

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 6, 2009

[ X ] Consent [ ] Regular  
[ ] Workshop [ ] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Automated Retail Vending Concession Agreement with NewZoom, Inc., d/b/a ZoomSystems (ZoomSystems) for an initial term of three years and minimum annual guarantee of \$6,000 per retail vending machine location.

**Summary:** On March 23, 2009, the Department of Airports issued a Request for Submittals (RFS PB-09-05) for the installation, operation and maintenance of automated retail vending machines at the Palm Beach International Airport (PBIA). Staff is recommending the award of the Automated Retail Vending Concession Agreement to ZoomSystems as the only respondent. The initial term commences on October 1, 2009 and expires on September 30, 2012 with two one-year options. ZoomSystems will sell Best Buy consumer electronics and Rosetta Stone products from three retail vending machines proposed to be installed at PBIA. ZoomSystems will pay a concession fee of \$18,000 for three machines or 6.5% of annual gross revenues on Best Buy consumer electronics and 10% of annual gross revenues on Rosetta Stone products, whichever is greater. **Countywide (AH)**

**Background and Justification:** ZoomSystems operates retail vending machines at many airports throughout the United States, including the Orlando International Airport, Dallas/Fort Worth International Airport and Fort Lauderdale-Hollywood International Airport.

**Attachments:**

- 1. Automated Retail Vending Concession Agreement (3)

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Recommended By:       *Diana V. Kelly*       9/3/09  
Department Director Date

Approved By:       *[Signature]*       9/26/09  
County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

| Fiscal Years             | <u>2010</u>              | <u>2011</u>              | <u>2012</u>              | <u>2013</u> | <u>2014</u> |
|--------------------------|--------------------------|--------------------------|--------------------------|-------------|-------------|
| Capital Expenditures     | _____                    | _____                    | _____                    | _____       | _____       |
| Operating Costs          | _____                    | _____                    | _____                    | _____       | _____       |
| Operating Revenues       | <u>(\$18,000)</u>        | <u>(\$18,000)</u>        | <u>(\$18,000)</u>        | _____       | _____       |
| Program Income (County)  | _____                    | _____                    | _____                    | _____       | _____       |
| In-Kind Match (County)   | _____                    | _____                    | _____                    | _____       | _____       |
| <b>NET FISCAL IMPACT</b> | <u><u>(\$18,000)</u></u> | <u><u>(\$18,000)</u></u> | <u><u>(\$18,000)</u></u> | _____       | _____       |
| # ADDITIONAL FTE         | _____                    | _____                    | _____                    | _____       | _____       |
| POSITIONS (Cumulative)   | _____                    | _____                    | _____                    | _____       | _____       |

Is Item Included in Current Budget? Yes \_\_\_\_\_ No x  
 Budget Account No: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ RSource \_\_\_\_\_  
 Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

ZoomSystems will be obligated to pay the greater of the minimum annual guarantee or 6.5% of annual gross revenues on Best Buy consumer electronics and 10% of annual gross revenues on Rosetta Stone products. The amounts identified above are the minimum annual revenue guaranteed to the County. Actual revenues may be greater if concession fees exceed the minimum annual guarantee.

C. Departmental Fiscal Review: CM Sumner

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

[Signature]  
 9/11/09 OFMB  
 9/11/09 VA  
 9/11/09

[Signature] 9/11/09  
 Contract Dev. and Control  
 E. Jones 9/17/09

This Contract complies with our contract review requirements.

**B. Legal Sufficiency:**

Anne Delgant 9/21/09  
 Assistant County Attorney

**C. Other Department Review:**

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

**AUTOMATED RETAIL VENDING CONCESSION AGREEMENT  
BETWEEN PALM BEACH COUNTY AND NEWZOOM, INC.**

This Automated Retail Vending Concession Agreement (this "Agreement") is made and entered into \_\_\_\_\_, 2009 by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and NewZoom, Inc., a California corporation d/b/a ZoomSystems ("Concessionaire"), having its office and principal place of business at 625 2<sup>nd</sup> Street, San Francisco, CA 94107. County and Concessionaire are sometimes referred to herein individually as a "party" and collectively as the "parties".

**WITNESSETH:**

**WHEREAS**, County, by and through its Department of Airports, owns Palm Beach International Airport (the "Airport"), which is located in Palm Beach County, Florida; and

**WHEREAS**, Concessionaire submitted a response to County's Request for Submittal for Automated Retail Vending Concession Agreement, ("RFS") No. PB-09-05 issued on March 23, 2009; and

**WHEREAS**, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, operate, and manage the concession granted hereby in accordance with the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

**ARTICLE 1**  
**RECITALS**

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

**ARTICLE 2**  
**DEFINITIONS**

**"ADA"** means Americans with Disabilities Act.

**"Agreement"** means this Automated Retail Vending Concession Agreement and all exhibits hereto. Words such as "herein", "hereafter", "hereof", "hereto", hereby" and "hereunder" when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

**"Airport"** has the meaning set forth in the Recitals to this Agreement.

**"Airport Director"** means the Director of the Palm Beach County Department of Airports.

**"Annual Privilege Fee"** means six and one-half percent (6.5%) of annual Gross Revenues earned from the sale of electronics, which includes consumer electronic products sold from Best Buy Stores, and ten percent (10%) of annual Gross Revenues earned from the sale of all other products and merchandise, which includes products sold from the Rosetta Stone Stores.

**"Assignment"** has the meaning provided in Article 16 to this Agreement.

**"Bond Resolution"** means the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof.

**"Commencement Date"** has the meaning provided in Section 3.02.

**"Concession"** means the Automated Retail Vending Concession operated by Concessionaire pursuant to this Agreement.

**"Concession Fee"** has the meaning provided in Section 5.01.

**"Contract Year"** means the twelve (12) month period, beginning on October 1, 2009 and ending on September 30, 2010, and each twelve (12) month period thereafter, until the termination or earlier expiration of this Agreement.

**"County"** has the meaning provided in the preamble to this Agreement.

**"Day"** means a calendar day of twenty four (24) hours measured from midnight to the next midnight.

**"Department"** means the Palm Beach County Department of Airports.

**"Disadvantaged Business Enterprise"** or **"DBE"** has the same meaning as set forth in Title 49, Part 23 of the Code of Regulations, as now or hereafter amended or any successor regulation.

**"Effective Date"** has the meaning provided in Section 3.01.

**"Equipment"** has the meaning provided in Sections 7.03 and 7.04 for purposes of those sections only.

**"FAA"** means the Federal Aviation Administration.

**"Financer"** has the meaning provided in Section 7.04.

**"Gross Revenues"** include all amounts, charges and revenues derived from Concessionaire's operations on the Airport, including all amounts, charges and revenues derived from the sale of merchandise on or from the Store Locations, whether paid for in cash or credit, regardless of when or whether or not collected, except only as explicitly excluded hereunder. The term Gross Revenues shall not include: (i) federal, state, county/city, and municipal sales taxes or other taxes separately stated and collected from customers and directly paid out by Concessionaire to the government entity; (ii) exchange of merchandise between Concessionaire's stores made only for the convenient operation of Concessionaire's business and not to consummate a sale made in, at, or from the Store Locations; (iii) returns to manufacturers; or (iv) refunds to customers (but only to the extent the original sale to that customer was included in Gross Sales). In the event Concessionaire fails for any reason to charge for or collect the value of any product or service provided hereunder, the amount customarily charged by Concessionaire for such product or service shall be included in the calculation of Gross Revenues. Further, no deduction shall be made from Gross Revenues by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.

**"Initial Term"** has the meaning provided in Section 3.02.

**"Inventory List"** means the products and merchandise listed on the attached Exhibit "A", as may be updated from time to time in accordance with the requirements of this Agreement.

**"Location Map"** means the most current Location Map approved by the Department in writing pursuant to Section 4.03 of this Agreement for the location of Stores at the Airport.

**"Monthly Transaction Report"** has the meaning provided in Section 5.08.

**"Ordinance"** has the meaning provided in Section 11.02.

**"PBIA"** means the Palm Beach International Airport.

**"Privilege Fee"** means six and one-half percent (6.5%) of monthly Gross Revenues earned from the sale of consumer electronics, which includes consumer electronics sold from the Best Buy Stores, and ten percent (10%) of monthly Gross Revenues earned from the sale of all other products and merchandise, which includes products sold from the Rosetta Stone Stores.

