Monthly Payment").

8. MidAir warrants and represents to the County it currently maintains all right title and interest in eight (8) airplanes or parts of airplanes (the "Aircraft") which are currently located on the non-exclusive ramp area of the lands owned by the County of Oneida at Griffiss International Airport, and said Aircraft and/or the proceeds therefrom, are not subject to any security interest or other lien.

9. MidAir agrees it shall use its best efforts to cause said Aircraft to be sold on or before June 30, 2015.

10. The parties agree the proceeds from the sale of the Aircraft shall be the property of MidAir. MidAir agrees, within ten (10) days of receipt of any proceeds from the sale of any scrapping of the said Aircraft, to pay an amount equal to the amount of proceeds realized from said sale to reduce the Net Amount Due. This payment shall be in addition to the monthly payment under the New West Bay Lease and Monthly Payment as set forth in Paragraph 7 herein. The payment of said monies pursuant to this paragraph shall be deemed made from the general funds of MidAir and shall not be considered earmarked as funds received from the sale of the Aircraft. In addition, nothing in this Agreement shall be deemed to create a security interest in said Aircraft, or the proceeds from the sale thereof, in favor of the County.

11. The parties acknowledge if MidAir had not agreed to the terms and conditions of this Agreement, the County would have executed on the warrant of eviction for the West Bay. This Agreement shall be deemed consideration for the County not serving the Warrant of Eviction.

12. In the event MidAir defaults in any payment required hereunder, or any other provisions of this Agreement, County shall have the right, after ten (10) days written notice to and an opportunity to cure by MidAir, to terminate this Agreement and to accelerate all

payments and amounts due and owing (excepting the New West Bay Lease) and to demand they be immediately payable and shall have the right pursue all remedies under this Agreement and pursuant to law.

13. There are no understandings or agreements between the parties hereto other than those set forth in this Agreement. This Agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations and warranties, whether oral or written of any party to this Agreement and no party to this Agreement may rely or shall be deemed to have relied upon any prior communications.

14 Neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

15. This Agreement shall be deemed to have been executed and delivered in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law rules or principles. All disputes arising out of this Agreement shall be resolved by a court of competent jurisdiction in the State of New York, and both parties consent to the jurisdiction and venue of the State and Federal Courts located in Oneida County and the State of New York.

16. In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that will achieve, to the extent possible, the economic, business and other

purposes of such illegal, void or unenforceable provision.

17. No provision of this Agreement shall be deemed to have been waived by either party, unless such waiver shall be set forth in a written instrument executed by such party. Any waiver by any of the parties to any of the provisions of this Agreement shall not imply preceding or subsequent waiver of that or any other provision, unless explicitly stated otherwise.

18. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.

19. In the event that action, suit or legal proceedings are initiated or brought to enforce any or all of the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and disbursements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ONEIDA

By: _____
Anthony J. Picente
County Executive

MIDAIR USA, INC.

By: _____
Its Authorized Representative

Approved
ONEIDA COUNTY ATTORNEY