**"Public Areas"** has the meaning provided in Section 4.02(A).

**"RFS"** has the meaning set forth in the Recitals to this Agreement.

**"Relocation Notice"** has the meaning provided in Section 7.08.

**“Renewal Term”** has the meaning provided in Section 3.03.

**“Response”** means the document, including attachments and exhibits, submitted by Concessionaire in response to the RFS.

**“Store”** means automated retail vending stores installed, operated and maintained pursuant to this Agreement for the sale of upscale products such as electronics and other specialty items.

**“Store Locations”** means the locations designated for the installation of Stores at the Airport on the Location Map, as may be amended from time to time in accordance with the requirements of this Agreement. As of the Effective Date, three (3) locations have been designated by the parties for installation of Stores at the Airport as reflected in the approved Location Map.

**“Term”** means the Initial Term and any Renewal Term.

**“Terminal”** means the passenger terminal building located at PBIA.

**“TSA”** means the Transportation Security Administration.

### **ARTICLE 3** **EFFECTIVE DATE AND TERM**

3.01 **Effective Date.** This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners (“Effective Date”).

3.02 **Term.** The term of this Agreement shall be for a period of three (3) years, commencing on October 1, 2009 (the “Commencement Date”) and terminating on September 30, 2012 (“Initial Term”), unless sooner terminated as provided for herein.

3.03 **Renewal Term.** Upon the expiration of the Initial Term, County shall have the option to renew this Agreement for up to two (2) additional, consecutive terms of one (1) year each (“Renewal Term”), subject to the consent of Concessionaire. Each Renewal Term shall be upon the same terms and conditions as set forth herein, except that County shall have one (1) less renewal option. In the event County desires to renew this Agreement, County shall provide written notice to Concessionaire of its desire to renew this Agreement at least sixty (60) days prior to the expiration of the then current term. In the event County desires to renew this Agreement, and Concessionaire has consented to such renewal, the parties shall enter into a written agreement to renew this Agreement. County shall have the absolute right, in its sole discretion, to elect not to renew this Agreement. County’s election to exercise any renewal option shall not obligate County to

renew this Agreement for any subsequent Renewal Term. In the event County elects not to renew this Agreement at the end of then current term, this Agreement shall terminate at the end of then current term and Concessionaire shall have no further rights hereunder.

**ARTICLE 4**  
**PRIVILEGES AND PREMISES**

4.01 Description of Specific Privileges, Uses and Rights. Subject to the terms and conditions of this Agreement, Concessionaire shall have the nonexclusive right and obligation to sell the products and merchandise listed on the Inventory List attached hereto as Exhibit A, which list includes Best Buy consumer electronic products and Rosetta Stone non-consumer electronic products, from Stores installed in locations approved in accordance with the requirements of this Agreement. In the event Concessionaire desires to sell additional products or merchandise not listed in the Inventory List, Concessionaire shall provide the Department with an updated Inventory List for prior written approval by the Department. The updated Inventory List shall be automatically incorporated into this Agreement without formal amendment hereto upon the approval of the Department. All products and merchandise shall be high quality and shall be complementary to the existing retail concessions located on the Airport. Concessionaire shall not be permitted to sell food or beverages from any Stores.

4.02 Description of General Privileges, Uses and Rights. In addition to the specific privileges granted pursuant to Section 4.01, County hereby grants to Concessionaire:

- A. the nonexclusive use of the Public Areas within the Terminal for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of County. County shall have the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and
- B. the nonexclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder.

Nothing herein contained shall be construed to grant to Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents or

authorized sublessees, if any, the right to use or occupy any space or area at the Airport improved or unimproved that is leased or assigned to a third party, or, except as expressly set forth in Section 4.02(A) and (B) above, County has not designated for Concessionaire's use pursuant to this Agreement. The general privileges, uses and rights granted in this Section 4.02 shall be subject to the terms, conditions and covenants set forth herein.

4.03 Location Map. Prior to the Commencement Date, Concessionaire shall provide the Department with a layout identifying the proposed location of each Store ("Location Map"), which shall include a general description of the type, photograph and dimensions of each Store for prior written approval by the Department prior to installation. The parties acknowledge that it may be necessary to relocate, install or remove Stores from the locations identified on the Location Map from time to time. Prior to installing, adding, removing, relocating or otherwise altering any Stores at the Airport, Concessionaire shall provide the Department with an updated Location Map for approval by the Department. Concessionaire shall not install Stores at any Airport location that has not been approved in writing by the Department

4.04 Condition of Store Locations. County makes no representations or warranties whatsoever as to the condition of the Store Locations or the Airport, including, but not limited to, any equipment, utility connections, utilities or fixtures currently installed at the Store Locations, whether such equipment, utilities or fixtures are in compliance with applicable laws or the fitness of any such equipment or fixtures fitness for a particular purpose. The Store Locations, and any improvements thereto, are being provided for Concessionaire's use in their "AS IS CONDITION" and "WITH ALL FAULTS." Concessionaire shall not be entitled to any adjustment of any fees or charges payable hereunder on account of the condition of any improvements or any failure of any improvements to be in working order or because of any necessity of Concessionaire to repair or take corrective actions with respect to any improvements.

## **ARTICLE 5** **CONCESSION FEE**

5.01 Concession Fee. Concessionaire shall pay to County Annual Privilege Fees equal to the greater of the Minimum Annual Guarantee or Annual Privilege Fee ("Concession Fee"). The Concession Fee shall be payable on a monthly basis as provided for herein and shall be reconciled on an annual basis in accordance with the provisions of Section 5.10 below.

5.02 Minimum Annual Guarantee.

A. The Minimum Annual Guarantee for each Contract Year shall be as follows:



| <b>Contract Year</b>                                  | <b>Minimum Annual Guarantee</b>   |
|---|---|
| First Contract Year                                   | \$6,000 per year for each Store Location or \$18,000 for three (3) Store Locations  |
| Second Contract Year                                  | Ninety percent (90%) of the Concession Fee for the first Contract Year, or the Minimum Annual Guarantee for the first Contract Year, whichever is higher. |
| Third Contract Year and each subsequent Contract Year | Ninety percent (90%) of the Concession Fee for the prior Contract Year, or the Minimum Annual Guarantee for the prior Contract Year, whichever is higher. |

B. Commencing on the Commencement Date and on the first (1<sup>st</sup>) day of each and every month thereafter, Concessionaire shall pay to the County one-twelfth (1/12) of the Minimum Annual Guarantee for the applicable Contract Year, without demand, deduction, holdback or setoff.

C. In the event the Department exercises its right to require the removal of any Store from the Airport, the Minimum Annual Guarantee will be reduced on a pro rata basis, based upon the remaining number of Store Locations, as opposed to the original number of Store Locations granted to Concessionaire under this Agreement.

5.03 **Privilege Fee.** In the event the Privilege Fee is greater than (1/12) of the Minimum Annual Guarantee, Concessionaire shall pay the difference to the County. Such payment shall be delivered with the Monthly Transaction Report required by Section 5.08 on or before the twentieth (20<sup>th</sup>) day of each and every month, without demand, deduction or setoff, throughout the Term of this Agreement.

5.04 **Unpaid Fees.** In the event Concessionaire fails to make payment of any fees or charges when due and payable in accordance with the terms of this Agreement, Concessionaire shall pay interest at the rate of one and one half percent (1.5%) per month on late payments from the date due until the date payment is received by the Department. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in payment due to County pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.

5.05 **Form of Payment.** All payments due under this Agreement shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Concessionaire or receipt by the County of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to establish an accord

and satisfaction, and the County may accept such check or payment without prejudice to the County's right to recover the balance of said amount due or pursue any other remedy available under this Agreement.

- 5.06 **Sales and Use Tax.** Concessionaire shall pay monthly to County any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the fees, use or occupancy of the Airport imposed by the United States of America, the State of Florida, or Palm Beach County, notwithstanding the fact that the statute, rule, ordinance or enactment imposing the same may endeavor to impose the tax on County.
- 5.07 **Place of Payments.** All payments required to be made by Concessionaire under this Agreement shall be made payable to "Palm Beach County," and shall be paid to the Finance Division, Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406-1470, or to such other office or address as may be substituted therefor.
- 5.08 **Monthly Transaction Report.** Within twenty (20) days after close of each month throughout the Term of this Agreement, Concessionaire shall submit to the Department, in a form and detail satisfactory to the Department, a monthly report that: (1) details the total number of transactions for each Store for the preceding month; (2) details the Gross Revenues for the preceding month attributable to each Store; (3) details the total Gross Revenues for the preceding month; (4) identifies the Concession Fee payable to County for the preceding calendar month; and (5) separately identifies any exclusions from Gross Revenues ("Monthly Transaction Report"). The Department may require the monthly report to be submitted electronically.
- 5.09 **Accounting Records.** Concessionaire shall keep, throughout the Term of this Agreement, all books of accounts and records customarily used in this type of operation, and as from time to time may be required by the Department, in accordance with Generally Accepted Accounting Principals prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available at Concessionaire's principal place of business for three (3) years from the end of each Contract Year, including three (3) years following the expiration or termination of this Agreement. County shall have the right to audit and examine during normal business hours all such books of accounts and records directly related to Gross Revenues upon thirty (30) days' written notice to Concessionaire. If the books of accounts and records are kept at locations other than the Airport, Concessionaire shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this Article. Failure to maintain books of accounts and records as required under this Section 5.09 shall be deemed to be a material breach of this Agreement. The obligations

arising under this Section 5.09 shall survive the expiration or earlier termination of this Agreement

**5.10 Audit Requirements.** Within ninety (90) days of the end of each Contract Year, Concessionaire shall provide to the Department an audit report on all payments required hereunder in accordance with the requirements of this Section 5.10. The audit report shall cover the preceding Contract Year. The audit report shall be prepared in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto, and shall be certified under oath by the Chief Financial Officer or Chief Executive Officer of Concessionaire as being true and correct. The audit report shall be in a form acceptable to the Department. The audit report shall include the following:

- A. Schedule of Gross Revenues by Store and month.
- B. Schedule of payments to County by month.
- C. Calculation of total Concession Fee payable to County for the preceding Contract Year.
- D. The audit report shall include an opinion on the schedule of Gross Revenues by Store and month, the schedule of payments to County by month, and the calculation of total Concession Fee payable to County for the preceding Contract Year.

Failure to deliver an audit report in accordance with the requirements of this Section 5.10 shall be deemed to be a material breach of this Agreement. If the audit report indicates that the Concession Fee (together with any sales taxes thereon) due and owing for any Contract Year is greater than the amount paid by Concessionaire to County during such Contract Year, Concessionaire shall pay the difference to County with the audit report. If the Concession Fee actually paid by Concessionaire to County during any Contract Year exceeds the Concession Fee due and owing for such Contract Year, the Department shall credit the overpayment in the following order: (1) against any past due amounts owed to County by Concessionaire, including interest and late fees; (2) against future Concession Fee which will become due during the succeeding Contract Year; and (3) against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire during the last Contract Year, the Department shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit.

**5.11 Audit by County.** Notwithstanding any provision in this Agreement to the contrary, County or its representative(s) may at any time perform audits of all or

selected operations performed by Concessionaire under the terms of this Agreement. In order to facilitate the audit performed by County, Concessionaire shall make suitable arrangements with the controller who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Section 5.10 above, to make available to County's representative(s) any and all working papers relevant to the audit performed by the controller. County or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of County. Concessionaire shall have thirty (30) days from receipt of the audit report from County or its representative(s) to provide a written response to the Department regarding the audit report. Concessionaire agrees that failure of Concessionaire to submit a written response to the audit report in accordance with the requirements of this Section 5.11 shall constitute acceptance of the audit report as issued.

- 5.12 Security for Payment. Concessionaire shall post a security deposit ("Security Deposit") with County in an amount equal to twenty five percent (25%) of the Minimum Annual Guarantee payable to County. The amount of the Security Deposit shall be increased annually concurrently with any increases to the Minimum Annual Guarantee. The Security Deposit shall serve as security for the payment of all sums due to County and shall also secure the performance of all obligations of Concessionaire hereunder. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to County. In the event of any failure by Concessionaire to pay any fees, sums or charges to County when due or upon any other failure to perform any of its obligations or other default under this Agreement, then, in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. A Security Deposit shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months after the termination of this Agreement. Not less than thirty (30) calendar days prior to any expiration date of a Letter of Credit or Bond, Concessionaire shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond as required by this Section 5.12 shall: (1) entitle County to draw down the full amount of such Security Deposit, and (2) constitute a default of this Agreement entitling County to all available remedies. The Security Deposit shall not be returned to Concessionaire until all obligations under this Agreement are performed and satisfied. Prior to consent from County to any assignment of this Agreement by Concessionaire, Concessionaire's assignee shall be required to provide a Security Deposit to County in accordance with the terms and conditions of this Section 5.12. The obligations arising under this Section 5.12 shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 6**  
**EQUIPMENT & SERVICE REQUIREMENTS**

**6.01 Minimum Equipment and Service Specifications:**

- A. All Stores installed by Concessionaire at the Airport shall meet all applicable federal, state and local laws, including, but not limited to, ADA regulations.**
- B. Concessionaire shall provide to the County written certification that all Stores have been fully tested and are operational prior to implementation. The results of all tests shall be documented, including test failures and the actions taken to remedy the failures.**
- C. Concessionaire shall routinely service each Store, so that they remain in a properly stocked, cleaned and serviceable condition. Stores shall be available for use twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, Department acknowledges that due to the automated nature of Concessionaire's business, the Stores' operation will be interrupted on a scheduled basis due to re-stocking and maintenance and repair, and such restocking and maintenance and repair may be carried out during business hours.**
- D. Stores shall accept a minimum of three major credit cards, including MasterCard and Visa.**
- E. Stores shall provide transaction receipts if desired by the customer.**
- F. Stores shall prominently display written directions necessary to instruct customers in the operation of the Stores and clearly list any and all fees and charges for merchandise and products sold from the Stores and any other fees charged.**
- G. Stores shall have the capability of providing instructions in English.**
- H. Stores shall be in new or "like new" condition with the latest technology and features. Stores shall be attractive and complementary to the existing décor of the Terminal, as determined by the Department. Stores shall be capable of withstanding moderate levels of vandalism and abuse.**
- I. The Department shall have the right to raise reasonable objections to the appearance or condition of the Stores, the quality and quantity of merchandise and products sold, the performance of service personnel, and to require any such conditions or practices objectionable to the Department to be remedied by Concessionaire.**

- J. Concessionaire warrants and represents that the Stores to be installed at the Airport shall not overload any floor or paved area. Concessionaire shall repair, at its sole cost and expense, any floor, including supporting members, and any paved area damaged by overloading.

**6.02 Rates and Charges.**

- A. Prior to the Commencement Date and on each anniversary of the Commencement Date, Concessionaire shall provide County with a written summary identifying the products to be sold from each Store and the proposed pricing for each item.
- B. Any modifications to the prices charged by Concessionaire for its products shall be subject to prior written approval of the Department, which shall not be unreasonably withheld, provided that such prices meet the following requirements: prices for products sold by Concessionaire at the Airport shall be comparable to the prices charged for products of similar quality and size at other retail locations within Palm Beach County. No more than twice a year, County may require Concessionaire to perform a price comparison of up to twenty (20) products selected by County. Price comparisons shall include pricing information from no less than (3) retail outlet locations located within Palm Beach County.

**6.03 Customer Service Requirements.**

- A. **Manager.** Concessionaire shall assure that the Concession is at all times under the supervision and direction of an active, qualified, competent remote manager who is at all times under the direction and control of Concessionaire. Concessionaire's manager shall be responsible for coordinating orders for installation, removal, and repair of Stores, addressing issues related to payments to the County; reporting; and any and all other operational aspects of the Concession. Concessionaire shall provide to the Department, and keep current, the contact information for its manager, including name, address, telephone number, and email address.
- B. **Services.** Concessionaire shall ensure that customer services shall be available 7 days a week, 8:30 am to 10:30 pm, EST, three hundred sixty five (365) days a year at no cost to County. Concessionaire's customer service shall be responsible for dispatching its employees to make Store repairs.
- C. **Customer Service Center.** Concessionaire's customer service center shall handle complaints, credit adjustments, and refunds and provide assistance in an expedient and professional manner. The customer

service telephone number(s) shall be: (1) toll-free; and (2) prominently posted on all Stores.

- D. Complaints. Concessionaire shall promptly respond to the Department of any complaints that the Department receives. At the request of the Department, Concessionaire shall meet with Department staff to review any complaints or concerns and to promptly correct any deficiencies.

## **ARTICLE 7** **INSTALLATION AND RELOCATION OF EQUIPMENT**

- 7.01 Installation. Concessionaire shall install Stores at locations previously approved by County.
- 7.02 Installation of Improvements or Equipment. All improvements to be installed or any alterations to existing equipment or improvements at the Airport by Concessionaire shall be subject to the prior written approval of the Department. Prior to the construction of improvements or installation of equipment, Concessionaire shall submit associated plans and specifications and construction schedules to the Department for review and approval. Any and all construction or installation shall be: (1) at the sole risk of Concessionaire; (2) in accordance with all applicable Federal, State and local codes, laws, the construction standards established by the Department, and the approved plans and specifications; and (3) shall be subject to inspection by the County. At the discretion of the Department, any improvements that are constructed or equipment that has been installed by the Concessionaire that are in violation of this Article 7 shall be removed or reconstructed in accordance with the requirements of this Article 7 at Concessionaire's sole cost and expense.
- 7.03 Title to Improvements. Except as otherwise provided for herein, all fixtures and improvements, excluding Equipment (as hereinafter defined), that are constructed or placed at the Airport shall become the absolute property of County upon the expiration or earlier termination of this Agreement and County shall have every right, title, and interest therein, free and clear of any liens, mortgages or encumbrances. Upon the request of County, Concessionaire shall provide County with a bill of sale or other evidence of the transfer of ownership of improvements pursuant to this Section 7.03 together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances. Notwithstanding the foregoing, County may require the removal of any or all improvements installed by Concessionaire on the Airport upon the expiration or earlier termination of this Agreement.
- 7.04 Security Interest in Equipment. County acknowledges that: (i) it has no security interest or other interest in the equipment and personal property (collectively, the "Equipment") of Concessionaire located in the Store Locations; (ii) the Stores may be leased by or otherwise financed by Concessionaire with third parties; and

(iii) as a result of such lease arrangements or other financing arrangements, the Stores may be owned by, or subject to a security interest in favor of East West Bank, TriplePoint Capital or other financier (each a "Financer"). Upon fifteen (15) days advance written notice to County, Financer or an authorized agent acting on Financer's behalf, may enter upon the Store Locations and remove any Stores that such Financer has a security interest in; provided, however, Financer shall be required to comply with the security requirements established for the Airport for access to any post-security locations of the Airport. Financer and Concessionaire shall be responsible for any and all reasonable costs, expenses and damages incurred by County, which are caused by or directly resulting from Financer or Financer's agents or employees in connection with their entry on Airport and removal of the Stores from the Airport; however, Financer shall not be liable or responsible to County for any type of incidental, punitive, indirect or consequential damages resulting from such entry and removal. Nothing in this Section 7.04 shall be deemed to waive any rights or remedies County may have against Concessionaire for such removal, including, but not limited to, lost revenues, incidental, punitive, indirect or consequential damages resulting from the removal of any Stores from the Airport. Concessionaire acknowledges and agrees that: (i) County shall have no liability whatsoever as a result of the removal of any Stores from the Airport pursuant to this Section 7.04; and (ii) County shall have no obligation to confirm or verify the legitimacy of any Financer's claim of a security interest in a Store prior to removal of the Store from the Airport.

7.05 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Concessionaire shall notify any and all persons performing work for Concessionaire at the Airport or providing materials relating to any improvements made by Concessionaire to the Airport of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Airport or other County property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security, within thirty (30) days from the date of filing. In the event that Concessionaire fails to satisfy or transfer such claim within the thirty (30) day period, County may do so and thereafter charge Concessionaire, and Concessionaire shall promptly pay to County upon demand all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Concessionaire agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien. The obligations set forth in this Section 7.05 shall survive the expiration or earlier termination of this Agreement.



- 7.06 Construction Bonds.** Concessionaire shall cause all improvements to be constructed to completion in accordance with the Department-approved plans and specifications and that all persons performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Prior to the commencement of any improvements (excluding the value of Stores) to the Airport, the estimated cost of which exceeds Fifty Thousand Dollars (\$50,000), Concessionaire, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements to the Airport, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Concessionaire of its obligations arising under this paragraph. Concessionaire may not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. County shall be named as the obligee on the bonds.
- 7.07 Contractor Requirements.** Concessionaire shall require contractors to furnish for the benefit of County a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by County. Concessionaire shall require its contractors to name County as a dual obligee on the bond(s). Concessionaire shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. County's Risk Management Department may require additional insurance for any alterations or improvements approved hereunder, in such amounts as County's Risk Management Department reasonably determines to be necessary.
- 7.08 Relocation of Equipment.** Concessionaire acknowledges that airports are a dynamic environment; therefore, it may be necessary to relocate Stores due to certain demands. County shall provide Concessionaire with prior written notice in the event County will require Concessionaire to relocate any of the Stores ("Relocation Notice"). The parties shall use good faith efforts to identify a reasonably comparable space within the Airport for the relocation of the displaced Store(s). In the event the parties are unable to mutually agree upon a reasonably comparable space for the relocation of the displaced Store(s) within fifteen (15) days of the date of the Relocation Notice, County may require the removal of the displaced Store(s) in lieu of relocation. Relocation or removal of any Stores shall be completed by Concessionaire within sixty (60) days of the date of the Relocation Notice. Concessionaire will be required to coordinate all construction, installation and relocation or removal with the Department. Concessionaire shall be required to observe Airport Rules and Regulations and attend pre-construction meetings as required by the Department. All costs

associated with the relocation or removal of the Stores shall be at Concessionaire's sole cost and expense.

- 7.09 Loss of Right to Sell Brands. In the event Concessionaire loses the right to sell any brand that Concessionaire has agreed to merchandise pursuant to this Agreement, Concessionaire shall offer County one or more replacement brands for the sale of merchandise at the Airport. County may accept or reject the offered replacement brand(s) in its sole and absolute discretion. In the event County rejects all offered brand(s), Concessionaire shall have no obligation to replace the Store(s) affected by the loss of the right to sell the brand merchandised from such Store(s).

## **ARTICLE 8** **MAINTENANCE AND REPAIR OF EQUIPMENT**

- 8.01 Maintenance Plan. Concessionaire shall provide a maintenance plan to County prior to commencement of services. The maintenance plan should include: (1) preventative maintenance activities and schedules; and (2) a schedule of periodic tests and inspections. The maintenance plan shall be subject to prior written approval of the Department, and shall be incorporated herein by reference.

8.02 Equipment Repair.

- A. Concessionaire shall provide repair services for Stores and equipment on a twenty-four (24) hour basis at no charge to County. Concessionaire shall use its commercially reasonable efforts to complete all maintenance and repair services within twenty four (24) hours from the time the need for such service was reported to Concessionaire. Replacement of equipment for the Stores shall be at the expense of Concessionaire.
- B. The repair or replacement of any defective or damaged equipment, fixtures, or appurtenances of the Stores shall be completed by Concessionaire as soon as reasonably possible and, if applicable, in accordance with the directions of the Department.

- 8.03 Maintenance. Concessionaire shall maintain all Stores in good repair and condition. In addition, Concessionaire shall maintain all Stores in a clean and hygienic manner.

## **ARTICLE 9** **SIGNS, DISPLAYS AND ADVERTISING**

- 9.01 Displays. The following information and telephone numbers shall be all toll-free and shall be prominently displayed on all Stores: (1) repair and customer service telephone numbers; and (2) Concessionaire's business name and address.

9.02 **Signs.** All signage identifying the location of Stores, must be recognizable for that purpose, and shall be approved by the Department prior to installation. Concessionaire shall be responsible to provide and maintain all signs, including those the Department has instructed Concessionaire to obtain. The Department has reviewed and approved the signage to be displayed on the Stores.

9.03 **Advertising.** Concessionaire shall not install or place any advertising materials on the Stores or at the Airport without the Department's prior written approval, which may be granted or withheld in the Department's sole and absolute discretion. This advertising prohibition shall include, but shall not be limited to, stickers, electronic advertising or other information that may be affixed or otherwise placed on any Stores.

#### **ARTICLE 10** **UTILITIES**

Concessionaire shall be responsible, at its sole cost and expense, for all utility connections necessary for the operation of the Stores. Concessionaire shall be responsible for payment of all utilities used or consumed by the Stores installed by Concessionaire in the PBI Terminal. County will invoice Concessionaire monthly for electrical usage based on the estimated consumption for the Stores. Rates for electrical usage will be based on then current utility rates charged by the service provider. Concessionaire shall be responsible for payment of all such charges within thirty (30) days of the date of County's invoice.

#### **ARTICLE 11** **AIRPORT SECURITY PROGRAM**

11.01 **Airport Security.** Concessionaire shall observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Concessionaire, as such regulations or requirements have been or may be amended, including without limitation, Title 14, Part 139 of the Code of Federal Regulations and Title 49, Part 1542 of the Code of Federal Regulations. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County, and to take such steps as may be necessary or directed by County to insure that sublessees, employees, invitees and guests observe these requirements. Concessionaire shall conduct background checks of its employees to the extent required by any Federal, State or local law or as required by the Department or County. The Department shall have the right to require the removal or replacement of any employee of Concessionaire at the Airport that the Department has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, employees, invitees or

guests, County incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of County; or any expense in enforcing the Airport Security Program, then Concessionaire agrees to pay to County all such costs and expenses, including all costs of administrative proceeding, court costs, and attorneys fees and all costs incurred by County in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined by County, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, County may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that County may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by County, the FAA or TSA.

- 11.02 Criminal History Records Check Ordinance. Concessionaire shall comply with the provisions of Ordinance 2003-030, as now or hereafter amended, the Criminal History Records Check Ordinance ("Ordinance"), if Concessionaire's employees or subcontractors are required by this Agreement to enter a "critical facility" as identified in County Resolution R-2003-1274, as now or hereafter amended. Concessionaire acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although County agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, Concessionaire shall be solely responsible for the financial, schedule, and staffing implications associated in complying with the Ordinance.

## ARTICLE 12 INSURANCE

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term of this Agreement, the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 12 nor County's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

- 12.01 Commercial General Liability. Concessionaire shall maintain Commercial General Liability insurance with limits of liability of not less than \$1,000,000 Each Occurrence including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. Coverage shall be provided on a primary basis.
- 12.02 Business Auto Liability. Concessionaire shall maintain Business Automobile Liability insurance with limits of liability of not less than \$1,000,000 for owned, non-owned and hired automobiles. In the event Concessionaire has no owned automobiles, Concessionaire shall only be required to maintain Hired & Non-Owned Auto Liability insurance. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability insurance or separate

Business Auto Liability insurance. Coverage shall be provided on a primary basis.

- 12.03 Workers' Compensation & Employers Liability. Concessionaire shall maintain Workers' Compensation & Employers Liability insurance in accordance with applicable law. This coverage shall be provided on a primary basis. In the event Concessionaire subcontracts any portion of the work or services required or permitted by this Agreement to another party, Concessionaire shall be responsible for ensuring the subcontractor maintains Worker's Compensation & Employers Liability insurance, or Concessionaire shall provide coverage under its own Worker's Compensation & Employers Liability policy on behalf of the subcontractor.
- 12.04 Additional Insured Endorsement. Concessionaire shall endorse County as an Additional Insured on each liability insurance policy required to be maintained by Concessionaire, except for Worker's Compensation and Business Auto Liability insurance policies. Concessionaire shall endorse County with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability policy. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. The Additional Insured endorsements shall provide coverage on a primary basis. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406".
- 12.05 Certificate of Insurance. Concessionaire shall provide County with a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage cancels or non-renews during the Term of this Agreement, Concessionaire shall furnish a new certificate of insurance evidencing replacement coverage thirty (30) days prior to the expiration of such insurance.
- 12.06 Waiver of Subrogation. Concessionaire agrees by way of entering this Agreement in writing to a Waiver of Subrogation for each required policy providing coverage during the Term of this Agreement. When required by the insurer or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, Concessionaire shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Concessionaire enter into such an agreement on a pre-loss basis.

- 12.07 Deductibles, Coinsurance, & Self-Insured Retention. Concessionaire shall be fully and solely responsible for any deductible, coinsurance penalty or self-insured retention, including any losses, damages or expenses not covered due to an exhaustion of limits or failure to comply with a policy.
- 12.08 Right to Review or Reject Insurance. County's Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article 12 from time to time throughout the Term of this Agreement. County may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, County shall provide Concessionaire a written notice of rejection, and Concessionaire shall comply within thirty (30) days of receipt of the notice.
- 12.09 No Representation of Coverage Adequacy. Concessionaire acknowledges the limits, coverages and endorsements required by this Article 12 are intended to minimize liability for County. Concessionaire agrees that it will not rely upon the requirements of this Article 12 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Concessionaire against any loss exposures, whether as a result of this Agreement or otherwise.

### **ARTICLE 13** **RELATIONSHIP OF THE PARTIES**

Concessionaire, or any successor in interest to this Agreement, is and shall be deemed to be an independent contractor and operator and shall be solely responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefor.

### **ARTICLE 14** **INDEMNIFICATION**

Concessionaire shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, arising out of this Agreement, including, without limitation those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Concessionaire's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Concessionaire or any breach of the terms of this Agreement ; provided, however, Concessionaire shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the

negligence of County its respective agents, servants, employees and officers. Concessionaire further agrees to hold harmless and indemnify County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Concessionaire's activities or operations or use of the Airport whether or not Concessionaire was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Concessionaire. Concessionaire recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that County would not enter into this Agreement without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Article 14 shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 15**  
**TERMINATION OF AGREEMENT, DEFAULT, AND REMEDIES**

15.01 **Termination.** This Agreement shall automatically terminate and expire at the end of the Initial Term unless renewed in accordance with Section 3.03.

15.02 **Termination for Convenience.** At any time after the expiration of first Contract Year, the County shall have the right to terminate this Agreement for convenience upon one hundred and twenty (120) days prior written notice to Concessionaire. Upon termination pursuant to this Section 15.02, the parties shall be released from all further obligations hereunder with the exception of those obligations that expressly survive the expiration or earlier termination of this Agreement.

15.03 **Default.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Concessionaire:

- A. The failure by Concessionaire to pay the Concession Fee in accordance with the requirements of Article 5 or make any other payment required to be made by Concessionaire hereunder, as and when due, where such failure continues for a period of three (3) business days after written notice thereof from County to Concessionaire.
- B. The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire, other than those described in paragraph A above, where such failure shall continue for a period of thirty (30) days after written notice from County to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed

to be in default if Concessionaire commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

- C. To the extent permitted by law, (1) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (2) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days]; (3) the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the Airport or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located at the Airport or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.
- D. The discovery by County that any information given to County by Concessionaire relating to the RFS or this Agreement was materially false.

**15.04 Remedies** In the event of any such material default or breach by Concessionaire, County may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement, by giving written notice to that effect. Such termination shall be without prejudice to County to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fee and other sums due hereunder, payable through the full Term of this Agreement, or any other damages or remedies whatsoever. Upon termination of this Agreement, County shall have the right to engage another Concessionaire to provide the services required hereunder for such period or periods at such fees and upon other terms and conditions as County may, in good faith, deem advisable.

**15.05 Termination by Concessionaire.** Concessionaire may terminate this Agreement, if Concessionaire is not in default of this Agreement (including, but not limited to, its payments to County hereunder), by giving County sixty (60) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

- A. Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes and the remaining in force of such injunction for a period of at least ninety consecutive (90) days.



- B. The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of sixty (60) consecutive days after receipt from Concessionaire of written notice to remedy same provided, however, that if the nature of County's obligations is such that more than sixty (60) days are required for performance then County shall not be in default if County commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or effect if County has remedied the default prior to receipt of Concessionaire's notice of cancellation.
- C. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Concessionaire, for a period of at least ninety (90) consecutive days.

**ARTICLE 16**  
**ASSIGNMENT AND TRANSFER**

Concessionaire shall not, in any manner, assign, transfer or otherwise convey an interest in this Agreement or any portion thereof ("Assignment"), without the prior written consent of the County, which consent may be granted or withheld by the County in its sole and absolute discretion. Any such attempted Assignment without County approval shall be null and void. In the event the County consents in writing to an Assignment, Concessionaire shall have the right to the extent permitted by the County's consent to such Assignment. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein and Concessionaire shall be fully responsible for the observance by its assignees of the terms and covenants contained in this Agreement. Notwithstanding any provision of this Agreement to the contrary, in the event of an approved Assignment, Concessionaire shall remain primarily liable to County for fulfilling all obligations, terms, and conditions of this Agreement, throughout the Term of this Agreement. County may freely assign this Agreement at any time without the consent of Concessionaire, and upon assumption by such assignee of County's obligations hereunder, County shall be released from all liability and obligation arising hereunder after such Assignment.

**ARTICLE 17**  
**LAWS, REGULATIONS, PERMITS AND TAXES**

**17.01 General.**

- A. Concessionaire agrees that throughout the Term of this Agreement, Concessionaire shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes,

regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended, including, but not limited to FAA Advisory Circulars and Airport Rules and Regulations.

- B. Concessionaire agrees that it shall require its appropriate managers, supervisors, and employees to attend such training and instructional programs as the Department may, from time to time require, in connection with the Airport Rules and Regulations and policies and procedures related to certification of the Airport under Title 14, Part 139 of the Code of Federal Regulations, as now or hereafter amended.

17.02 Permits and Licenses Generally. Concessionaire shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Agreement by any Federal, State or local governmental entity or any court of law having jurisdiction over Concessionaire or Concessionaire's operations and activities, for any activity of Concessionaire's conducted on the Airport and for any and all operations conducted by Concessionaire including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Concessionaire's operations and activities on the Airport have been obtained and are in full legal compliance. Upon the written request of the Department, Concessionaire shall provide to Department certified copies of any and all permits and licenses which Department may request.

17.03 Air and Safety Regulation. Concessionaire shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all safety regulations of the Department and with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all employees, contractors, business invitees and all other persons transacting business with or for Concessionaire resulting from, or in any way related to, the conduct of Concessionaire's business on the Airport. Concessionaire hereby agrees that neither Concessionaire, nor employee or contractor or any person working for or on behalf of Concessionaire, shall require any personnel engaged in the performance of Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

17.04 Payment of Taxes. Concessionaire shall pay any and all taxes and other costs lawfully assessed against its operations under this Agreement. Concessionaire shall have the right to contest the amount or validity of any tax or assessment payable by it by appropriate legal proceedings, but this shall not be deemed or

construed in any way as relieving, modifying, or extending Concessionaire's covenants to pay any such tax or assessment, unless the legal proceedings shall operate to prevent the collection of the tax or assessment. Upon termination of such legal proceedings, Concessionaire shall pay the amount of any such tax or assessment, or part thereof, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution thereof, together with any costs, fees, interest, penalties, or other liabilities in connection therewith.

**ARTICLE 18**  
**DISCLAIMER OF LIABILITY**

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE AIRPORT, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS. CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT COUNTY SHALL HAVE NO LIABILITY WHATSOEVER AND CONCESSIONAIRE COVENANTS AND AGREES TO HOLD HARMLESS COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS AGREEMENT. FURTHERMORE, CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, WAS AT ITS SOLE RISK.

**ARTICLE 19**  
**NOTICES**

All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight delivery service, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or

if mailed, upon the date on which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Attn: Deputy Director, Airports Business Affairs  
Palm Beach County Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, Florida 33406-1470  
Fax: 561-471-7427

With a copy to:

Attn: Airport Attorney  
Palm Beach County Attorney's Office  
301 North Olive Ave, Suite 601  
West Palm Beach, FL 33401  
Fax: 561-355-4398

Concessionaire:

Attn: Patrick Freeman, Account Manager  
NewZoom, Inc.  
625 2<sup>nd</sup> Street  
San Francisco, CA 94107  
Fax: (415) 348-7483

With a copy to:

William M. Scherer, Esq.  
Scherer Smith & Kenny, LLP  
140 Geary Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108  
Fax: (415) 433-9434

Either party may change the address to which notices under this Agreement shall be given, upon three (3) days prior written notice to the other party.

## **ARTICLE 20** **GOVERNMENTAL RESTRICTIONS**

20.01 **Federal Right to Reclaim.** In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or Terminal for public purposes for a period in excess of ninety (90) days, either party may terminate this Agreement by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all

liability hereunder arising after such termination or as a result thereof. This Section 20.01 shall not act or be construed as a waiver of any rights Concessionaire may have against the United States as a result of such taking.

- 20.02 Federal Review. Concessionaire acknowledges this Agreement may be subject to review or inspection by the FAA to determine satisfactory compliance with Federal law or grant assurances and agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Agreement which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.
- 20.03 County Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of County of Palm Beach, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the business or property of Concessionaire.
- 20.04 Right of Flight. County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.
- 20.05 Operation of Airport. Concessionaire expressly agrees for itself, its subleases, successors and assigns, to prevent any use of the Airport which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.
- 20.06 Release. Concessionaire acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases County from any and all liability relating to the same.

**ARTICLE 21**  
**NON-DISCRIMINATION**

- 21.01 Non-discrimination. Concessionaire for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (1) that no person on the grounds of race, color, religion, sex, age, marital status, familial status, handicap, gender expression or identity, or national origin shall be excluded from participation in or denied the use of its facilities or Stores, (2) that in the construction of any improvements on, over, or under the Airport and the furnishing of services, no person on the grounds of race, color, religion, sex, age,

marital status, familial status, handicap, gender expression or identity, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Concessionaire shall use the locations assigned to Concessionaire in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations have been or may be amended. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Agreement as if this Agreement had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulation, Part 21, are followed and completed including exercise or expiration of appeal rights.

- 21.02 Disadvantaged Business Enterprises/Affirmative Action.** Concessionaire acknowledges that the provisions of Title 49, Part 23, Subpart F of the Code of Federal Regulations, Disadvantaged Business Enterprises (DBE), and Title 14, Part 152 of the Code of Federal Regulations, Affirmative Action Employment Programs, are applicable to the activities of Concessionaire under the terms of this Agreement, unless exempted by said regulations, and shall comply with said regulations, as now or hereafter amended or any successor regulations, and all requirements of the Department, the FAA and the U.S. Department of Transportation, in reference thereto. These requirements include, but are not limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports, and including, if directed by Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises in accordance with the goals established in Section 21.03. Failure to comply with these requirements shall be grounds for default and termination of this Agreement. Concessionaire shall not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award of performance of any concession agreement covered by Title 49, Part 23, Subpart F of the Code of Federal Regulations, as now or hereafter amended or any successor regulation. Concessionaire shall include the preceding statement in any subsequent concession agreements that it enters and cause those businesses to similarly include the statement in further agreements. Any termination pursuant to this Section 21.02 shall not be effective until the procedures specified in said federal regulations or established by County are completed, including exercise or expiration of any appeal rights.
- 21.03 Disadvantaged Business Enterprise Participation Goals.** Concessionaire has committed to making a good faith effort to meet the DBE goal of at least ten percent (10%) of Concessionaire's gross receipts for each twelve (12) month period throughout the Term of this Agreement and any extension thereof. For the

purpose of verifying Concessionaire's good faith efforts, Concessionaire shall keep and maintain such books of account and records as necessary for compliance with Title 49, Part 23, Subpart F of the Code of Federal Regulations, as now or hereafter amended or any successor regulation, County's and Concessionaire's commitment to such DBE participation. Concessionaire shall provide an annual report to the Department as to the percentage of DBE participation during the previous year on or before November 1st of each year. In the event that Concessionaire's annual report reveals that Concessionaire did not meet the DBE participation goal for the previous twelve (12) month period, Concessionaire shall also furnish a detailed report as to reason(s) that the participation goal was not met together with documentation of Concessionaire's good faith efforts and a corrective action plan for meeting the DBE goal.

**ARTICLE 22**  
**MISCELLANEOUS**

- 22.01 County Not Liable.** County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from (1) cessation for any reason of air carrier operations at the Airport or (2) diversion of passenger traffic to any other facility. County shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury whatsoever sustained by Concessionaire including, but not limited to, those resulting from failure of any water supply, heat, air conditioning or electrical current or from an act of God, state of war, terrorism, civilian commotion or riot or any cause beyond the control of County. All personal property placed on or moved on to the Airport shall be at the sole risk of Concessionaire. County shall not be liable for any damage or loss of any personal property placed or moved on to the Airport.
- 22.02 Losses and Expenses.** Concessionaire acknowledges and agrees that County shall not be held responsible in any way for any losses or expenses incurred resulting from lost funds, theft, vandalism, or from the repair or replacement of defective or damaged Stores, equipment, fixtures or appurtenances. Security of currency as well as associated supplies shall be at the sole responsibility of Concessionaire. Such losses and expenses will not affect the fees to be paid by Concessionaire to County.
- 22.03 Waivers.** The failure of County to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that County may have for any subsequent breach, default, or non-performance, and County's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.
- 22.04 Subordination to Bond Resolution.** This Agreement and all rights granted to Concessionaire hereunder are expressly subordinated and subject to the lien and

provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Concessionaire agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Concessionaire and County with the terms and provisions of this Agreement and Bond Resolution.

- 22.05 Subordination to Federal and State Agreements.** This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired the land or improvements thereon and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Concessionaire understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between County, the United States of America, the State of Florida or any of their agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.
- 22.06 County's Governmental Authority.** Nothing in this Agreement shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Concessionaire or its operations. The County's obligations under this Agreement are made in a proprietary capacity rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair the County's governmental functions, including, without limitation, the County's right to lawfully exercise its regulatory authority over the development of the Concessionaire's operations, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the County's governmental authority.
- 22.07 Rights Reserved to County.** All rights not specifically granted Concessionaire by this Agreement are reserved to County.
- 22.08 Invalidity of Clauses.** The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no affect upon the validity of any other part or portion hereof.
- 22.09 Venue.** To the extent allowed by law, the venue for any action arising from this Agreement shall be in Palm Beach County, Florida.
- 22.10 Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of Florida.



- 22.11 **Remedies Cumulative.** The rights and remedies of the parties with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.
- 22.12 **Paragraph Headings.** The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 22.13 **Binding Effect.** The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.
- 22.14 **Performance.** The parties expressly agree that time is of the essence in this Agreement and the failure by Concessionaire to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of County without liability, in addition to any other rights or remedies, relieve County of any obligation to accept such performance.
- 22.15 **Public Entity Crimes.** As provided in Section 287.132-133, Florida Statutes by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date. This notice is required by Section 287-133(3)(a), Florida Statutes.
- 22.16 **Conflict.** In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Agreement, the RFS or Concessionaire's Response, the order-of-precedence shall be (1) this Agreement; (2) the RFS; and (3) Concessionaire's Response.
- 22.17 **Consent or Action.** In the event this Agreement is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Agreement requires the County or Department's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Airport Director. If Concessionaire requests the County or Department's consent or approval pursuant to any provision of the Agreement and County or Department fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.

- 22.18 **Excusable Delay.** Any party in performing under this Agreement shall use reasonable efforts to remedy the cause or causes of an excusable delay. Excusable delays are those delays due to force majeure, acts of God, fire, flood, earthquake, explosion, riot, sabotage, windstorm, or labor dispute, and shall toll the time to perform under this Agreement.
- 22.19 **Incorporation by References.** All terms, conditions, specifications of the RFS, Concessionaire's Response and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 22.20 **Entirety of Agreement.** The parties agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.
- 22.21 **No recording.** Neither this Agreement, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 22.22 **Construction.** Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.
- 22.23 **Inspections.** The authorized employees and representatives of the County and any applicable federal, state, and local governmental entity having jurisdiction hereof shall have the right to inspect the Store Locations at all reasonable times for the purposes of compliance with the provision of this Agreement and/or applicable laws.
- 22.24 **Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

{Remainder of page intentionally left blank}

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by the Chair of the Board of County Commissioners and the seal of the Board to be affixed hereto and attested by the Clerk of the Board, pursuant to the authority granted by said Board, and Concessionaire has caused these presents to be signed in its corporate name by a duly authorized officer, acting on behalf of Concessionaire and the seal of Concessionaire to be affixed hereto and attested by the Secretary of Concessionaire of the dates set forth below.

**ATTEST:**

**SHARON R. BOCK**  
Clerk & Comptroller

**PALM BEACH COUNTY, a Political  
Subdivision of the State of Florida,  
by its Board of County Commissioners**

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

By: \_\_\_\_\_  
John F. Koons, Chairman

(SEAL)

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
County Attorney

By: \_\_\_\_\_  
Director, Department of Airports

**Signed, sealed and delivered in the  
presence of two witnesses for**

**CONCESSIONAIRE:  
NEWZOOM, INC., a California  
corporation d/b/a "ZoomSystems"**

**Concessionaire:**

\_\_\_\_\_  
Signature  
Danyelle Oubre  
Name (typed or printed)

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature  
Erina Belenky  
Name (typed or printed)

\_\_\_\_\_  
Name (typed or printed)  
Frank Siskowski  
CFO  
Title: \_\_\_\_\_

(Seal)

**EXHIBIT "A"**  
**INVENTORY LIST**

**Best Buy**

| Product Name                                      | Retail \$ |
|---|-----------|
| Apple iPod Shuffle 1GB Silver                     | \$49.99   |
| Apple iPod Nano4 16GB Silver                      | \$199.99  |
| Apple iPod Nano4 8GB Black                        | \$149.99  |
| Apple iPod Nano4 8GB Purple                       | \$149.99  |
| Apple iPod Touch 2nd Gen 8GB                      | \$229.99  |
| Apple iPod Touch 2nd Gen 32GB                     | \$399.99  |
| DLO TransDock Micro FM Transmitter                | \$52.99   |
| Apple earphones                                   | \$29.99   |
| Apple earphones                                   | \$29.99   |
| Apple iPod Classic 120GB Silver                   | \$249.99  |
| Apple iPod Classic 120GB Black                    | \$249.99  |
| Dynex iPod Wall Charger                           | \$29.99   |
| DLO Power Bag for iPod Shuffle                    | \$21.99   |
| Dynex iPod Car Charger                            | \$19.99   |
| Philips HE592 Earbuds w/ Surround Sound WHITE     | \$22.99   |
| Philips HE592 Earbuds w/ Surround Sound WHITE     | \$22.99   |
| Philips SHN3500 Turbo Boost Performance Earphones | \$29.99   |
| Philips SHN3500 Turbo Boost Performance Earphones | \$29.99   |
| Sony NC-6 Noise Cancelling Headphones             | \$59.99   |
| Sony MDR-EX25LP earphones                         | \$59.99   |
| Sony NC-6 Noise Cancelling Headphones             | \$59.99   |
| Bose In-Ear Triport Earphones                     | \$99.99   |
| Bose On-Ear Triport Headphones                    | \$179.99  |
| Shure SE110 Black noise-isolating earphones       | \$99.99   |
| Klipsch Custom I earphones                        | \$129.99  |
| Shure SE210 Black noise-isolating earphones       | \$149.99  |
| Pure Digital FLIP Ultra Video Camcorder - WHITE   | \$149.99  |
| Nikon Coolpix S550 10.0MP BLACK                   | \$229.99  |
| Fuji J10 FinePix 8.2MP BLACK                      | \$129.99  |
| Kingston SD Memory 4GB                            | \$37.99   |
| Canon ELPH SD750 10.0MP Silver                    | \$299.99  |
| Kingston SD Memory 2GB                            | \$22.99   |
| Nintendo Brain Age 2 for DS                       | \$19.99   |
| Nintendo DS Lite (Cobalt/Black)                   | \$129.99  |
| Activision Guitar Hero Bundle for Nintendo DS     | \$49.99   |
| Nintendo Lego Batman for DS                       | \$29.99   |
| Nintendo Mario Kart for DS                        | \$34.99   |
| Nintendo Mario Party for DS                       | \$29.99   |
| Rockfish Headphone Softizer                       | \$19.99   |
| Janzen 1600W Foreign Voltage Converter & Adapter  | \$24.99   |
| Pure Digital FLIP MNO camcorder - BLACK           | \$179.99  |
| SES Best Buy Gift Card - Pre Loaded               | \$25.00   |
| Microsoft Bluetooth Mouse 5000                    | \$44.99   |
| BlackBerry Travel Wall Charger                    | \$24.99   |
| BlackBerry Vehicle Charger                        | \$25.99   |
| Janzen II Bluetooth Headset Black                 | \$139.99  |
| Geek Squad 4GB USB Flash Drive                    | \$34.99   |
| Nokia 2630 Unlocked Mobile Phone                  | \$119.99  |
| Garmin Nuvi260w GPS Receiver                      | \$349.99  |

**EXHIBIT "A"**  
**INVENTORY LIST**

**Rosetta Stone**

| Product Name         | Retail Price |
|----------------------|--------------|
| Italian Level 1      | \$209.00     |
| French Level 1       | \$209.00     |
| Spanish Level 1      | \$209.00     |
| Italian Level 1      | \$209.00     |
| French Level 1       | \$209.00     |
| Spanish Level 1      | \$209.00     |
| Italian Level 1.2    | \$339.00     |
| French Level 1.2     | \$339.00     |
| Spanish Level 1.2    | \$339.00     |
| Italian Level 1.2    | \$339.00     |
| French Level 1.2     | \$339.00     |
| Spanish Level 1.2    | \$339.00     |
| Italian Level 1,2,3  | \$499.00     |
| French Level 1,2,3   | \$499.00     |
| Spanish Level 1,2,3  | \$499.00     |
| Arabic Level 1       | \$209.00     |
| English Level 1      | \$209.00     |
| German Level 1       | \$209.00     |
| Arabic Level 1.2     | \$339.00     |
| English Level 1.2    | \$339.00     |
| German Level 1       | \$209.00     |
| Arabic Level 1,2,3   | \$499.00     |
| English Level 1,2,3  | \$499.00     |
| German Level 1.2     | \$339.00     |
| Russian Level 1      | \$209.00     |
| Portuguese Level 1   | \$209.00     |
| German Level 1.2     | \$339.00     |
| Russian Level 1.2    | \$339.00     |
| Portuguese Level 1.2 | \$339.00     |
| German Level 1,2,3   | \$499.00     |

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**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
8/12/2009

**PRODUCER** Technology - T: (415) 374-2000 F: (415) 374-2035  
Wells Fargo of California Insurance Services Inc.  
550 Montgomery Street, 3rd Floor  
San Francisco, CA 94111-2536

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURERS AFFORDING COVERAGE**

NAIC #

**INSURED** NewZoom, Inc. dba ZoomSystems  
625 Second Street  
San Francisco CA 94107

|  |       |
|--|-------|
| INSURER A: Employer's Fire Insurance Company   | 20648 |
| INSURER B: Hartford Casualty Insurance Company | 29424 |
| INSURER C:                                     |       |
| INSURER D:                                     |       |
| INSURER E:                                     |       |

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR ADD'L LTR | INSRD | TYPE OF INSURANCE   | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS  |
|----------------|-------|---|---------------|----------------------------------|-----------------------------------|---|
| A              |       | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC | 7140076400000 | 07/15/2009                       | 07/15/2010                        | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000<br>MED EXP (Any one person) \$ 10,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A              |       | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS   | 7140076400000 | 07/15/2009                       | 07/15/2010                        | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br><br>BODILY INJURY (Per person) \$<br><br>BODILY INJURY (Per accident) \$<br><br>PROPERTY DAMAGE (Per accident) \$   |
|                |       | <b>GARAGE LIABILITY</b><br><input type="checkbox"/> ANY AUTO  |               |                                  |                                   | AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN EA ACC \$<br>AUTO ONLY: AGG \$   |
|                |       | <b>EXCESS/UMBRELLA LIABILITY</b><br><input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE<br><br><input type="checkbox"/> DEDUCTIBLE<br><input type="checkbox"/> RETENTION \$   |               |                                  |                                   | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$<br>\$  |
| B              |       | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below  | 57WECLN4842   | 07/15/2009                       | 07/15/2010                        | <input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                          |
|                |       | <b>OTHER</b>  |               |                                  |                                   |   |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Additional Insureds for General Liability only:  
Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents.  
  
Waiver of Subrogation applies.

**CERTIFICATE HOLDER****CANCELLATION Ten Day Notice for Non-Payment**

Palm Beach County Board of County Commissioners  
c/o Department of Airports  
846 Palm Beach International Airport  
West Palm Beach, Florida 33406

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



ACORD 25 (2001/08) 1 of 2 719709

© ACORD CORPORATION 1988

(This certificate replaces certificate# 719692 issued on 8/12/2009)

## **IMPORTANT**

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Bond No. 1000839279

Premium: \$204.00/ 3 years

## CONCESSION BOND

KNOW ALL MEN BY THESE PRESENTS: That we NewZoom, Inc. 625 2<sup>nd</sup> Street,  
San Francisco, CA 94107, as Principal and AMERICAN CONTRACTORS INDEMNITY  
COMPANY, a corporation organized and existing under the laws of the State of California are held and firmly  
bound unto Palm Beach County, 846 Palm Beach International Airport, West Palm Beach,  
Florida 33406-1470 as Obligee, in the penal sum of \* Four  
Thousand Five hundred and NO/100THS\* Dollars (\$ 4,500.00 ) lawful money of the  
United States of America, to be paid to the said Obligee, or their successors or assigns, for which payment well and  
truly to be made, we, and each of do hereby bind ourselves, and each of our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written Agreement with the Obligee for operation by the Principal of an  
Agreement at Palm Beach International Airport as a Concessionaire, and, WHEREAS, said  
Agreement, which by references is made a part hereof.

The term of this bond shall be for a period of three years beginning August 21, 2009 but may be  
continued in force at the option of Surety of additional one year periods upon execution of its Continuation  
Certificate.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall comply with the terms of the  
concession agreement and save harmless the Obligee from any loss or damage, then this obligation is void,  
otherwise, to remain in full force and effect.

This bond is executed by the Principal and Surety and accepted by Obligee upon the following express conditions:

1. The liability of the Surety on this bond shall not exceed the sum of \$4,500.00 in the aggregate.
2. In the event of any "Event of Default" as defined in the Agreement, the Surety shall be given written notice  
by the Obligee of such default within 60 days after such "Event of Default" at its office at 601 S. Figueroa  
St., #1600, Los Angeles, CA 90017.
3. No action or suit proceeding either a law or equity shall be maintained against the Surety unless such  
action, suit or proceeding is commenced within (3) months after the termination of this bond.
4. It is further understood that this bond may be cancelled at any time by the Surety upon giving thirty (30)  
days notice by certified mail to the Obligee in which event the liability of the Surety shall terminate at the  
expiration of thirty (30) days except to any liability that may have arrived prior to the expiration of the  
thirty (30) days.

This bond is to be effective August 21, 2009.

SIGNED AND SEALED THIS DAY OF August 26, 2009.

NewZoom, Inc.

By: 

(Principal)

American Contractors Indemnity Company

By: 

Nancy L. Wallis, Attorney in Fact (Surety)



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Sonoma

On 8-26-09 before me, Stacy M. Davis, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Nancy L. Wallis  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Handwritten Signature]  
Signature of Notary Public Stacy M. Davis

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

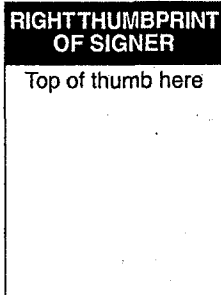
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

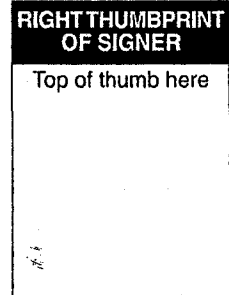
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**POWER OF ATTORNEY**

**AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

**Nancy L. Wallis, Bruce G. Okrepkie, Catherine A. Pinney or Cheryl Ripley of Petaluma, California**

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed \*\*\*\*\*Three Million\*\*\*\*\* Dollars (\$ \*3,000,000.00\* ).

This Power of Attorney shall expire without further action on March 18, 2011. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be It Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be It Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 15<sup>th</sup> day of July, 2008.

**AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

Corporate Seals



By: [Signature]  
Daniel P. Aguilar, Vice President

State of California  
County of Los Angeles SS:

On this 15<sup>th</sup> day of July, 2008, before me, Deborah Reese, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity, upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature [Signature] (Seal)



I, Jeannie J. Kim, Assistant Secretary of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 26<sup>th</sup> day of August, 2009

Corporate Seals

Bond No. 1000839279  
Agency No. 2181



[Signature]  
Jeannie J. Kim, Assistant Secretary